



# Consumer Protection Strategy Review

Vulnerable customer review to assist  
with Consumer Protection Programme  
development

August 2018



## About the Utility Regulator

The Utility Regulator is the independent non-ministerial government department responsible for regulating Northern Ireland's electricity, gas, water and sewerage industries, to promote the short and long-term interests of consumers.

We are not a policy-making department of government, but we make sure that the energy and water utility industries in Northern Ireland are regulated and developed within ministerial policy as set out in our statutory duties.

We are governed by a Board of Directors and are accountable to the Northern Ireland Assembly through financial and annual reporting obligations.

We are based at Queens House in the centre of Belfast. The Chief Executive leads a management team of directors representing each of the key functional areas in the organisation: Corporate Affairs, Markets and Networks. The staff team includes economists, engineers, accountants, utility specialists, legal advisors and administration professionals.



### Our mission

To protect the short- and long-term interests of consumers of electricity, gas and water.



### Our vision

To ensure value and sustainability in energy and water.



### Our values

- Be a best practice regulator: transparent, consistent, proportionate, accountable and targeted.
- Be professional – listening, explaining and acting with integrity.
- Be a collaborative, co-operative and learning team.
- Be motivated and empowered to make a difference.



## Abstract

This review is aimed at assisting with context, background and ideas to inform UR as the new Consumer Protection Programme is developed. It deliberately focuses on issues and lessons from GB regulation and regulated sectors as learning points for the NI debate.

## Audience

This document is most likely to be of interest to regulated companies in the energy and water industries, consumer organisations, community and voluntary organisations, natural gas, electricity and water consumers, government and other statutory bodies.

## Consumer impact

This review was produced to assist with the development of the Consumer Protection Programme. The Consumer Protection Programme is a three year programme of projects which are expected to have a positive impact on domestic electricity, gas and water consumers.



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## Introduction and Context

- 1.1 This review is aimed at assisting with context, background and ideas to inform UR as the new Consumer Protection Programme is developed. It deliberately focuses on issues and lessons from GB regulation and regulated sectors as learning points for the NI debate. This is appropriate given (i) similarities in market, policy and regulatory models (whilst recognising policy/regulatory differences); (ii) UK-wide relevance of said policy discussions, vulnerability etc; (iii) work across UK regulators to better understand optimal vulnerability definitions, impacts, and regulatory policy responses.
- 1.2 It is clear from policy discussions and strategic statements in recent months in Great Britain (GB) that society's expectations of what markets, particularly essential services and regulated markets such as energy, should deliver for all customers has changed. "Fairness" of market outcomes for all customers, including those in vulnerable circumstances, has become a fourth element to formally consider in regulatory policy alongside price, security of supply, and sustainability. The recent Department for Business Energy and Industrial Strategy (BEIS) Green Paper (1) for example notes specifically that "the government wants good outcomes for all consumers, both now and in the future. Firms should not prosper from taking advantage of some groups of consumers".
- 1.3 The previously held view was that regulators should focus on regulating monopolies and promoting competitive markets. The perceived wisdom was that competition would be sufficient to protect all customers, with protection measures for "at-risk" or vulnerable customers as a secondary duty. It was assumed that any protective measures would focus on only specific and tightly defined groups and competition would look after the rest. Vulnerability too was often assessed simply in terms of relatively "tick box" and static criteria such as "disabled" or "pensionable age". BEIS (1) discuss how people who are vulnerable or at risk of vulnerability should not be treated as a homogenous group.
- 1.4 Understanding of vulnerability has developed, moving from being restrictively based on defined customer groups, to an understanding that anyone can be vulnerable given a combination of circumstances. These circumstances can be complex, are often multi-dimensional and can be transitory, with people moving in and out of positions of vulnerability. It is therefore not appropriate to limit vulnerability to something that only affects specific customer groups.
- 1.5 Recently the concept of 'vulnerability' in NI has shifted towards the concept of 'risk of harm'. This is because there may be certain aspects of a customer's personal characteristics which leave them at greater risk of harm



under one set of circumstances, but not under another.

- 1.6 Consumers' circumstances are not the only factor impacting on this risk. Company policy, practice and behaviour can be equally important in contributing to consumers being at greater risk of vulnerability and of that risk crystallising into detriment. This company behaviour is within our control and, viewed from the perspective of the consumer receiving the support, should be the focus of this review and our collective work.
- 1.7 A long-standing regulatory view is that informed consumers are empowered consumers and regulators were largely tasked with prioritizing efficiency and market-based outcomes. However there are many people in vulnerable situations who are not able to embrace empowerment and need effective protection in a changing environment. The recent shift in policy direction is also a result from actual market experiences, especially financial products and energy; together with the real world of consumer/political/media insight and debate, which highlight that many customers may not get "fair" outcomes from the marketplace alone, despite actively promoting competition, consumer education and measures to make engagement easier.
- 1.8 The changed context noted above is reflected in the fact that issues around consumer protection, and best practice in relation to the needs of consumers in vulnerable situations, are being considered in parallel by various bodies in GB at present. An appendix to the BEIS Green Paper provides a new strategic steer to the Competition and Markets Authority (CMA). In this section of the Consumer Green Paper, BEIS have restated their stance that consumer harm can be substantial when markets do not work well and that this is particularly the reality for vulnerable customers. Therefore, BEIS has called upon the CMA to be a champion for consumers in regards to issues such as: (a) Tackling market failures that harm consumers, especially vulnerable ones; and (b) making markets work well for vulnerable consumers.
- 1.9 The establishment of such groups reiterates the importance the government, regulators and industry participants now put on vulnerability issues.
- 1.10 In light of all the above, this review has been commissioned to explore current best practice on domestic energy consumer protection issues in relation to vulnerability. As noted above, the focus of this paper is on GB market and aims to identify the issues that are gaining traction across all regulated sectors to understand how these issues are being addressed.



1.11 The paper is presented as follows:

- **Section One** introduces the identified issues around vulnerability. Following a brief preamble on the topic of vulnerability, the paper details some of the common concerns to vulnerability that regulators are trying to address such as mental health and an aging population. Also described in section one are some of the emerging issues related to vulnerability such as how big data can be used for the benefit of consumers but also to their detriment. The final segment of section one discusses the future of regulation and how this needs to change due to the changing nature of energy markets.
- **Section Two** of the paper relates to research and data collection. Throughout the literature there are snippets of descriptors of where organisations are collecting research information regarding consumer vulnerability. Other sources mention where there are gaps in knowledge or research data. This section details this information and also describes how organisations are monitoring the impact of policy decisions on vulnerable consumers.
- **Section Three** of the paper lists the practical advice that organisations offer in relation to vulnerable consumers. This list is by no means exhaustive but gives a range of recommendations which could be adopted and implemented in Northern Ireland.
- **Section Four** notes some NI relevant aspects identified during the review. This is clearly not an attempt to be exhaustive; but move to stimulate further ideas and thinking. The vulnerability issues raised in this paper are not mutually exclusive and often categories overlap. To highlight the extent of this, each issue is colour-coded e.g. communications, data so it is clearly evident when they appear in relation to another issue.

## 2. Section One: Vulnerability

### Defining Vulnerability

- 2.1 The term vulnerability has changed from a static to a more dynamic meaning and the focus has shifted to **customers at risk of harm from being in vulnerable circumstances**, rather than tightly-defined groups where people who meet the definition may not be vulnerable. Previous definitions of vulnerability focused on specific indicators such as age, disability, illness or income level. This was useful for identification and policy targeting but is now considered an outdated way to view vulnerability.
- 2.2 This shift in focus could potentially make policy targeting more difficult, given the enhanced scope of at-risk characteristics that flow from a more dynamic definition, but is nonetheless more realistic of the challenges and changing circumstances faced by consumers over time.
- 2.3 BEIS (1) discuss how people who are vulnerable or at risk of vulnerability should not be treated as a homogenous group. BEIS note:
- Vulnerability can arise because of individuals' characteristics, their circumstances, the nature of the market, product or service, or the behaviour of firms. The risk of being vulnerable can change with events, such as bereavement or job loss.
  - Regulators should act robustly to prevent harm to vulnerable consumers and encourage companies to design systems that work for vulnerable consumers. Companies must understand their customers including those who are vulnerable, and how they can reasonably support their needs.
  - Vulnerability can be about financial matters, for instance the ability to afford bills or access best value deals. It can also be about non-financial matters, such as the ability to read or understand bills, make decisions, greater reliance on particular services, the need for advance notice of service interruptions and problems in interacting confidently with companies.
  - Technical changes could risk widening the gap in outcomes between groups at different risk of vulnerability. For example, consumers on lower incomes and with lower academic qualifications are less likely to use the internet and use digital comparison tools.



- 2.4 The Financial Conduct Authority (FCA) (3) discuss the definition and effects of vulnerability. They describe vulnerable consumers as those who are particularly susceptible to exploitation or harmful actions from firms. For example those who have low financial capability or literacy may be targeted by scam artists or fall foul of confidence tricks designed to part them from their money.
- 2.5 Due to the dynamic nature of vulnerability, they estimate that 50% of consumers show characteristics of potential vulnerability but emphasise that potential harm does not necessarily develop into real harm.
- 2.6 Individual consumers may accept and acknowledge or disagree and not recognise that they are experiencing vulnerability. This is the challenge for those dealing directly with consumers.
- 2.7 The FCA definition of a vulnerable customer is therefore:
- People who can readily be identified as significantly less able to engage with a market, or
  - People who suffer disproportionately if things go wrong.
- 2.8 The FCA further go on to divide the causes of vulnerability into four categories:
- Health
  - Financial Resilience
  - Life Events
  - Capability
- 2.9 Potentially vulnerable customers may suffer from more than one type of vulnerability at the same time, which may make them especially susceptible to harm.
- 2.10 BEIS (1) has stated in its Green Paper that, “firms should not prosper from taking advantage of some groups of consumers “indeed, they go on to say that “consumers ought to be able to trust that they will be treated well, both because firms recognise it is the right thing to do and because regulators will act if they do not”.
- 2.11 Potentially vulnerable customers may suffer from more than one type of vulnerability at the same time, which may make them especially susceptible to harm.
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*taking advantage of some groups of consumers “indeed, they go on to say that “consumers ought to be able to trust that they will be treated well, both because firms recognise it is the right thing to do and because regulators will act if they do not”.*

## **Familiar topics and concerns being reviewed in GB**

### **Mental health / dementia**

- 2.13 A topical issue in vulnerability is how to support people with mental health concerns or cognitive impairments to use essential services. Communications and services for people with physical disabilities have improved but the equivalent options for people with mental health concerns or cognitive impairments are often lacking (4). The issue is likely to be exacerbated by both the aging population and digital divide issues covered later.
- 2.14 A topical issue in vulnerability is how to support people with mental health concerns or cognitive impairments to use essential services. **Communications** and services for people with physical disabilities have improved but the equivalent options for people with mental health concerns or cognitive impairments are often lacking (4). The issue is likely to be exacerbated by both the **aging population and digital divide** issues covered later.
- 2.15 According to the recently published BEIS Consumer Green Paper (1) the government wants to see action in helping consumers with mental ill health, cognitive impairments and dementia including conditions like Alzheimer’s. The regulators, through the UKRN will identify where there are benefits from introducing a set of minimum standards that consumers with mental ill health, cognitive impairments and dementia should expect to receive across sectors, and agree principles for improving services to these consumers.
- 2.16 Mental health problems are not well understood, are difficult to diagnose and are often stigmatised, meaning customers are not likely to disclose this type of vulnerability. With one in four adults experiencing a mental health problem each year, the latent need for regulatory action in ensuring adequate systems to identify and help customers with mental health or dementia vulnerabilities could be significant. The challenge for regulators is how to work with the regulated sectors to best identify and support consumers given the range of ways people can be affected.
- 2.17 Experience for people with mental health issues can include:
- Struggling to compare complex products, tariffs or bills.

- Low motivation can mean sticking to their current providers, not out of loyalty, but for fear of making a bad decision.
- Phobia of the telephone means people can't cope with the pressure of haggling or being pressured by their providers.
- Social phobia can prevent people from leaving the house to top-up a prepayment meter.
- Avoidant behaviours can lead to missed payments and penalties (4).

2.18 It is also the case that people with dementia may struggle with **communication** issues. Some people with dementia find communicating via phone demanding and frustrating. Automated systems can be confusing and they may only recall some of the conversation. **Written communications** can also be difficult to comprehend if there is too much unnecessary information provided (5).

2.19 People with mental health conditions or with dementia are likely to be paying more for services often choosing the more expensive billing options.

2.20 Regulators have strategies for dealing with some categories of vulnerable customers, however understanding the specific needs of customers with mental health problems appears to be less well developed (4).

2.21 The Money & Mental Health Policy Institute (6), the Money Advice Trust (7) and the Alzheimer's Society (5) offer practical advice to companies for dealing with customers who have mental health issues. The suggestions can be summed into three categories:

- People
- Processes
- Places

#### **People: Awareness, training and support**

2.22 For frontline staff, identifying and knowing how to respond to customers in vulnerable situations can be challenging, particularly where it involves sensitive topics, or where the impact changes over time. It is important that all frontline staff have basic mental health awareness training. For example, the UR is aware that Dementia Awareness has worked with a supplier in NI to train frontline/call centre staff on recognising and potential helping dementia sufferers when in contact.

## Processes: Customer support and communication

- 2.23 **Communication** issues are not just limited to those with mental health conditions and are dealt with further along in this review.

## Places: Working with local communities

- 2.24 Warm referral is a term which means being able to directly transfer them to support services rather than getting them to hang up and call the support services directly. It is an important service for vulnerable customers.
- 2.25 Practical advice can be found in the Money Advice Trust's report '*Vulnerability, mental health, and the energy sector: a guide to help identify and support consumers*' (7). Written in conjunction with Energy UK's newly formed Vulnerability Group, the guide looks at how organisations can develop and use better **data** on vulnerability by collecting routine **data**, drawing on the experiences of staff, adopting the right quality monitoring indicators, call recordings and speech analytics. The guidance also provides a tool for thinking about what more can be done and new areas of focus.
- 2.26 The Legal Services Board have also created two factsheets to highlight how improving practices can help people with mental health (8).
- 2.27 The Energy and Utilities Alliance (9) link **fuel poverty** and mental health. They say that both young and old suffer substantial psychological harm as a result of **fuel poverty**, with one in four adolescents living in cold homes found to be at risk of multiple mental health symptoms.
- 2.28 Mental health can be difficult to identify and therefore there is great value in companies improving their customer service to empower customers to disclose their situation. One of the challenges facing customers in disclosing their mental health problems is concerns over how such information would be used. Research has shown that not all those who disclose receive additional support. It is important for service providers to raise awareness amongst their customers as to how they stand to benefit from disclosing sensitive information.
- 2.29 Money Advice Trust (7) offers a guide to energy suppliers to identify and support consumers. They details how staff experience is vitally important. Staff are often the 'missing data point' when it comes to vulnerability. While being able to draw on what staff are thinking, hearing and experiencing in their work with consumers in vulnerable situations is invaluable, it is often overlooked. Providing training to staff to be able to act on knowledge and insight would be a first step to providing support to those with mental health conditions.

## Aging population & growing disabled young population – dash for digital & ‘empowered’ customers

- 2.30 In its report ‘*Vulnerable consumers in the retail energy market 2017*’ (10), Ofgem discuss the importance of empowerment. They claim that this means suppliers must support vulnerable consumers to become empowered, confident energy consumers. However, the social needs of the population are changing and there is a growing older generation and a growing younger disabled population. There are many people in these categories and other vulnerability categories who are not able to embrace empowerment and need effective protection in a changing environment.
- 2.31 There is an onus to ensure that these people are not left behind, particularly in a world where there is a rising expectation of digital literacy (11). The literature indicates that this is one of the changing context implications that could exacerbate vulnerability and poor market outcomes in the regulated sectors going forward. It was suggested (8) that companies can do more to empower and assure customers to disclose their circumstances.
- 2.32 The NAO (12) however identified that improving consumer information is only partially effective. To extend the notion of consumer empowerment beyond the vulnerable, Challenging Ideas (13) argues that a supply-dominated system that treats the consumer as a ‘victim’ will never deliver best value. The policy around delivering best cost to consumers has placed much of the burden on the consumer to switch suppliers in a market that is impenetrable and uninteresting. Most consumers are just not interested in energy and do not have the desire to spend their well-earned free time getting to understand energy. BEIS (1) also noted that simply relying on ‘engaging’ consumers by providing them with more information has been shown not to be a wholly effective approach.
- 2.33 The Financial Conduct Authority (14) found that there’s a risk that older consumers’ needs aren’t being fully met – which could mean exclusion, poor customer outcomes, and potential harm. They advise firms to:
- **Design products** with all customers in mind
  - Think about how they support older consumers, especially as their needs change over time
  - Review and adapt strategies ensuring solutions are not purely box-tick exercises.
- 2.34 Sustainability First (11) suggest that ensuring usability or user’s ability to use smart products and services is an important factor in minimising the digital divide and ensuring the benefits of innovation are delivered for all. To ensure

that smarter technologies and wider innovation deliver improvements in service and quality of life for all consumers, regardless of their personal characteristics, circumstances or situations.

- 2.35 Another issue that relates to an aging population is that of elder abuse. COPNI (15) published a report in 2016 regarding the financial abuse of older people in NI. The report stated that 21% of older people in NI are affected by some form of financial abuse. It calls on Northern Ireland's policy makers, organisations and individuals working with older people to put a stop to this type of abuse.

### **Access – Not just access to service, but access to innovation and good customer services**

- 2.36 Traditionally, the term 'access' referred to access to the essential service itself, in this case energy. However more recently, the term has broadened to refer to equal access to all new innovations and good levels of customer services. It can also be interpreted as access to being able to complain and seek redress.
- 2.37 BEIS (1) notes that vigorous enforcement of consumer rights benefit businesses by creating a level playing field, helping to avoid a 'race to the bottom' in standards.
- 2.38 Sustainability First's Project Inspire (11) looked at improving service and quality of life for energy consumers in vulnerable situations. They aim to ensure that vulnerable people are not just protected but also experience the benefits of change. There is an opportunity to refocus attention on the quality of service provided to those with diverse additional needs.
- 2.39 Suppliers often view those with additional needs as having a higher cost to serve, sometimes higher debt levels, relatively weak buying power, and weak market demand. Suppliers often look to innovation in this space to help reduce extra costs associated with vulnerable customers, rather than win and retain these customers. Companies have limited resources to invest in updating their vulnerability strategy. These limitations are discussed in a further section.
- 2.40 One of the problems identified in the NAO report (12) is that regulatory incentives to promote service quality for vulnerable consumers is limited. The FCA (3) identified that customer exclusion can be due to the **digital transformation**, coupled with groups of consumers who have low digital skills. As part of their consumer engagement the FCA used a 'Call for Input' to improve their understanding of the issues that vulnerable or excluded consumers face in accessing different markets.

- 2.41 As part of their Project Inspire (11), Sustainability First has identified as one of its main objectives to ‘Explore and identify perceived barriers and enablers to innovation that benefit consumers in vulnerable situations’.
- 2.42 In its Consumer Green Paper (1) BEIS offers three principles for responding to the challenges and opportunities of modern consumer markets. Two of the three principles are directly applicable to the issue of access:
- 2.43 This second principle is particularly important when it comes to vulnerable people. Making a complaint requires significant effort from consumers and unnecessary frictions, complexity or delay in the process can deter them from pursuing it to a conclusion. Therefore vulnerable people are probably less likely to be aware they can seek redress and less likely to do it.
- Consumers should benefit from new technology and new business models
  - Consumers should be able to get redress when things go wrong.
- 2.44 In energy, water and telecoms, automatic compensation exists or is being introduced so that customers get money back if they do not receive a service or if appointments are missed.

**Product design – Inclusive by design. Products should be designed for all customers not an ‘average’ customer**

- 2.45 As part of a roundtable discussion hosted by Money & Mental Health Institute and the UKRN (8) it was discussed that services offered need to be ‘Inclusive by design’. Improving practices to benefit the vulnerable improves the experience for all.
- 2.46 When it comes to designing such products, Citizen’s Advice put it best “A shift in mindset is required...which requires service providers to ask not ‘What is wrong with this person?’ but ‘What is wrong with my service if this person cannot [access](#) it?’”
- 2.47 NAO (12) indicated that some measures designed to benefit consumers overall may actually disadvantage those in vulnerable circumstances.
- 2.48 In its report ‘Our future approach to consumers’ (3), the FCA elaborated further on this concept of design. It stated that remedies should be designed around real behaviour. Their approach to consumers is based on what they know about consumer behaviour rather than theory. Examples include the use of a ‘cooling-on’ period which would give consumers additional time to confirm if they definitely want a product; smart defaults ensuring consumers are automatically defaulted to the best option for them and personalised friction, allowing customers to create tailored log-ins and adjust their own

account settings to help control unwanted spending habits.

- 2.49 In its report with Leicester University, Citizen's Advice (16) found that companies licenced to operate in essential markets must take responsibility for the development of inclusive products and services. They have also worked with the British Standards Institute to produce a standard (BS18477) to show companies how they can behave in a fair and inclusive way and make essential services **accessible** and suitable for all consumers.

### **Communications – How do people wish to receive information?**

- 2.50 One of the critical considerations when dealing with vulnerable people is around communication and how different communication techniques are required for different types of vulnerabilities.
- 2.51 Money & Mental Health Policy Institute's best practice checklist for energy and water suppliers (6) has two recommendations in the area of communications.
- Let your customer tell you how they wish to be contacted and don't assume phone contact is always possible
  - Ask customers if they'd like a trusted friend on their account
- 2.52 Current systems for third party access to essential services are inadequate (4). BEIS (1) discuss this further in the context of Power of Attorney. A power of attorney can enable a trusted family member or carer access and manage the accounts of certain vulnerable people. However, there are differences in what information companies require before they recognise a power of attorney which makes it more difficult than it needs to be for consumers during what are likely to be a challenging period of life. The understanding from (6) is that the arrangement would be more informal.
- 2.53 Communication also extends to the availability of energy schemes that could help vulnerable consumers. The Energy and Utilities Alliance (9) points out that not only are those trapped in a poverty cycle unable to shop around for deals regarding energy, they may also face difficulties finding out about the various schemes, such as Warm Home Discount, introduced to improve their situation. Vulnerable people are less likely to use internet banking and direct debits, rendering them more likely to be reliant on prepayment meters and resulting in them spending far more on energy. Though the Warm Home Discount is not available in NI, it is worth noting that almost all suppliers require customers to apply for it online.
- 2.54 A further communication barrier to **accessing initiatives** intended to combat fuel poverty is language (9). Due to the language barrier, which is



compounded by the fact that many councils in GB no longer offer free translation services, the majority of families are unaware of energy initiatives and also have an overall lack of awareness about what constitutes as fuel poverty.

- 2.55 As part of their Consumer Vulnerability Strategy, Ofgem (10) sets out their expectation that companies should establish their practices and products with vulnerable consumers in mind. It will be reviewing rules to encourage more consumer-friendly communications. It has also asked suppliers to minimise costs to customers by offering Freephone or low geographic numbers, and to make these numbers easily accessible for their customers.
- 2.56 Another suggestion put forward by the Alzheimer's Society (5) is for companies to have a priority telephone number for vulnerable customers to use. As an extension, it would also be helpful to have a single point of contact for vulnerable consumers within an organisation. As one lady put it to the Alzheimer's Society "It's not rocket science, it's just customer service plus".

**Fuel poverty – poverty premium higher in NI due to higher levels of poverty.**

- 2.57 The concept of fuel poverty is widely understood and debated amongst the relevant regulators and sectors; and has obvious links to customers in vulnerable situations. Hence its inclusion in this review.
- 2.58 There are conflicting views in the literature around fuel poverty. While the accepted view is that fuel poverty should be tackled at the supplier level, one think tank does not agree. The collaborative group known as Challenging Idea, wrote a report (13) challenging the accepted views on energy regulation and aiming to help shape a set of new regulatory principles that would govern all those involved in the energy industry.
- 2.59 The consortium had very specific views around fuel poverty. They believe that it is a misplaced responsibility given to the energy sector and should be removed from energy policy. They argue that fuel poverty is not an energy problem, but either one of real poverty or of bad housing, and as a result should sit clearly within a different set of policy areas and departments. They continue that placing the fuel poverty agenda within the energy sector has distorted the system and created ceilings and thresholds that have restricted some companies' development.
- 2.60 If we accept there is a responsibility on the energy industry and regulators to identify what can be done for vulnerable consumers within the sector, it is appropriate that we focus on mitigating fuel poverty.

- 2.61 Sustainability First (11) explain that one of the reasons for companies needing to innovate is to help tackle fuel poverty, prevent debt and support those in financial difficulties.
- 2.62 In terms of tackling fuel poverty, the EUA (9) advocates promoting initiatives to alleviate fuel poverty through agencies that fuel poor individuals already have contact with.
- 2.63 The EUA also notes that the UK suffers far worse in terms of fuel poverty than many of its European counterparts. This is largely down to how inefficient many UK homes are. In Sweden, every landlord is held accountable to a legal minimum heat standard.
- 2.64 The Energy Act (2011) in GB proposed regulations pertaining to energy efficiency in the Private Rented sector which means that by April 2018, all rented property will be required to have an EPC rating of at least E.
- 2.65 This is reiterated in the recent Clean Growth Strategy (Oct 2017), with the aim of as many rented homes as possible being upgraded to EPC Band C by 2030. BEIS will be consulting on this shortly.

## Emerging Issues

### Big data and how it is used for both good and bad

- 2.66 The value and risks of **digitalisation** and the use of big data are addressed in many of the literature pieces. Money & Mental Health Policy Institute (6) have the 'Proactive use of data' as a point on its best practice checklist for energy suppliers. It states that data should be used to identify and support vulnerable consumers, particularly those at risk of going cold in winter.
- 2.67 In October 2017, the UKRN and Citizen's Advice hosted a roundtable entitled '*Big data, bigger challenges: how will markets serve the consumers of the future*' (18). It was warned that the availability of data allows companies to price discriminate in more sophisticated ways. It also allows companies to secure ruthless customer acquisition, in return offering poor follow-up care and mind-boggling get-out clauses. But it also noted that there are opportunities to transform data into knowledge that can empower consumers.
- 2.68 Regulators must challenge companies' behaviour and approaches to utilising the information they gain through data, acknowledging that customer data belongs to the customer.
- 2.69 The UKRN Vulnerability Network has been established to facilitate collaboration and information sharing between regulators on vulnerability issues.
- 2.70 Their desktop research on customers attitudes towards data-sharing found that customers:

- Value transparency over how their data is used
  - Want to see the positive benefits where their data is shared
  - Want control and choice over how their data is shared
- 2.71 In its Green Paper, BEIS (1) identifies that too often data works against consumers rather than for them, for example when companies identify loyal customers and put them on expensive deals.
- 2.72 The potential benefits, and also dangers, of the greater data and analytical capabilities available to the companies in the regulated sectors is a broad but important topic. It includes aspects, such as: data protection, GDPR implications and barriers to data sharing to help consumers; data portability for consumers; and cross-sectoral best practice re data sharing. It is an area that is much under scrutiny by the bodies mentioned in the context section above, and by UKRN. The implications for NI, and for adopting best practice, at this stage remain unclear. Impending work by the new BEIS-led Consumer forum will focus on this area, and may be a useful vehicle to identify and share best practice for regulators.

### **Data portability – sharing vulnerability data between suppliers (pros and cons)**

- 2.73 There has been a lot of discussion lately around data sharing and consent across all industries. While GDPR is being introduced to protect consumers, data protection in general is viewed as more of a hindrance than a help. Two ways to combat the risk relating to GDPR are to either establish consent early from consumers in terms of data sharing for their benefit or giving consumers their own data portability.
- 2.74 The UKRN and Citizen's Advice roundtable (18) suggested exploring the possibility of greater collaboration and data sharing for other services. Portability allows a customer to transpose their **data** and information from one provider to another, a frontier which some regulators have already started to explore.
- 2.75 The UKRN also produced a report on data sharing (19). They noted the similarities in support offered by the Special Assistance Register in water and the Priority Services Register in energy and how this presents a useful starting point to explore the sharing of vulnerability data across the two sectors and to ensure customers receive the support they are entitled to.
- 2.76 They set out aspirations for the water and energy sectors to make better use of **data**, including how we think data sharing can help achieve this. There may be future potential for this work to go further and be expanded to include financial vulnerability data sharing.
- 2.77 The Money and Mental Health Policy Institute are working with the Personal Finance Research Centre to explore how greater data sharing between financial firms could benefit customers, especially those in vulnerable situations. Its early blog has identified that data sharing has the potential to

save customers time and stress, removing the need for several time-consuming conversations with multiple creditors that could potentially be upsetting.

- 2.78 BEIS (1) sets out to ensure that in regulated markets consumers benefit from competition and do not face excess penalties for loyalty by reviewing how to make data portability work best for all consumers, as part of the 'Smart Data' review. They are taking specific actions to address issues relating to vulnerable consumers in regulated markets, including facilitating data sharing, identifying and sharing good practice and setting minimum standards across sectors.
- 2.79 To maximise the opportunities from these kinds of technologies and business models, **data** needs to be in a format that is easily comparable and portable across providers. To work effectively and be accepted by consumers, it is also essential to have the appropriate protections and provision for redress in place to give consumers confidence and to facilitate trust, particularly with sensitive personal **data**.
- 2.80 Data portability is a new right introduced in the UK's forthcoming data protection legislation that gives consumers the ability to request the movement of their personal data between services and suppliers.
- 2.81 Where the EUA (9) advocates a multi-agency approach to dealing with **fuel poverty**, there must be an awareness of privacy when sharing data. Whilst some promote utilising **data** from 'smart technologies' such as smart meters to ascertain if people are self-disconnecting or struggling with energy costs, they are cautious that some people may perceive this as too intrusive, and would rather advice and help came from within their community, rather than energy companies.

## Blue Sky Thinking

### Regulating for the future

- 2.82 The National Audit Office report (12) on vulnerable consumers in regulated industries is a key driver of change at BEIS and UKRN. Amongst its findings, the report details that the impact on individuals of being in a vulnerable position can be significant and cuts across many services.
- 2.83 The report also indicates that while regulators recognise the need to work together more closely, progress to date has been limited. Specifically, the NAO recommends that regulators should work together more closely to identify and address common challenges. Efforts to support vulnerable consumers could benefit from more joined-up approaches to, for example, monitoring outcomes and intervention. There should also be proactive exploring of options to enhance **data sharing** that would allow better identification of, and support for, consumers in long-term or permanent vulnerable circumstances.
- 2.84 The UKRN report on **data sharing** (19) indicates the need for increasing focus on collaborative working and the better use of **data** cross the policy

and regulatory landscape, and the evolution of data access and protective regulations which is of particular relevance in this context.

- 2.85 The Sustainability First project (11) believe that Citizen's Advice should develop information on supplier service for vulnerable customers that will allow cross-industry comparison of performance and potentially inform switching decisions.
- 2.86 At the UKRN and Citizen's Advice Roundtable (18) the subject of regulation was debated in terms of serving the consumers of the future. It was discussed that regulation is a static practice, relying on structured, periodical audits of **data**, incompatible with the free-flowing dynamic nature of real-time **data** capture. Regulation is based on a traditional notion of economics, while the platforms that dominate a **data**-centric economy are built on fast-changing models that are able to carry out real-time analysis of consumer behaviour and demographic patterns to produce bespoke prices.
- 2.87 Regulators may need a new framework, shifting the perspective from identifying how regulation can help consumers to how consumers can help themselves. Regulators should consider their role in a global, international and cross-sector market and adapt to think and operate more flexibly. This requires a shift from structured temporal regulation to a flexible regime that can respond to real-time **data** analysis.
- 2.88 BEIS (1) agree with this sentiment. They say it is right that we review this regulatory model periodically, given the changing nature of markets and the development of new technologies and practices. Their aim is to build a regulatory and competition framework that meets the challenges of the future.
- 2.89 BEIS (1) are also establishing a new joint government-regulator Consumer Forum. Given the importance of protecting vulnerable consumers in regulated markets they propose that the first priority of the new forum should be to ensure regulators are working effectively together, best practice is shared and suppliers are playing their part in ensuring vulnerable consumers are not exploited.
- 2.90 The Energy and Utilities Alliance (9) advise that there should be a joint unit on **fuel poverty**. This could possibly form part of the remit of the Consumer Forums.
- 2.91 The Challenging Ideas ReShaping Regulation report (13) describes four regulatory principles that underpin a future regulatory architecture:
- Regulate for how consumers consume, not how businesses are organised
  - Regulate for system optimisation to deliver the most productive, efficient and affordable system
  - Regulate to promote transparent, cost-reflective and open markets

- Regulate for where security of the system is truly at risk

- 2.92 In considering the regulatory approach to desirable energy system outcomes, it is crucial that we distinguish between statutory regulation and these industry codes and practices.
- 2.93 Money Advice Liaison Group (20) produced a list of guidelines for helping consumers with **mental health** conditions and debt. One of these guidelines was in relation to joined-up working. They advise that creditors, advice agencies and health and social care professionals should work in a joined-up way but do not offer any practical advice on how to achieve this.

### **Resourcing**

- 2.94 Two organisations highlighted that companies have finite resources and while they would like to address all vulnerability issues, they must focus on the most impactful. The FCA (3) makes clear that they have finite resources, and in this context need to give more protection to some consumers than others. They describe three strands of their 'Regulation for Vulnerable and Excluded Consumers' Mission. The first strand is '*Focus on the most vulnerable and least resilient group*'. This reflects an acknowledgement that potential harm does not necessarily develop into real harm for the majority of vulnerable consumers and therefore simply identifying harm does not mean that they will act.
- 2.95 In any given scenario, they assess the range of available regulatory tools and make a judgement about whether these can remedy or mitigate harm cost-effectively. Since low financial resilience exacerbates other potential vulnerabilities and can trap individuals in negative cycles, it is the FCA's most important area of focus. The FCA also acknowledge the need to collaborate with others to address issues like vulnerability.
- 2.96 Sustainability First (11) note that increased competition is reportedly reducing margins and therefore also discretionary spend for vulnerability innovation. The NAO (12) also identified that regulators do not have a good enough understanding of the costs to businesses of activities to support vulnerable consumers.

### **Bundled services**

- 2.97 There is a question mark over what the future will look like for retail energy. The two big themes to emerge are **big data** and bundled services. Having already covered the former, the latter will be discussed here. The FCA (3) describe how more and more firms are trying to sell add-on services as part of the purchase of a main product. This makes the add-on product look cheaper than if it was sold as a standalone product and is referred to as anchoring. Consumers tend not to be price sensitive in these circumstances.
- 2.98 BEIS (1) also mention bundled services as a potential application of new **digital technology** into regulated markets. They describe how a service to

filter deals to those which best matched the needs of the consumer could be valuable. Emerging technologies can make it even easier for consumers to manage the range of services they require. Consumers like convenience, and if digitally driven consumers are increasingly offered energy as part of a bundle of services rather than energy as a product itself, the need for energy regulation per se will be limited (13). Future energy product and service offers will be varied – a mix of bundled, aggregated and blurred – and potentially invisible to the consumer (13). In this potential future world, energy supplier licences with obligations to the consumers could become unnecessary.

- 2.99 The future connected consumers are likely to be serviced by new **big data** companies, or intermediaries. BEIS (1) go on to describe how innovative intermediaries could generate offers or manage contracts on behalf of customers, eliminating altogether the need for the consumer effort. They go on to say they must guard against the risks that bundled services across markets make it more difficult for meaningful comparisons and reduce the willingness of consumers to switch.

### 3. Section Two: Research and Impact

3.1 Throughout the areas reviewed, there are snippets of descriptors of where organisations are collecting research information with regard to consumer vulnerability. Other sources mention where there are gaps in knowledge or research data. Below is a list of some of the information being gathered and the noticeable gaps.

#### Research

- The FCA (3) have committed to collecting information to diagnose and monitor potential harm working collaboratively with other organisations. In order to do this, they will collect a diverse range of robust information and evidence from a range of activities to identify potential harm. These include day to day supervisory contact with firms, call from consumers to the contact centre, analysing intelligence from whistleblowers and evaluating complaints **data**.
- BEIS (1) state that to improve the availability of performance **data**, Ofgem, Ofcom, Ofwat and FCA, through the UKRN, will develop performance metrics for companies and digital comparison tools operating in their sectors where relevant.
- The Social Market Foundation report (21) offers practical advice on how to design a survey of households. The report examines how, methodologically, one could quantify and track the size of the 'poverty premium'. This also includes a 'poverty inflation' metric and a long-term 'cost of poverty' measure.
- Money Advice Trust (22) launched a major new survey looking at UK debt advisers' experiences of supporting their most vulnerable clients. The guide looks at how organisations can develop and use better **data** on vulnerability by collecting routine data, drawing on the experiences of staff, adopting the right quality monitoring indicators, call recordings and speech analytics.

#### Gaps

- The NAO (12) has identified that there are no comprehensive **data** on the experiences of vulnerable consumers or the impact of regulatory intervention.
- The CMA (2) noted that there is a lack of effective communication concerning the forecast and actual impact of government and regulatory policies on energy prices and bills.
- Sustainability First (11) suggest that the industry should commission



research into the commercial and market opportunities to retailers of different vulnerable energy customers segments, including potential impact on reducing overall cost-to-serve. They argue that a strong evidence base is needed to understand vulnerable customers' experiences in the energy market, and their market value.

- Sustainability First (11) also describe how many companies do not seem to routinely monitor and collect customer experience (satisfaction/complaints) data broken down by key vulnerability demographics.

## Impact

- 3.2 Assessing the impact of policy decision is important to understand their usefulness. The FCA (3) introduce the idea of exploring and analysing impact in context. They understand that when attempting to mitigate any potential harm, we must explore and try to predict the impact of proposed interventions against wider environmental change. BEIS (1) discuss that they want to see more collaboration, sharing, and assessment of the effectiveness of different approaches to supporting vulnerable consumers.
- 3.3 UKRN will lead a project to identify example of good practice in company policies and approaches to vulnerable consumers from across sectors and work with appropriate experts to assess the effectiveness of different approaches to supporting vulnerable consumers. In essence this is what the UR is trying to achieve and should be part of this group.
- 3.4 Practical advice in this area comes from Citizen's Advice (16). They state that regulators should set clear challenges, incentives and sanctions for firms to ensure that they treat all customers fairly. This would involve evaluating the impact of company policies on the vulnerable.

## 4. Section Three: Practical Advice

4.1 Also dotted throughout the issues reviewed are snippets of advice, practical and theoretical, in relation to vulnerable consumers. While some have been discussed throughout the review, others are listed below.

- Money & Mental Health Policy Institute (6) produced a best practice checklist for energy and water suppliers. This two-page handy guide has eight practical steps for dealing with people with [mental health](#) problems.
- The Legal Services Board have created two factsheets to highlight how improving practices can help people with [mental health](#) problems (8).
- The Money Advice Trust (7) produced a guide 'Vulnerability, mental health and the energy sector: a guide to help identify and support consumers'. This comprehensive guide offers practical advice on dealing with people with [mental health](#) problems.
- The UKRN (23) produced a guide to how UK regulators embark on consumer engagement in regulatory decisions. They state that regulators need different approaches to competitive markets and non-competitive markets, and presents how different regulators in different sectors embrace customer engagement.
- Sustainability First's Project Inspire (11) offers practical advice on embedding innovation and consumer vulnerability into a company's ethos. It also introduces a *Vulnerability Innovation Flight Path*, which is a new tool to help companies and others think about their internal processes and company governance arrangements to embed vulnerability and enable innovation for energy customers with additional needs. They have also created four practical guides to help companies in the areas of:
  - (ii) Identifying customers with additional needs
  - (iii) Improving access
  - (iv) Affordability – supporting customers on low incomes and in debt
  - (v) Security and peace of mind

4.2 Finally, the project concludes with a practical look at smart innovation case studies from throughout the industry. Called 'Winning Innovations' the group identified the best ideas to come from the industry in relation to the four categories above.

- The Energy and Utilities Alliance (9) offers practical steps for dealing with fuel poverty. These include advice on energy efficiency, [data sharing](#) and [mental health](#) amongst other things.
- Citizen's Advice (16) has worked with the British Standards Institute to produce standard (BS18477) to show companies how they can behave in a fair and inclusive way and make essential [services accessible](#) and suitable for all consumers.
- Citizen's Advice (24) also produced a Good Practice Guide on how energy suppliers can signpost and refer to vulnerable consumers to the right source of help. It contains six recommendations that energy supplier should adopt.
- Citizen's Advice (25) also produce a note on improving support for prepayment consumers who've self-disconnected with advice to suppliers on how to identify households at risk of self-disconnection and advise on [access to emergency fuel credit](#).
- The Money Advice Trust (22) provide vulnerability training and consultancy services across a range of themes, which can provide practical support and tools needed to help customers while meeting business objectives.
- Money Advice Liaison Group produced a Good Practice Awareness Guideline for helping consumers with [mental health](#) conditions and debt. It has 14 principles for dealing with this type of vulnerable consumer, though not all would be applicable to Northern Ireland.
- The Alzheimer's Society (5) produced a dementia-friendly utility guide offering practical guidance to supporting customers and employees affected by dementia. "It's not rocket science, it's just customer service plus".

## 5. Section Four: NI Implications

5.1 In this final section, we reflect on some of the sentiments from the review that may be applicable to Northern Ireland. These thoughts are grouped into three subsections:

1. Context
2. Implications for NI regulated sectors at a policy level
3. Specific innovations that may be transportable to NI

### **Context**

5.2 The Utility Regulator's Consumer Protection Strategy (CPS) has been in place since 2016 and has made good progress in improving consumer protection in circumstances where consumers may be considered to be vulnerable. This forms part of the UR's five year Corporate Strategy which has an objective of protecting the long-term interests of consumers.

5.3 The UR is reviewing its Consumer Protection Strategy during 2018; this will result in the development of a new Consumer Protection Programme (CPP) which will become an integral part of the UR's new Corporate Strategy (2019-24). There will again be years 1-3 prioritised CPP specific projects. The UR has engaged robustly with our partners in the statutory, industry and community/voluntarily sectors to ensure that all best practice for consumer protection is captured in the CPP.

5.4 The UR continues to work with the electricity, gas and water industries to promote good practice and innovation. Some examples include Codes of Practices, the engagement with care registers, and Quick Check, to name a few. This creativity of approach should be harnessed and become consistent across the utility sectors. There are many opportunity for companies to learn from one another.

5.5 This review notes some of the good work that is occurring in GB, these include innovations and best practices. As part of the CPP consultation, the UR will consider the innovations and best practices presented and prioritise those that may potentially be transferable to Northern Ireland.

5.6 Collaboration will be the key to success in these endeavours and the UR will continue to learn for the UKRN and to contribute to ongoing industry best-practice discussions.

### **Implications for NI regulated sectors at a policy level**

5.7 The term vulnerability has changed from a static to a more transient meaning and the focus has shifted to customers at risk of harm from being in vulnerable circumstances. Regulated sectors in Northern Ireland need to accept this transition and adopt new ways of thinking about vulnerability.

5.8 The UR recognises that industry is on a journey in regards to 'tooling' up in

order to offer the necessary protections and interventions for customers who are deemed to be risk of harm. The CPP focus may be on helping industry to identify and adopt best practice approaches to the various vulnerability issues: identification; practical help; staff training etc.

- 5.9 The UR will need to continue to ensure that those who are in the advantageous position to be an essential services provider are providing the highest level of customer service possible. A high quality, fair and equitable outcome should be expected by all customers – regardless of vulnerability status.
- 5.10 The review identified a number of references to designing products and services that are inclusive for all. This also includes equity of access to products and services for all. The UR continues to see this as a priority and will continue to strive for fair outcomes for all consumers, especially the vulnerable.
- 5.11 Another issue identified was the requirement for regulators, government and industry participants to have a joined-up partnership approach to vulnerability. This will promote innovation and best practice across the industry. The CPP consultation may consider how best to maximise industry-wide collaboration, co-operation and partnership.

#### **Specific innovations that may be transportable to NI**

- 5.12 The CPP consultation will look to identify how Northern Ireland should benchmark and adopt best practice. Some of the sentiments and innovations identified in this review are reiterated here for consideration during the CPP consultation.
- Sustainability First (11) discuss their ‘Winning Innovations’ project in which the group identified the best ideas to come from the industry in relation to vulnerability. This could be a transportable idea for the UR in Northern Ireland. There may not be currently much innovation happening in this small market, but the UR could potentially hold a year-long competition to come identify and implement new innovations and offer gold, silver and bronze status to the most impactful ideas.
  - The Office of the Public Guardian will lead a project, with input from Ofgem, Ofwat, Ofcom and the FCA through the UKRN, to produce new guidance on the recognition of power of attorney in regulated markets.
  - In energy, water and telecoms, automatic compensation exists or is being introduced so that customers get money back if they do not receive a service or if appointments are missed. There is an opportunity for this to be made consistent across Northern Ireland.
  - As part of their consumer engagement the FCA used a ‘Call for Input’ to improve their understanding of the issues that vulnerable or excluded consumers face in accessing different markets. As part of the CPP consultation the UR may consider if it has engaged with

consumer enough with regard to the customer journey and customer outputs in a market. This issue was raised at the UR's CPS review summit in April 2018.

- BEIS (1) are also establishing a new joint government-regulator Consumer Forum. Given the importance of protecting vulnerable consumers in regulated markets they propose that the first priority of the new forum should be to ensure regulators are working effectively together, best practice is shared and suppliers are playing their part in ensuring vulnerable consumers are not exploited.
- Of particular interest to Northern Ireland may be the Money Advice Trust's report '*Vulnerability, mental health, and the energy sector: a guide to help identify and support consumers*' (7). Written in conjunction with Energy UK's newly formed Vulnerability Group, the new guide could be easily imported to Northern Ireland, perhaps following a consultation on its applicability.

## **Conclusions**

- 5.13 The world has changed, regulators need to refocus and redouble efforts in relation to identifying customers in vulnerable circumstances; and crucially in collaborating and identifying best practice and consistently adopting that best practice. There is much going on, there is much already done, and the challenge is to co-ordinate and capture that.
- 5.14 The Utility Regulator, as part of the Consumer Protection Programme, should benchmark the best practice illustrated, prioritise and adopt innovations for Northern Ireland. It should ensure consistency of approach where possible across the electricity, gas and water sectors and ensure the delivery of these innovations in line with the CPP and the new Corporate Strategy.

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