



Consultation Response

Ofgem Draft Consumer Vulnerability Strategy 2025

August 2019



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Mental Health and Disability and Energy Law sub-committees welcome the opportunity to consider and respond to the Ofgem consultation on its Draft Consumer Vulnerability Strategy 2025. The sub-committee has the following comments to put forward for consideration.

General Comments

We fully support the broad approach to vulnerability taken in this document, including for example the range of socio-economic characteristics noted at page 13 of the consultation document. Ensuring that issues arising out of vulnerability, however it may present, are addressed in the basic design of our systems is key to ensuring the best outcomes for everyone, whether they would generally be considered to be vulnerable or not. The concept of universal design allows for everyone to be included, without the need for specific adaptations or accommodations to be made and should be the starting point for ensuring compliance with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).

Consultation questions

Question 1: Do you agree with the five priority themes and the outcomes we will aim for (as set out in chapter 3-7 and annex 2)?

The five priority themes and outcomes which Ofgem have tabled are well considered and practical in nature - especially those in relation to consumer vulnerability and fuel poverty. The initiative to increase the availability of connections to the gas grid are also welcome.

The concept of universal design and working to support everyone who needs it without requiring them to fit a prescribed definition of vulnerability is particularly relevant to Theme 1 – Improving identification of vulnerability and smart use of data. Vulnerability should not be considered an exceptional circumstance requiring a different approach. A degree of vulnerability is likely to exist for many people. It should be presumed, looked for, and the focus should be on whether any form of special provision or special support is needed, then using data from all relevant sources (on a fully joined-up basis) to identify what particular support techniques, in what degree, will be most effective in each individual case.

Theme 2 – Supporting those struggling with their bills, is an area where it can be presumed that vulnerability is likely to be identified and should be further explored. The question should be what support will most efficiently and effectively meet the individual's needs, not whether support is needed at all. In our society, appropriate sources of energy are a basic need. Certainly, people who should be able to pay their bills and do not should be sanctioned. But apart from that, strategies need to ensure that people's reasonable and proper energy requirements are met. The greater the degree of vulnerability and disability identified for an individual, then generally speaking the more important it is that this be achieved. A range of support measures may be considered appropriate including, for example, help for budgeting, selecting a more cost-efficient supply, using energy more efficiently and cost-effectively, and claiming all benefits to which they may be entitled. These processes are in terms of the UNCRPD, aspects of the "exercise of legal capacity". The UK Government has, through Article 12 of the UNCRPD, undertaken to ensure that people with disabilities receive the support that they require to exercise their legal capacity; and it is reasonable to suggest that significant inabilities to do that without support, for whatever reason, fall within the definition of disability. These are clear obligations, and in the context of essential energy requirements must be met.

We also fully support Themes 3-5, always in the context of our comments above on the need for a broad approach to vulnerability and noting in relation to Theme 4 – Encouraging positive and inclusive innovation, the need to coordinate and collaborate to ensure a joined-up and consistent approach.

Question 2: Do you agree with our approach on affordability? While we recognise this is a concern for many consumers in vulnerable situations, we think addressing wider affordability pressures is mainly a matter for government to address.

While we agree that the UK Government does have a role to play, we do not agree that Ofgem's role is "to ensure all customers including those in vulnerable situations receive a service that meets their needs and that prices reflect the efficient cost of supplying energy **and no more.**" (our emphasis).

The issue of affordability is a complex one and requires full engagement from all stakeholders, including Ofgem as regulator, to ensure that consumer risks are properly identified, managed and practically addressed.

Question 3: What more could be done through energy regulation to assist consumers in vulnerable situations in the longer term? How should any such further measures be funded?

We would suggest that measures, such as those that have been discussed by the Scottish Government, should be reflected. The Fuel Poverty (Targets, Definition and Strategy) (Scotland) Bill¹ was passed by the Scottish Parliament on 11 June 2019 and is currently awaiting Royal Assent. It is key to assisting in the fight against fuel poverty and protecting vulnerable consumers. It includes a target for reducing fuel poverty to no more than 5% of households by 2040. Account was also taken of remote, rural and island communities with regard to the uplift to the UK minimum income standard for households in those areas. A decision was also taken to create a new statutory Scottish fuel poverty advisory panel.

We have no comment on the funding arrangements.

Question 4: Do you agree with our proposals for the first year of the strategy?

Given that Ofgem's original archetypes were commissioned in 2012, updating is vital to establish a baseline which is representative of the position in 2019 (with ongoing monitoring going forward). Use of existing baseline monitoring data carried out in connection with the vulnerability strategies of the devolved administrations should be used where available and appropriate to avoid duplication and to encourage consistency.

¹ As amended at Stage 3

[https://www.parliament.scot/S5_Bills/Fuel%20Poverty%20\(Target%20Definition%20and%20Strategy\)%20\(Scotland\)%20Bill/SPBill37BS052019.pdf](https://www.parliament.scot/S5_Bills/Fuel%20Poverty%20(Target%20Definition%20and%20Strategy)%20(Scotland)%20Bill/SPBill37BS052019.pdf)

BUSINESS

For further information, please contact:

Marina Sinclair-Chin

Policy Team

Law Society of Scotland

DD: 0131 476 8136

MarinaSincliar-Chin@lawscot.org.uk