

# Commission for Energy Regulation

## Review of the Electricity and Gas Supplier's Handbook

### Consultation Response CER/16/031

#### Introduction.

PrePayPower welcomes the opportunity to respond to the CER Consultation Paper on the Review of the Electricity and Gas Supplier's Handbook.

The Supplier Handbook is fundamentally a consumer protection document and should provide clear, well-defined rules and regulations that effectively and efficiently define standards for suppliers to adhere to when interacting with their customers. The Handbook complements the many legal protections in place for the consumer. It also can act as an easy reference tool to maintain a positive customer and supplier relationship.

The statutory basis for the CER function is outlined in the Electricity Regulation Act 1999. The Act stipulates that this function should be carried out in a proportionate and justified manner as under s.9 (m) *to decide upon and impose effective and proportionate measures to promote effective competition...* Further in making a decision the CER must perform their powers where; s.9 (6) (b) *any decisions taken by it shall be fully reasoned and justified.....*

In making decisions the CER must not discriminate between licence holders under s.9 (3) (a) *in relation to electricity does not discriminate unfairly between holders of licences....* and the CER obligation to promote competition in the supply of electricity under s.9 (4) (a) (1).

We welcome the fact that the CER have recently recognised the distinction in the bill pay and PAYG markets in applying new regulatory provisions regarding debt transfer. CER have stated '*Applying debt transfer to lifestyle choice Pay As You Go suppliers alone, would be discriminatory as it would not provide them with the same level of recourse as others*<sup>1</sup>'. With this decision the CER further underlines the balance required in regulatory application with respect to the very different market segments of bill pay and PAYG suppliers, stating 'Debt transfer would be against CER's duties of *"no unfair discrimination and protecting the final customer within the context of promoting competition"*. This essential balance should be maintained by CER. We highlight throughout our response a need for regulatory balance, as it must be judged against the needs of the customer and provisions of competition law as well as administrative law principles.

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<sup>1</sup> CER/16/014 p.14

## **4.1 Introductory Section**

### Question 1.

We see the potential merit of introducing a set of overarching principles. The principles should be carefully selected as core principles of interaction with customers. However, broad principles can be open to interpretation and subjective imposition on an ad-hoc basis. Therefore any principles should be carefully selected and must be implemented on a consistent basis. They should be backed by clear rules to identify how the principle will be applied in practice.

In the UK the Committee of Advertising Practice states that '*Consistency is a principle of good regulation; it helps to create clarity which leads to good practice amongst businesses*'<sup>2</sup>. Difficulty in interpretation in a compliance document means inconsistency in compliance. As there is no review body for CER decisions, it is essential that there is due process sustained by objective definitions. There may also be referral to precedent in decisions, which aids in consistent compliance. In this there should be a framework devised in regard to the application of decisions. Consideration must also be afforded to the Principles of Better Regulation<sup>3</sup>.

### Principle 1. Market Design Rules and Market Monitoring

There are already obligations on suppliers in this area and so it would be excessive and unnecessary to include these in the Handbook. Licence obligations ensure a conformity by suppliers to market processes. These are distinctly different documents with different objectives. Market rules govern market participants as opposed to the Supplier Handbook which governs the supplier-consumer relationship. There is no clarity here as to benefits to the consumer. It may in fact lead to potential confusion when these market rules are interspersed in a consumer code.

If this principle is used there would be a need also to include other bodies within the scope of the Supplier Handbook. Including the Transmission and Distribution system operators as well as the MRSO.

### Principle 2. Compliance with customer protection legislation

All suppliers must be compliant with all legislation and not just with consumer protection legislation. There would therefore not appear to be any benefit in including this as a principle as it is already a given.

It would be very helpful if the handbook could highlight what aspects of the consumer protection legislation is relevant to the various interactions between customers and suppliers and structure this detail throughout the handbook.

Other regulatory bodies oversee the application of certain laws and regulations such as the CCPC. With legal requirements '*The CER is cognisant that the requirements of the Supplier's Handbook may not encompass all obligations placed on licensed energy suppliers by existing customer protection legislation*'. Where the Supplier Handbook does not encompass a specific incident the consumer law will apply at any rate to protect the customer.

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<sup>2</sup> Committee of Advertising Practice <https://www.cap.org.uk/Advertising-Codes/Consistency.aspx>

<sup>3</sup> Regulating Better: A Government White Paper setting out six principles of Better Regulation

All Six Principles are: Necessity, Effectiveness, Proportionality, Transparency, Accountability, Consistency

There is a plethora of legislation that govern the supplier customer relationship. If included in the Handbook the most efficient and effective way to do this would be to include only regulation most relevant to electricity suppliers. For the CER to be in a position to both interpret and apply consumer law, a system of due process and review is essential. The 'OFGEM Enforcement Guidelines' from the UK market establishes "*The aim of these guidelines is to bring greater clarity, consistency and transparency to our enforcement policies and processes, and to reflect changes that we have made to maximise the impact and efficiency of our work.*" Such guiding criteria could be included in the introduction section of the Handbook. These could address areas such as how investigations are conducted and how decisions are made. Specifying criteria in this area will benefit the customer.

### Principle 3. Fair, honest, transparent, reasonable and professional behaviour

We certainly agree these are laudable principles but suggest these subjective terms are open to interpretation. We do not see the added benefit of including this principle given that there are already legal protections for the customer.

Concepts such as '*cast aspersions*' are difficult to define and would ultimately be addressed under consumer legislation. Under the Consumer Protection Act 2007, s.43, this prevents "*Misleading: false, misleading or deceptive information*". More specific on top of this there is further legislation in the area such as the Misleading and Comparative Marketing Regulation 2007. This forms strong protection in regard to customer interactions. If such inclusions are made it will be necessary to specify the system of procedural due process.

### Principle 4. Suppliers are required to ensure and maintain consistency, accuracy, clarity and transparency of information

We agree that all customer communication should be clear and in plain English. The use of technical, market-focussed, insider jargon or legalistic wording will just confuse customers.

Under the Consumer Protection Act 2007, s.46 a commercial practice is misleading if the trader '*omits or conceals material information that the average customer would need*'. This forms protection for the customer on a legal footing. Another basic principle of commercial law would be *contra proferentem*: Where there is any ambiguous clause there would be a leaning against those who drafted it.

We therefore see no incremental benefit in the inclusion of this principle.

### Principle 5. Internal systems, processes and procedures conducive to compliance with customer protection measures and adherence to the overarching principles

Suppliers, through their licence conditions, are bound by the Supplier Handbook. Therefore all internal systems, processes and procedure must support these obligations and we believe this principle to be unnecessary. System issues must not be considered as an excuse for non-compliance. A referral to third parties such as MABS for customers in financial hardship is a positive aid to the customer. There is a current obligation on suppliers in the Handbook under 6.7.6 and this is presented and stated clearly.

The Supplier Handbook can be wide ranging in scope due to wording. Objective definitions are needed and the addition of general principles may add in fact to inconsistency and the corollary of this is more difficulty in compliance. This occurs in particular with phrasing such as *'causing undue delay or add complexity'* or *'unduly complex complaints'* and *'unfairly discriminate'*.

#### Principle 6 Minimise the extent of disconnections for non-payment of account and self-disconnections

Disconnection is an action of last resort and it is a process no supplier wishes to undertake. The prevention of this is to address the initial build of customer debt. 'Self-Disconnection' for PAYG cannot be treated in the same way as involuntary disconnection (de-energisation). With the PAYG service, the customer has choice, visibility and self-control over their consumption. This is a key aspect of the service which the customer enjoys. Customers may wish to cap their own consumption to avoid getting into arrears. With self-disconnection the customer can choose to switch the power back instantaneously at any time of day or night by making use of the emergency credit facility or simply by topping up. Unlike involuntary disconnection there is no delay or additional costs for de-energisation and re-energisation.

#### Principle 7 Customer's nominated representative. Energy suppliers or their representatives may not represent customers in any matters arising from the supplier-customer relationship

There needs to be further clarity on this proposed principle. There will always be circumstances where the supplier will act on behalf of a customer. For example in the switching process the supplier will contact the MRSO to initiate the change of supply. Preventing this approach would not prove a positive experience for the customer. In any interactions the customer can also refer to consumer law to ensure they are treated in the best manner.

There is legal protection that can be referred to when the supplier deals with customers. Under the Sale of Goods and Supply of Services Act 1981, the relative bargaining power of the parties is taken into account and any inducement received by the customer.

#### Question 2.

We support the addition of this requirement. Although this is already an obligation under the terms of the licence this requirement provide further clarity. Any action taken by a party on behalf of a supplier needs to be treated as if it were undertaken by the supplier themselves.

#### Question 3.

We agree with the proposal. It is important that the customer is made aware that there is a Code of Practice and how to access the document. The manner of delivery should be flexible such as via the supplier's website.

#### Question 4.

We suggest that it would be helpful to include an outline of procedures to be followed in determining and pursuing a breach would be useful for both suppliers and customers. This should not only include details of how a supplier is afforded Due Process but also as to how the rest of the market is informed of the latest thinking on how the rules are applied in practice. A need for a documented process of decision making adds to transparency of the regulation for the customer. This is consistent with Principles of Better Regulation – ‘Consistency, Accountability and Necessity’. It would be helpful for the CER to share the criteria used at arriving at a decision and how the market can be informed of adjudications and current CER thinking in an area.

#### Question 5.

We do not see a need to update this section. The obligation to draft a Customer Charter stems from S.I 463/ 2011 Reg. 5(1) and this lays out the criteria to be placed in the Charter by the supplier.

### **4.3.1 Code of Practice on Marketing and Sign-up**

#### **Question 6.**

We broadly agree with the sentiment of this proposal. However we believe that provision of complete information is an impractical goal for an advertisement. To provide complete information could be taken to mean that a supplier must provide full terms and conditions which typically runs to many pages. This is clearly not only impractical but undesirable as it will overload the customer with information.

Additionally, it is inappropriate to focus on advertising exclusively. Advertising is only part of a full sign up process. Information can be provided to those that are interested in the advertising on the sign up call before they actually sign up.

Therefore we believe that key information should be included in an advertisement together with information on where to find full terms and conditions for the service. Additional key terms can be provided as part of the sign up procedure together with access to a copy of the full terms and conditions.

The format of the advertisement should be taken into account particularly for broadcast and radio advertising where limitations of the medium limit the amount of information that can be provided. We agree that advertising should not mislead by omission.

#### **Question 7.**

We agree with this proposal. Suppliers should be required to highlight the different billing types such as PAYG or Direct Debit so the customer can make a fair comparison. Service elements should be highlighted as well as cost. The standard unit rate should be highlighted with the same level of prominence as the temporary discount.

#### **Question 8.**

We agree that there should be an unbiased source of objective comparison between offers taking into account the billing mechanism. Such websites should clearly compare supplier's offerings for different billing types (i.e. PAYG and billpay).

Price comparison websites are however commercial entities. In many markets price comparison websites compete directly with retailers. The supplier should therefore be allowed to make a commercial decision on whether to use price comparison website publication services or not. Price comparison websites compete with suppliers in respect to booking advertising and are potentially anti-competitive.

There is a potential conflict of interest for the website between objectivity presenting information and encouraging customers to sign up to a particular supplier's offer for which they are paid commission.

To be truly objective, price comparison websites should be non-commercial. We suggest that an objective non-commercial website be developed for this purpose.

## Question 9.

### Proposed Requirement 1

We agree that customers must be provided with access to full pricing of an offer. Customers switch for reasons other than price and many switch for service. The key place to provide pricing information should be on a supplier's website.

We would add the point that many customers are unaware that discounts are actually calculated against a suppliers own standard rates which vary considerably from supplier to supplier. This fact needs to be predominantly mentioned in the sign up process. We suggest that the cost of the offer in year two should be included in any advertisement.

### Proposed Requirement 2

We suggest that this requirement needs further clarification.

Removal of the text 'between tariffs' makes it unclear what the scope of the requirement is. This text should remain to make it clear that the scope of the requirement is for a price comparison.

The service and billing type needs to be included to make the comparison valid for customers specifically interested in one of these services. It is clearly inappropriate for a supplier to compare its cheapest discounted bill pay offer to a PAYG offer of another supplier. This would mislead the customer that wishes to avail of a PAYG offering on the merits of the other suppliers offer.

We also suggest that as well as the requirement to identify discounts that expire in less than one year, suppliers should be required to give details of the pricing that applies at the expiration of the one year deal.

Savings such as vouchers should not be included if there are any significant limitations. Only cash equivalent savings should apply. The Advertising Standards Authority of Ireland (ASAI) states that "*Any and all potentially substantial limitations or exclusions (such as, for example, one year; parts only) should be clearly indicated in the marketing communication.*" With the ASAI they will also look at the regulations in context: *Viewing 'Characteristic of the likely audience' 'Media by means of marketing communication' 'Location and context of marketing communication' 'Nature of advertised product and nature of content' and 'Form of associated material made available (e.g. website information)'*. The more detailed information requirements can be contained on an easy to access website. Marketing material should always make reference to the additional information available on the website.

The Committee of Advertising Practice in the UK have developed a document on 'Pricing claims'. This provides a standard structure around claims such as "*It should be qualified, if necessary, to refer to the conditions that affect it.*"<sup>4</sup>

With regard to the current pricing template, it does not make sense to include the VAT exclusive price given that all residential consumers are liable for VAT. Quoting VAT exclusive prices leads to customer confusion. We suggest that all prices are provided inclusive of VAT to improve the clarity and simplicity for the consumer.

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<sup>4</sup> [https://www.cap.org.uk/~media/Files/Copy%20Advice/Help%20Notes%20new/utilities\\_prices\\_claims.ashx](https://www.cap.org.uk/~media/Files/Copy%20Advice/Help%20Notes%20new/utilities_prices_claims.ashx)

This area is presently very well regulated by a number of bodies including the Courts under the Misleading and Comparative Marketing Regulations. Currently the ASAI is the body that regulates all marketing material through the ASAI Code. In the application of the Code the ASAI would take account of the particular medium used. For instance the same amount or format of information cannot be contained in a radio advertisement as it would in a newspaper advert or with a TV advert. However, it is appropriate to include reference to where further information may be sought.

#### Question 10

Not all customers are motivated to switch supplier for price reasons. Customers also decide to switch for in order to avail of a different service offering. Lifestyle PAYG customers switch in order to avail of the PAYG service rather than price per se. Customers wishing to make a like for like comparison based on service need to be accommodated within any price comparison regime. With PrePayPower the majority of customers state that they switch for service rather than price.

Option A seems like an appropriate mechanism where an advertisement makes a claim of cheapest, best or unbeatable. Where making such unequivocal statements a comparison with all other available tariffs for the chosen service would seem to be appropriate.

Such a requirement should also apply where an advert states that a customer can save an amount in euro. It should be made clear exactly who can benefit from the saving or alternatively it should be available to the majority of customers reading the advert.

It should also make clear the pricing that applies at the end of the discounted period.

Option B. Removing the charge breakdown will make it unclear as to what charges apply for which elements of a service and will make pricing less clear for customers. PAYG services have additional costs to serve. Highlighting the component of charges that apply for the PAYG service make it clear to the customer what they are paying for.

The PAYG service charge should be highlighted separately to ensure the customer is aware of the extra they pay for the service. A 'like for like' comparison would need to allow for service elements to be distinguished so that the customer can make an informed decision.

The customer should be able to decide on what elements of the service they are willing to pay for. Rolling them into an overall amount can be confusing for the customer.

Care must be taken when making comparisons between Bill Pay and PAYG. A fair comparison must be made. Customers switch for service as well as price. There should therefore be an ability to allow for an objective comparison that takes into account of all aspects of the offer, and not solely just the price. As we have stated an estimated annual consumption may not be a reflection of the true usage of the customer. Typically PAYG customers make significant consumption savings when they switch from Bill Pay.

The Misleading and Comparative Marketing Regulations and the ASAI Code provide governance in this area. Under this code material must not '*be likely to mislead, be inaccuracy, ambiguity, exaggeration, omission or otherwise*'. A greater degree of regulation in the area would seem unnecessary.

Option C: Seems to be impractical.

### Question 11

We agree that winback and retention activities lead to positive outcomes for customers and are good for the market. Any action to curtail the ability of suppliers to engage with its customers must be carefully considered to ensure that it does not impact customer engagement in the market. International experience suggests that winback provides positive benefits to markets. Any action needs to be carefully considered and needs to be in reaction to evidence-based customer needs. PrePayPower customers are hugely positive about their winback experience.

One of the key benefits of engagement in winback is that it acts as a protection against any overzealous field sales activity by individual field sales agents. A customer focussed losing supplier should contact the customer in order to ensure they have actually decided to switch and where they have decided, to allow for fair comparison between the new supplier's offer and the winback offer. If a customer originally agreed to switch based on a door to door visit they should be allowed receive further offers from this door to door channel. This is a significant reason for many PrePayPower customers welcoming retention activity. Door to door is often the only way to contact the customer due to changed contact details etc.

It must be remembered that the customer is protected in regards to customer contacts and behaviour already under law. The Consumer Protection Act 2007, prevents '*Aggressive Commercial Practice*' under s.53, and sets out provisions in determining what an aggressive practice is for a supplier. The consumer law is in place to help aid to strictly govern any supplier retention campaigns.

We note that ERGEG, on indicators for retail market monitoring as of 1 January 2012 do not make mention in regard to monitoring customer retention. In fact ERGEG also see the possible expansion of the indicators of competition: '*The customer's experience is both a key market output and an indicator of the health of the market overall. It is the customer's engagement with the market that drives the benefits of competition – therefore NRAs are encouraged to observe indicators which help build a comprehensive picture of customer satisfaction.*' This suggests viewing other indicators (not just switching) to determine consumer engagement.

BEUC (The European Consumer Organisation) in a response to a consultation by Council of European Energy Regulators (CEER) 'Position Paper On Well-Functioning Retail Energy Markets' Jan 2016 have stated the need that 'regulators should assess a wider range of factors related to switching' and in this regulators should view 'Intra-supplier switching level' in respect of sufficient consumer engagement.

#### Proposal 1.

We agree with this proposal. Going through the sign up process is important to ensure the customer understands all the key terms and conditions and allows for an assessment of suitability. It allows a supplier to determine if circumstances have changed since first sign up before signing the customer up again.

#### Proposal 2.

We agree with this proposal to follow the sign up process when suppliers attempt to re-acquire a previous customer.

### Proposal 3

We do not support this proposal. It has the potential to create confusion for the customer and result in poor customer experience. The customer is already in a contract so it does not make sense to follow the full sign up process.

### Proposal 4.

We fundamentally disagree with any regulatory limit on the extent or nature of winback communication. We understand that in addition to consumer protection (which presupposed some harm), the CER is also concerned to increase 'market participation' by consumers. We welcome that but are concerned that restricting win-back will simply reduce consumer participation at the very point where their interest in the market has been freshly stimulated.

Winback is a very positive, pro-competitive feature of well-functioning markets. It is important that customers are afforded the opportunity to hear from their existing supplier, who may ensure that the customer is further informed in making their decision and may offer additional value to the customer to remain on their supply. We consider that there is no evidence of consumer harm as a result of winback activities: instead, there is only evidence of certain suppliers being disgruntled. This is neither a necessary or proportionate intervention, principles that apply to all interventions by the CER. There is also reason to consider that the regulation of winback will effectively deprive cooling off periods of their efficacy by depriving or restricting consumers in their access to and consideration of alternatives. Given that such cooling-off periods are based on EU law, this measure would deprive the underpinning directive of its effectiveness. We also consider that Ireland's ability (in this case acting through the CER) to adopt measures of this nature applying during the cooling-off period has been pre-empted through the adoption of comprehensive EU legislation on the operation of cooling-off periods. Finally, we are concerned, not least considering the origins of this measure, that its adoption will give rise to a violation of Article 106(1) of the Treaty of the Functioning of the European Union ('TFEU').

### **Background from a customer perspective**

Customers lead busy lives and it may take several attempts to contact them. Limiting contact attempts will mean that customers that may have received a non-optimal offer will be precluded from the opportunity of a better offer. Customers appreciate being contacted and receiving an offer.

It is important to note that there are many reasons as to why suppliers fail to contact customers including out of date contact details, infrequently used email addresses etc. In most cases the customer is not aware of the contact attempt. Therefore there is little if any impact on the customers of repeated efforts to contact. There are many benefits of ensuring a successful contact attempt, for example, ensuring that the transfer was requested by the customer in the first place, and ensuring that the customer has a fair comparison between their existing offer and that made by a door to door agent of another supplier. It is a natural extension of good customer service to contact a customer at the point of leaving to discuss the reasons why, and in the case of PAYG suppliers, it is necessary to contact the customer in any event. Therefore in the absence of any evidence of consumer harm it is in the customer's interest to allow sufficient contact attempts to allow a successful contact.

The overwhelmingly majority of PrePayPower customers are happy with having received contact from PrePayPower. We review all customer complaints to ensure market leading levels of customer service. We agree with the CER that there may be a general difficulty faced by all providers in terms of getting the attention of consumers to focus on their decision around electricity supply. Where a customer

makes an initial decision to switch, then it is likely that they have begun to engage with this issue afresh. As a result, winback activities will occur precisely at a point where the consumer is re-informed and in a better position to assess their best overall interests. It is noteworthy that under EU law, the purpose of a cooling down period is to create the potential for a customer to reconsider: it is not to restrict or regulate the customer considering alternatives, which is precisely what occurs in a typical winback scenario. Switching is not an end in itself. Instead, what matters is that adequately informed customers secure what they regard as a better deal for themselves (wherever that comes from) based on their assessment of where their best overall interests lie.

### **Requirement for Regulation**

To our knowledge there has been no suggestion from customers or consumer organisations that winback should be limited, nor is there any source identifying any actual or potential harm to consumers arising from winback contacts. By contrast, it is clear from the CER's engagement with suppliers that some of them do wish for this type of curtailment of competition, which should create a general presumption against regulatory intervention.

No argument or evidence has been advanced as to why customer protection measures ought to be considered in this area. The question posed in this consultation invites subjective, opinion-based feedback rather than the objective, evidence-based data required as the basis for regulation.

The consultation suggests that limits might be placed on the frequency of contact attempts. It is a matter of fact that it can be difficult to contact customers, and many attempts may be needed to successfully do so. In any event, attempts to harass the customer would be highly counterproductive to the winback objective, so it is unlikely that such an issue would persist in the market (and no evidence exists to our knowledge of such an issue).

The consultation also suggests a restriction on that nature of customer contact. Our research suggests that approximately two-thirds of switchers in the market arise following unsolicited door-to-door sales visits. It would be asymmetrical and unfair to allow a gaining supplier use such a methodology but deny it to the current supplier. Moreover, it would disenfranchise a large number of consumers who for various reasons are not readily contactable by phone.

Any move to restrict the extent or nature by which competitors can engage with consumers in the market would be a very significant regulatory step. The evidential threshold for such a move would surely be very high. It would need to be a demonstrably necessary and proportional step to safeguard consumers.

Furthermore, we are concerned that the CER could be inadvertently led by certain suppliers into a breach of Article 106(1) of the TFEU by restricting or distorting competition in a market in which a public undertaking (ESB) participates. The adoption of rules in the form of the Supplier Handbook (if the underlying statutory authority to do so exists) is a measure for the purpose of Article 106(1), and it would apply to all suppliers including Electric Ireland. As the incumbent supplier, and after an initial switch away from it, Electric Ireland may be a provider that is best positioned to benefit from a regime that deprives or restricts customers from receiving alternative offers during the cooling off period. As such, it has the potential to reinforce a dominant position. As such, that would be a breach of Article 106(1) in conjunction with Article 102

#### Question 12.

We agree with this proposal. We always ensure that the customer is provided with accurate information and always attempt to minimise cost for the consumer. We inform the customer of the charges so they are fully informed of the most pertinent information relevant to their terms. In the PAYG market there is a need to ensure the recovery of an asset. Not being able to charge a reasonable costs of recovery where the customer refuses to co-operate would place the burden on the vast majority of other customers that do cooperate. Providing any misinformation to the customer is actionable under the Consumer Protection Act 2007.

#### Question 13 - 14

We disagree with this proposal. It is in the customer's interest that a PAYG supplier contacts the customer in order to provide them with the deactivation code. The requirement to have separate customer contacts would place an increased communication burden on the customer.

The statement that the combination of the winback attempt and the issuing of the deactivation code 'may be regarded as applying undue pressure on the customer' is a very tentative claim and it is not one that is backed up by evidence of actual or potential harm to consumers. By contrast, it is clear from certain competing suppliers do wish for this type of curtailment of competition. That should create a general presumption against regulatory intervention.

There are many practical reasons as to why it is inappropriate that retention and issuing of the deactivation code should happen on the one call. Issuing of the deactivation code creates a situation that is difficult to reverse. Having issued the code makes it difficult for the customer to remain with their supplier and exercise their right to change their mind in the cooling off period. Therefore it makes sense to ensure that the customer actually does wish to leave supply and it is not simply an erroneous transfer or an incorrect comparison of their existing service to another supplier's offer that caused the customer to request a switch before finalising that switch. Similarly if a deactivation code is issued and not used by the customer this can prevent a customer from successfully topping up their meter. Therefore it is important to contact the customer to ensure that they utilise the code.

The focus of the winback call is in providing a positive customer experience. To use undue pressure on the call to force the customer to stay is not something that a customer centric supplier will engage in and is also unlikely to be effective in anything but the immediate short term. Ultimately, frustrating switches in this way will cause the customer to find another way to switch. The only way to winback a customer for the long term is to ensure that they are happy to remain as your customer.

In our experience customer frustration usually arises where they cannot find an agent with the system access required to issue a code and the customer is required to make repeated calls. Any further limitations in this area will make this worse.

Therefore customers' interests are best served by allowing the deactivation code to be issued on the same call as the winback. In PrePayPower, winback calls are monitored and audited to ensure that no undue pressure is brought to bear on the customer.

As soon as the customer confirms their desire to leave supply they must be facilitated to switch without hindrance including issuing of a deactivation code as soon as possible. All suppliers must ensure that deactivation codes are issued without delay. This requirement should apply to both lifestyle choice and financial hardship PAYG meters.

The application of a deactivation code is also present in regard to Financial Hardship meters as well as Lifestyle Choice. It is not clear why this proposal is limited to lifestyle choice meters.

#### Question 14

We don't believe further requirements need to be included. We suggest that any requirements provided under this section must be backed up by objective evidence that there is a customer need to be served by inclusion of the requirement.

#### Question 15

Agreed. Process for cancellation is outlined in the Consumer Information, Cancellation and Other Rights Regulations 2013. All suppliers must adhere to all provisions under this act. PrePayPower allows customers to cancel by any communication means including phone, email and written communication. Suppliers should also be required to provide customers with the option of cancelling by phone. This would be a quicker and more convenient way to cancel within the cooling off period. Furthermore we do not levy any charges for meter installation or removal during this period. Our focus is on having customers fully satisfied with our service rather than being forced to remain on supply in order to avoid costs.

#### Question 16

We agree with the proposal.

#### Question 17

We agree with the proposed amendments to the sign up process.

Dealing with vulnerable customers is a critical and complex area. It would be very helpful if the CER provided a standardised statement of the regulatory measures that have been put in place to ensure the protection of vulnerable customers.

Consideration needs to be given to the law in this area. The Customer Protection Act 2007 contains provisions in regard to preventing the exploitation of the consumer whose characteristics make them particularly vulnerable to unfair commercial practice. Again with the Act 2007 under s.46, a trader must not conceal material information from the customer.

At PrePayPower we ensure the customer understands how the PAYG system operates and the consequences if a credit balance is not maintained. We make it clear to vulnerable customers that they waive their right to non-disconnection during winter. Based on a detailed risk assessment we ensure the service is suitable for the customer before taking them onto our supply.

Question 18.

a) **Notice before the expiry of a fixed term contract**

We believe that there are two distinct cohorts of customers in the energy market.

1. Those that switch and do so regularly
2. Those that have never switched.

Customers that have switched at least once have a higher propensity to switch again. The customers that are least engaged are those that have not switched at all. Any solution aimed at driving better engagement should start with customers that have yet to switch. Any customer that has no record of having switched should be written to by their supplier and informed of the savings that they can avail of by switching. The number of such customers should be included in CER quarterly reports.

In the UK market c. 40% of customers have yet to switch. It is not unreasonable to assume that in Ireland there is approximately 50% that have never switched. In the Irish electricity market, that means approximately 1.0m customers, have never switched. In the other 50% of the market, approximately one in three of those that do switch, switch each year which is surely a sign of a healthy engaged market.

The CER should seek to ensure that these customers become engaged with the energy market by ensuring that their supplier writes to them on annual basis informing them of the price benefits of switching and other new services that may be availed of in the market.

Customers that are on discount tariffs should be notified by their supplier at the expiry of the discount.

### **4.3.2. Code of Practice on Customer Billing and Disconnections**

The Code of practice on Customer Billing & Disconnections sets out specific processes that suppliers are required to adhere to when dealing with customers in arrears due to genuine financial hardship, including disconnection procedures. PAYG meters are offered to customers by post pay providers as an alternative to disconnection. However, the existing code of practice does not take into consideration lifestyle PAYG customers who have accumulated arrears while the PAYG meter was in situ.

Our experience has shown us that substantial arrears can accrue on lifestyle PAYG meters where a consumer has deliberately interfered with the general operation of the PAYG meter. This can range from the use of magnets to distort the usage recorded to more elaborate and dangerous bypass works.

We consider these type of arrears to fall outside “genuine financial hardship” and would welcome the CER’s guidance on how customers of this nature should be treated in terms of the existing code of practice on disconnections.

#### **Question 19.**

With a PAYG meter the customer is always aware of costs, as consumption information and spend can be obtained at any time directly from the PAYG meter. This information is supplemented by an annual statement which details the comparison between consumption based on ESB Networks meter readings and Top Ups purchased for the PAYG meter.

The bill pay model is structured radically different. Customers rely on their Monthly/Bi Monthly Invoice for visibility on consumption versus spend, which demonstrates the considerable differences in the Post Pay and Pre Pay market segments. This should be accounted for in regard to communication obligations in each segment.

#### **Proposed requirement 1**

We agree with this proposal.

#### **Proposed requirement 2**

We agree with this proposal and the annual statement is the customer’s source for this information.

#### **Proposed requirement 3**

We agree with this proposal

#### **Proposed requirement 4**

We agree with this proposal In terms of Annual Statements for PAYG customers.

#### Proposed requirement 5

We agree with this proposal. Customer accounts are closed on an estimate if the customer is unable to provide an actual reading at the time of leaving.

We agree with this proposal, however we would state that in the lifestyle PAYG market the change of occupant process is different to post pay. As customers do not receive bills, there is less incentive to notify the PAYG supplier of a change of occupant. The top up card can just be passed on to the incoming tenant. As a result we require contact from the customer to verify that they are in fact the correct persons entitled to any refund before payment is released.

#### Question 20

We agree with this proposal and currently present this information on the customer's annual statement.

#### Question 21

There are multiple factors involved when assessing customer risk. Previous payment history, occupancy status, ability to disconnect, and current balance are to name but a few. Due to the complex nature of risk assessment, the determination of the deposit amount should be left to the individual supplier. However, if the CER feel they can offer a robust model that can factor all of the associated risk elements with the appropriate weightings and ultimately determine a deposit amount based on these factors, this should be welcomed by the industry.

In relation to deposits for PAYG customers, the proposal would suggest that the CER deem the credit risk associated with these customers to be minimal. This is not the case. Due to meter tampering, there is a very real credit risk associated with PAYG customers, therefore deposit requirements should be left to the determination of the supplier.

#### Question 22

We agree with this proposal. To inform the customer of the various obligations and relevant charges under the contract is vital at sign up. This is not only a regulatory and legal requirement but also provides the customer with the most relevant information, which in turn gives the customer the ability to make an informed choice at sign up and removes ambiguity when said charges are applied to the customer's account.

#### Question 23

We agree with the proposal. Suppliers should be consistent with terminology. Clarity and transparency with the customer is the starting point of a good consumer relationship. Also under the Unfair Terms in Commercial Contract Regulations 1995 where terms must '*be drafted in plain, intelligible language*'. If an unfair term is found this will void the contract.

#### Question 24 – 25

We agree that the customer should be informed as to how their dual fuel account will be managed. I.e. as two separate accounts with financials individual to each utility, or a combined account with financials held at account level.

Clarification Required on proposed requirement 2 section 6.5.5. The code of practice on disconnections requires a supplier to send a minimum amount of notifications to a customer prior to disconnection. In the event that both utilities are being disconnected simultaneously, is the proposal suggesting that double the amount of contacts be sent to account for the additional utility? Or is it the case that the existing minimum contact requirements remain in place but are worded to reflect both utilities?

We disagree with proposal 6.5.6. There is currently an expectation on suppliers to refrain from disconnection where a customer is engaging regarding the outstanding balance. With this in mind, Customers presenting for disconnection tend to be customers who are not engaging in regard to the outstanding balance. At this point, allowing the customer to nominate which service is removed first further increases the supplier's exposure. In the Lifestyle PAYG market, this amounts to facilitating continued fraud.

#### Question 26 – 27

We agree that customers experiencing genuine financial hardship should be afforded as much flexibility as possible regarding the repayment of outstanding debt. However, we would again point out that customers availing of a lifestyle PAYG product should not have an outstanding debt. We therefore deem deliberate interference with a PAYG meter resulting in an outstanding balance, to fall outside "genuine financial hardship".

With that said, if the customer engages to repay the balance we offer flexible repayment solutions through recoup, based on the customers' ability to repay the balance. However, where we have no engagement, we would seek to take every measure possible to stop the ongoing fraud, including the removal of the 25% recoup limit. It is our belief that this limit should not apply in cases of meter tampering and we are seeking clarification on the CER's position regarding this issue.

### **4.3.3 Code of Practice on Complaint Handling.**

#### Question 28 - 29.

We agree with the proposed timeframe.

It would be helpful if CER decisions on complaints could be made available to all suppliers. This would ensure suppliers continue to improve their customer experience and reduce the number of complaints going forward.

### **4.3.4 Code of Practice on Vulnerable Customers**

#### Question 30.

We support the proposed amendments.

This is a complex and sensitive area and further clarity on regulatory requirements is welcome.

It should be remembered that this is a self-registration process and many customers will be sensitive to the use of labels such as 'vulnerable'.

#### Question 31.

We agree that the point of sign up is the best time to provide customers with all the necessary information related to protections available to vulnerable customers.

In relation to field sales it is challenging to ensure that customers are fully briefed. It is best practice to use a third party validation process whereby the customer speaks to a back office agent to confirm the details of the sign up and ensure the customer fully understands the terms and conditions including the implications under code of practice on vulnerable customers. PrePayPower uses this third party validation process.

Eligible customers should be provided with information on the benefits of registering as a vulnerable customer and how they can go about registration. This is a self-registration process and it is important customers are given the necessary information to decide for themselves whether to register for priority or special services. It is recognized that customers are sensitive and may not wish to be labelled as vulnerable.

It must be remembered that the vulnerable customer requirement stems from the 'third package' Electricity Directive 2009/73. A persistent contact with certain customers may be seen as going beyond the intention of both the Directive as well as the transposed legislation in S.I 463/2011. The EU legislation states as the definition of a vulnerable customers those 'protected from winter disconnection'. The PAYG supplier must ensure at sign up that the technical specifications of the meter suit the customer. As stated, this is the key point of contact. A post sign up process could possibly be seen as intrusive. We must also be careful of placing an obligation on a sign up to identify medical conditions. Beyond the vulnerable categories specified in the Supplier Handbook there are many 'grey areas' not in the power of the sales agent to identify without some initiation by the customer.

### Question 32.

We agree that a single form is the most appropriate for the registration of vulnerable customers. The terminology such as 'Priority Services' and 'Special Services' are not intuitive for customers. Providing a single form will simplify the situation for the customer and allow the customer to assess which category is appropriate.

A standardised form used by all suppliers would be helpful.

### Question 33

We agree that vulnerable customer registration forms comply with legislative requirements and CER instructions. Requirements for vulnerable customer registration forms are not outlined in legislation save for basic definitions of 'Priority' and 'Special Services'.

### Question 34

We agree that customers should be provided with an easy and free of charge process for registration as vulnerable customers. Postage is the only cost that may be incurred.

### Question 35

In relation to changes in type of vulnerability we suggest that it is sufficient for suppliers to remind customers annually of their right to register for Priority or Special Services. Clearly, customers that are not already registered as vulnerable can become vulnerable over time. Suppliers should strive to ensure customers are aware of their rights while being cognizant that this is a sensitive issue for consumers and that ultimately the consumer decides whether they want to register or not.

### Question 36

It would be helpful if the CER provided guidelines to ensure consistency in the criteria used by suppliers to determine whether a PAYG meter is suitable for vulnerable customers.

It is important that the Supplier ensures the customer understands the PAYG service and that they will be without power if the meter is not kept topped up. The customer needs to understand what is involved in topping up and that they waive their right to non-disconnection during winter.

This information allows the customer to make an informed decision on whether the PAYG service is suitable for them. It is important that customers are permitted to make this choice informed choice and are not discriminated against.

### Question 37

Customers should be empowered to decide for themselves whether a PAYG service continues to be suitable. Existing PAYG users are clearly familiar with the product and of their own abilities. It should be sufficient to remind customers of their rights under the code of conduct for vulnerable customers. A vulnerable customer should not be held liable for early termination charges in the case that the PAYG service is no longer suitable.

### Question 38 - 39

It is important to distinguish between vulnerable customers and customer facing financial hardship. Customers that choose PAYG as a lifestyle choice are typically individuals that want to better manage their energy costs and not because they are in financial hardship. We agree that all customers should be provided with information on how to access emergency credit (IOU Credit). Customers in financial hardship should be encouraged to access support agencies such as MABS, DSP and charities. However, many customers react negatively to any suggestion that they need help from such organisations. This is particularly true of customers that have selected PAYG as a lifestyle choice.

It is not appropriate for Suppliers to monitor the top up behaviour of vulnerable customers. An interpretation of a customer's lifestyle is not within the remit of suppliers or regulators. There are many innocuous reasons (such as having established a large balance on their meter) why a customer may not top up for a period of time. It would be ineffective, impractical and an unwelcome intrusion if suppliers attempted to contact vulnerable customers whenever there was a change of top up behaviour.

We also question the data protection implications of monitoring top-up information to follow up on the vending behaviour of vulnerable customers.

### **4.3.5 Code of Practice on PAYG Metering and Budget Controllers**

#### Question 40

We agree that this information should be provided to the customer.

#### Question 41

We understand that comments are sought in particular on the italicised text at the end of this section.

Commenting on the italicised text:

We agree that suppliers should support an efficient and effective change of supply process in line with market messaging. This is the basis on which we designed our processes and have ensured that as far as the market messages are concerned we behave like a bill pay supplier.

We maintain auditable records of our market messages and indeed our interactions with our customers (in the form of recorded calls and signed documents).

We fundamentally disagree that it is in a customer's interest to force a separation of contact with for provision of deactivation codes versus winback activity. From a customer perspective these activities are naturally aligned.

More generally, any further integration with market messaging is undesirable and impractical. There are many reasons as to why multiple contact attempts need to be made with a customer in order to establish contact to confirm they wish to switch and to establish how best to provide them with a deactivation code. From a customer perspective the most natural and intuitive approach is to:

- Confirm with the customer that they do wish to switch (not an erroneous transfer and they are fully aware of the comparisons of their existing and new offers).
- If they do wish to switch issue the deactivation code to the customer and inform them of how to use it.
- 

They are not aware of market messaging and tying them to market messages would seem to have limited benefits.

We suggest that a principle be applied that no undue pressure be applied on the winback call and that the CER audit to ensure that this is in fact the case.

Any requirement to link to market messages would need to allow time for contact and confirmation with the customer. Therefore 10 days after the receipt of a 105L (confirmation of loss) is an appropriate link to market messaging. This is the appropriate timing as it confirms that the customer has in fact left supply.

In summary the alignment of the call to issue the deactivation code and the confirmation of switch is desirable from a customer perspective as a supplier needs to:

- Confirm that the customer did in fact intend to switch (avoid erroneous switch)
- Ensure customer has full facts
- Ensure contact details are correct (to send code)
- Confirm that customer engagement is positive experience for customer
- Promote high levels of satisfaction.

We note that CER suggest that they are minded to make such a change in this area. Any such change must be appropriate, evidence based and avoid any marketing distorting impacts. PrePayPower have been active in this area and have extensively monitored our retention team to ensure that customer interests are best served. We have established that there is evidence of overwhelming customer satisfaction with our approach. The few complaints we received were historical due to delays as we initiated the service and have long since been resolved. As this is a key area of interaction with our customers we look forward to reviewing any evidence put forth by the CER that this is a necessary change and in customer's interests.

The process of delivering a deactivation code provides in fact many checks and procedures that are not seen in the bill pay sector and should be viewed as a positive contribution to the customer interaction. This is to ensure for instance there has not been an erroneous switch. As PAYG providers send codes for other purposes, such as for PSO change, as we have explained previously. Where a customer is switched erroneously they would place the deactivation code into the meter unknowingly. The consequences being that the customer will not be connected to supply. The deactivation code is long and the customer should be provided with this directly, to guarantee it is inputted into the meter correctly. As we have also stated previously, the aligning of issuing a deactivation code with a market message will require the interaction of multiple systems. It affords also another avenue of comparison and competition for the customer.

Aside from the deactivation code, there will still remain times that the customer must be contacted directly, such as to issue a refund. The PAYG provider must also contact the customer to retrieve equipment placed in the property. This is an investment bill pay providers do not have to make, but is considerable cost in the PAYG market. The customer contact to issue a deactivation codes ensures that there is a direct single interaction with the customer, where all arrangements to finalise the account switch can be made.

In applying regulation in a specific segment of the market the CER must be cognisant of their obligations under the Electricity Regulation Act 1999, s.9 (3) (a) *"in relation to electricity does not discriminate unfairly between holders of licences"*.

#### Question 42 – 43

We disagree with the proposal.

Annex VII of the Energy Efficiency Directive 27/2012/EC the legislation refers to “billing information”.

One of the many advantages of a PAYG system for the customer, is that the customer has constant access to information about their energy consumption. A PAYG customer does not need to receive a bill because they have real time management of their account. Clearly with a bill pay provider, sending a bill is the sole means for a customer to know exactly how much money they are spending and their consumption.

The legislation states that billing is there ‘*to regulate their own energy consumption*’. An energy bill is not comparable to an energy statement and they have a very different purpose. It would seem that the proposal would not be in accordance with the intention of the legislation.

#### Question 44

The requirement here is outlined in the Energy (Miscellaneous Provisions) Act 2012 and then further delineated under S.I 603 2015. These clauses should be included in the supplier’s terms and conditions. Such detailed terms should be separate from the summary terms of the supplier.

#### Question 45

We do not agree with these proposed changes. The notification system in place at present is sufficient and fit for purpose. It is not appropriate that the only acceptable means of notification is by post or e-mail. For example, why does the proposal not include SMS or at the point of top up?

#### Question 46 – 47

We agree that suppliers should always ensure that terms and conditions do not cause undue delay and suppliers should always maintain a ‘free and easy switching process’.

PAYG suppliers will have the practical objective to recover their meter equipment from the customer. It is important that PAYG suppliers are not put at a competitive disadvantage by limiting their ability to recover this equipment.