

# EUK Response to Opt-in and Opt-out Switching Consultation

15 October 2021

## Introduction

Energy UK is the trade association for the energy industry with over 100 members spanning every aspect of the energy sector – from established FTSE 100 companies right through to new, growing suppliers and generators, which now make up over half of our membership.

We represent the diverse nature of the UK's energy industry with our members delivering over 80% of both the UK's power generation and energy supply for the 28 million UK homes as well as businesses. The energy industry invests £13bn annually, delivers £31bn in gross value added on top of the £95bn in economic activity through its supply chain and interaction with other sectors, and supports 738,000 jobs in every corner of the country.

This is a high-level industry view; Energy UK's members may hold different views on particular aspects of the consultation. We would be happy to discuss any of the points made in further detail with BEIS or any other interested party if this is considered to be beneficial. Responses to the more detailed consultation sections are provided in Annex A.

## Executive Summary

The current crisis being faced in the energy sector is as clear an indication as any that BEIS, alongside Ofgem and industry, needs to look at how we create a retail sector that is able to be financially sustainable, invest in future innovative services that we will rely on to meet Net Zero such as electric vehicle charging and low-carbon heating, and allow all consumers to see the benefits of a competitive market. The relentless pursuit by Ofgem and BEIS of increased switching and cheapest tariffs below cost has delivered a retail market that is fundamentally unsustainable and demonstrably not robust enough to deal with what should be survivable scenarios of wholesale market price spikes.

We are concerned that the Government and the regulator have been too willing to accept negative margins across the board from suppliers of all sizes, and while this has been good for customers in the short term this is absolutely not the kind of collaborative long-term thinking that we need to achieve Net Zero. A fundamentally different approach to the retail market is needed, and BEIS' proposals for opt-in and trialing opt-out switching schemes fall far short of what is required – instead, they will again bake in an unsustainable regulatory focus on below-cost pricing and short-term gains ahead of the long-term sustainability, investment and innovation all needed to achieve decarbonisation at the lowest cost for consumers.

We believe that the proposals as set out by BEIS are past solutions that will not be fit for the future market we require. BEIS must instead work to create a sector that is encouraged through reward to innovate and provide new and better services to customers, that at the same time address the climate challenge. BEIS has extended the potential duration of the price cap beyond 2023 that will ensure disengaged customers continue to pay a fair price as determined by Ofgem. It should use this time to complete a full review of the retail market framework and create a fully future-focused strategy for the retail market, rather than implementing schemes that will exacerbate the issues we already face in today's market and undermine its ability to help achieve the UK's 2050 Net Zero target.

## **Addressing the ‘Loyalty Penalty’**

We do not believe that BEIS’ proposals will remedy or sufficiently contribute to addressing the implications of apparent long-term customer disengagement, as was shown by Ofgem’s 2018/19 collective switching trials targeted at long-term disengaged customers, and which required substantial resources from Ofgem and industry. In examining customers’ sustained engagement behaviour following its trials, Ofgem found that the subsequent switching rate of those in the intervention group was only six percentage points greater than those in the control group. Ofgem also concluded that the higher subsequent switching rate found in those customers that had initially switched as a result of the trial intervention was largely driven by an intensive re-prompting campaign from Energy Helpline.<sup>1</sup> BEIS’ proposals would see industry resource significant changes to processes, systems and business models for little gain in increased consumer engagement – disengaged customers from one supplier would likely be switched just to become disengaged customers of the new supplier.

This implies that an opt-in and/or opt-out scheme would make a marginal, at best, impact on customers’ long-term switching habits within the energy market, and could very well require substantial ongoing resources to re-prompt and engage customers in order to make even marginal gains in sustained switching behaviour. It also does not take account of the negative impacts that could not be assessed as part of the trial. For example, if the scheme would lead to additional failures of suppliers which reduce confidence in the market, or if consumers in an “opt-out” scheme stop engaging due to the perceived safety net. Implementing opt-in or opt-out switching across the entire market may have systemic impacts which Ofgem’s trials did not (and could not) test. While Ofgem’s collective switching trials involved contacting approximately 250,000 customers as part of its treatment groups, this represents less than one percent of the total number of customers in the market. This contrasts with the 60% of customers currently on default tariffs, which BEIS is proposing may be targeted by the new switching schemes.

Furthermore, with the extension of the Default Tariff Cap, which was put in place to ensure customers pay a “fair price” for their energy, what BEIS is continuing to describe as a “loyalty penalty” is in practice just the recognition of acquisition prices being lower than non-acquisition prices. In competitive retail markets, price differentials are utilised in order to attract new customers – customers are more incentivised to switch if there is sufficient gain for them do so. With the extension of the Default Tariff Cap to guarantee customers pay a fair price, BEIS has not been clear what detriment they are actually now trying to solve – such differentials will still be in the market even if opt-in and opt-out switching are introduced (in fact opt-in and opt-out switching as concepts are dependent upon them).

There has also been no consideration of how its proposals will fundamentally impact the wider nature of competition in the energy retail market – moving towards an auction-based market for disengaged customers as the primary means for suppliers to gain customers and grow. If the scheme works as intended to introduce competitive pressures in the disengaged customer segment, then this will inevitably have impacts on the active customer segment, which BEIS has not considered or assessed.

Ultimately, collective switching schemes are designed to target disengaged consumers who are not likely to switch on their own accord, and as such are flawed from the beginning if seeking to increase engagement across the whole market in the long-term. In addition, the potential for customers to be switched to a supplier that subsequently fails, or has sub-standard customer services, risks longer-term harm to those customers’ appetite for market engagement. Experience with Ofgem’s collective switching trials shows that this risk is not just hypothetical, with customers having been switched to a supplier which subsequently failed in the following months.

## **Achieving Net Zero**

BEIS has not been clear how it believes that these proposals will support the Net Zero transition. To the contrary, the switching proposals put forward by BEIS will deter the investment that is needed to meet the Net Zero target, and risk undermining consumer trust in the energy market just as it is needed most to adopt innovations as we continue the transition to a smarter, more flexible system.

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<sup>1</sup> [Prompting sustained engagement in energy tariff switching: Learnings from following up customers from Ofgem’s Collective Switch trials](#), Ofgem, October 2020

With this in mind, it is frankly alarming that the consultation does not make any mention of the introduction of market-wide half-hourly settlement and the fundamental changes the programme will have on the nature of energy retail tariffs, let alone the opportunities that the implementation of this programme is expected to bring for innovation in new products and services. For example, it appears unclear whether BEIS have considered how the proposals would work in a market which adopts Time of Use (TOU) tariffs since each customer's bespoke needs are unlikely to be best served by a collective switch; TOU tariffs have already been shown to be one tool for helping customers access the value of an EV, and for managing a more flexible system.

We are already seeing a growing trend of consumers considering the greenness of suppliers and tariffs when deciding on a switch, or in staying actively loyal to their supplier, and the combination of a price-focused market via opt-out switching and undermined consumer trust could reverse this trend, impacting heavily on consumer take-up of Net Zero-enabling products and services. The decarbonisation of heat and transport are critical for the successful delivery of the fifth and sixth carbon budgets, and suppliers will be at the forefront of its delivery. Trusted relationships between suppliers and their customers, as well as retail innovation and investment, will be key to the adoption of novel technologies and achieving behaviour change. However, these requirements risk being undermined by BEIS' proposals, risking the delivery of Net Zero by 2050 as a whole.

There is also a risk that opt-in and/or opt-out switching schemes will exacerbate the current incentives that suppliers have to adopt risky and unsustainable business models, undermining their own ability to invest in innovative products and services, as well as the ability of other suppliers to make necessary investments to meet Net Zero as they are forced to compete in this distorted, price-focused market. Incentivising this behaviour even further through these switching schemes risks restricting suppliers' ability to invest in key enablers of Net Zero, such as time of use tariffs and other tariffs/products that drive lower carbon emissions, as well as other systems and customer services for a Net Zero world. This is contrary to BEIS' own vision for an energy system and market framework that supports Net Zero by maintaining "*market stability and ensure a level playing field for competition, including among different business models, allowing competitive companies to make a profit and therefore attract investment*".<sup>2</sup>

As noted above, from experience with Ofgem's trials there is a very real risk of damaging consumer trust through poor outcomes, which will have a significantly negative impact on their willingness to take actions consistent with Net Zero such as the delegation of active consumption management. If switched to a supplier which subsequently fails (potentially due to adopting a risky and unsustainable business model to win a batch of switches), overall customer trust in the energy sector will be impacted, and risks customers becoming less likely to sign up to innovative products or tariffs that can contribute to the achievement of Net Zero.

### **Past Solution for a Future Market**

Switching is an increasingly limited way of looking at the retail energy market today, let alone in 2024 or 2028. The proposals being put forward, particularly the opt-out switching scheme, are solutions to the issues faced in the energy retail market of a decade ago. We are already transitioning to a market where suppliers compete on new products and that offer a wider value to customers than a simple price per kWh. The Energy White Paper itself stated that the future of energy retail would allow energy to be offered as a service, not simply a commodity. Proposals which further entrench a narrow focus on unit price and switching will undermine the value and competition for these new, desirable, services. A recent study of the Big Switch run by *Which?* strongly supports the view that such market interventions are also wrongly based on the assumption that energy is a homogenous product, and ignore different service offerings from suppliers outside of price per kWh that may guide customers' decisions in whether or not to switch.<sup>3</sup>

This is not to say that Energy UK and its members consider price to be irrelevant to energy purchasing decisions, rather that price is just one of a number of competitive factors consumers will be considering as services and products evolve. There are many non-price factors that consumers take into consideration when staying actively loyal. Ofgem's latest Consumer Survey notes that 42% of

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<sup>2</sup> [Energy retail market strategy for the 2020s](#), BEIS, July 2021

<sup>3</sup> D Deller et al, "*Switching energy suppliers: it's not all about the money*", *The Energy Journal*, 42(3), 2021, pp. 95-120, at p. 109.

consumers did not engage with the energy market because they are satisfied with their existing supplier/tariff, and 20% noting the importance of good customer service.<sup>4</sup> It is this customer behaviour of active loyalty that BEIS proposals for opt-out switching in particular dismisses too readily in the consultation.

As we already noted, there is a growing willingness amongst consumers to consider the greenness of the supplier and/or products that are on offer, rather than just a bottom-line price, which is a fundamental consumer behaviour change needed to achieve Net Zero. Instead of allowing for innovation and flexibility in the future market, BEIS' proposals on opt-in and opt-out switching schemes will bake-in a static tariff model that repeats the mistakes of the past and limits the benefits that customers and the wider system can receive from supplier innovation.

**For further information or to discuss our response in more detail please contact Steve Kirkwood on 0207 747 2931 or [Steve.Kirkwood@Energy-UK.org.uk](mailto:Steve.Kirkwood@Energy-UK.org.uk).**

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<sup>4</sup> [Consumer Survey 2020: Update on Consumer Engagement with Energy](#), Ofgem, April 2021

# Annex A: Detailed Response to Opt-in & Opt-out Consultation

As outlined in the preceding paper, Energy UK does not believe that either opt-in or opt-out switching schemes would provide the benefits for consumers or the energy retail market that BEIS is seeking. The following comments should not be taken as an endorsement of either scheme, but a constructive illustration of some of the complex issues BEIS will need to address.

## Opt-in Switching Proposals

### *Role of Delivery Body*

If BEIS is to make use of a Price Comparison Websites (PCW) or other such third-party intermediary (TPI) to act as the Delivery Body, then it should set out how it intends to link the development of this scheme with its ongoing workstream looking at the regulation of TPIs. Such organisations already take part in the retail energy market unregulated, and BEIS should ensure that if it were to grant the responsibilities to a PCW through the opt-in switching scheme that it only does so once direct regulation of TPIs has been implemented. It is vital to allow Ofgem to monitor and effectively enforce against TPIs to ensure consumer confidence in the wider energy market is maintained and that robust consumer protections across the market are in place when TPIs undertake the same activities as regulated suppliers.

We are concerned that the choice of a PCW to act as the Delivery Body may have negative impacts on the success of any scheme. As the consultation suggests that the scheme would focus on customers who are disengaged and do not use PCWs (included those who do not trust such organisations), then delivering the scheme through a PCW may be counterproductive.

If BEIS are to pursue the PCW route to act as the Delivery Body, then the tendering and appointment process must be made fully transparent. We note that the appointment of EnergyHelpline by Ofgem for its switching trials had not been made in a transparent manner, and BEIS must ensure that this opaque process is not repeated if it is to build consumer trust in either the opt-in or opt-out schemes.

Alternatively, if BEIS was to act, or chose Ofgem or another independent organisation to act as the Delivery Body, then this may have significant impacts upon competition in the PCW market. BEIS must ensure that it undertakes a full and rigorous Impact Assessment of its chosen route to ensure that it does not undermine competition in the market, nor does it unintentionally undermine the effectiveness of any scheme that will inevitably require significant resources from suppliers and others to implement.

### *Data Processing and Consumer Protections*

While BEIS is deferring many details of how any scheme would operate for later consideration, most options seem to involve mass transfer of customer data without their express consent. There are very substantial risks with any large-scale data transfer, which should not be underestimated.

BEIS must ensure that there is a robust and transparent data protection framework in place for any data sharing or processing. For example, it must be clear how long the Delivery Body may hold customer data for and for which purposes it is allowed to be used. It will, therefore, be critical for BEIS to draft any primary legislation in a way that empowers the Delivery Body to fulfil its role, whilst giving all relevant

and necessary protections to consumers' data and the suppliers who will be charged with providing this data to the Body.

## **Opt-out Switching Trial Proposals**

### *Aims of Testing*

It is not at all clear what BEIS considers would be a successful outcome of opt-out switching trials. We would urge BEIS to set out clearly and transparently its success criteria prior to finalising the details of the scheme to allow stakeholders to help develop the trial to best test the desired outcomes and judge the success criteria.

### *Targeting*

Energy UK believes that PSR and WHD customers should be excluded from the testing of opt-out switching, given that BEIS should seek to minimise any potential disruption to the service received to customer in vulnerable circumstances. Exclusions should also go beyond WHD and PSR customers to include wider measures of vulnerability as not all vulnerable categories are linked to the PSR or WHD scheme.

We also believe that it would be prudent to exclude traditional PPM customers from any such trial to ensure that these customers are not unintentionally left stranded without credit. In addition, as the long-term aim if the trial were to be successful is for implementation around 2028, we see no need to test traditional PPM customers as by that time the vast majority (if not all) traditional PPM meters should have been replaced with smart meters through the Government's rollout programme. We are also concerned that if they are to be included then there is a risk of severe confusion if a disengaged PPM customer were to receive a new meter key/card from a different supplier than they are used to, and further risk disruptions to their supply. As a result, any testing that includes these customers would be an unnecessary burden for suppliers, and an unnecessary risk for these customers with no real-world benefit.

We are concerned that BEIS has yet to address how it intends to deal with customers with Direct Debit mandates. Direct Debits (~70% of default tariff customers according to the consultation document) rely on customer consent as a key principle, with customers themselves setting instructions. Any attempt to move away from that principle would be challenging to set up and represent a significant intervention in consumers' personal finances. Most DD customers pay a fixed monthly amount that should cover forecast annual charges. A mandated switch mid-way through a year will mean that a customer may be refunded a significant amount that was needed to cover upcoming high winter consumption, (and therefore needs to be retained by the customer to avoid future bill/payment shock). Alternatively, the customer transfers through BEIS' proposed scheme to a new supplier, leaving behind a material debt that was due to be collected within a year but, because of the mid-year switch, has not made all of the required payments. This then becomes repayable, quite quickly, to the old supplier, with a potential impact on the customer's credit score and a negative experience overall.

We recognise that this consultation is the first stage in developing the testing, but we would urge BEIS to ensure that it works closely with industry in the next stages to address this and any other detailed issues that may hamper customers' experience or impact on supplier processes.

### *Determining the New Tariff & Supplier*

We do not believe that the singular focus on price in isolation is compatible with the current trajectory of the market towards innovative offers and low-carbon products. While we recognise that price is the easiest metric for BEIS to implement and assess as part of the trial, we do not believe that this would provide any meaningful results in the trial to enable an effective scaling-up of opt-out switching post-trial. The focus on price (especially below-cost tariffs) has contributed to current crisis and adverse customer impact when cut-price suppliers go bust and setting it as the main focus for future default arrangements would risk alienating those customers that have taken up Net Zero solutions already (e.g. solar or EV products), and undermine the innovation to decarbonise that is already underway, and that will be further enhanced by the introduction of market-wide half-hourly settlement.

### *The Opt-out Process*

Any opt-out process must be as quick and simple as possible for consumers – as the trial will be targeting the already disengaged, it would not be fair for consumers for the opt-out process to be complicated, lengthy or require significant engagement above that needed for switching. BEIS needs to set out clearly how its design is going to engage disengaged customers in the short and longer term, and provide greater benefits than the price cap which ensures disengaged customers pay only a fair price for their energy (as determined methodologically by Ofgem). We have significant concerns that if it is unable to do so, then in effect BEIS will just create a government-backed auto-switching service for the perennially disengaged which will further distort competition to the detriment of consumers as a whole.

### *Data Processing and Consumer Protection*

In addition to the concerns raised about the role of the Delivery Body above, we are concerned that BEIS has not considered that any such body would undermine the expertise and experience of suppliers. The Delivery Body would likely not have the same level of experience with customers (particularly those in vulnerable circumstances) and data in the energy sector as suppliers. Even in a small-scale trial, the duties and responsibilities for the Delivery Body would be considerable, and the error rate would, therefore, likely be quite high. This is likely to have a negative impact upon customers' experience with the energy sector, and their overall willingness to engage.

### **Debt as a Barrier to Switching**

We do not believe that BEIS has adequately assessed the impact upon consumers' and the market in allowing customers with significant debts to transfer suppliers. For example, such possibilities could encourage 'debt-hopping' between suppliers, raising debt levels across the market to the detriment of consumers as a whole. In addition, suppliers' routes to collect debt from a customer that has switched to another supplier are limited, and BEIS may diminish the experience of customers overall if the only route available to suppliers to collect such debt is through debt collectors. BEIS has also not assessed the impact on industry's provision of additional innovative services and products which have longer pay-back periods (such as batteries and solar installations), and the subsequent impact that its schemes will have on the achievement of Net Zero.

Ofgem undertook a review of domestic debt objections and decided in 2016 that it is in domestic consumers' interests to retain the current debt objection arrangements.<sup>5</sup> In particular, it found that removing debt objections would be likely to increase debt across suppliers' customer bases as customers switch away, leaving a debt that is harder for suppliers to recover - it also concluded that the distributional impact could be significant.

We recognise that the market has evolved significantly in the five years since Ofgem's review. However, BEIS has not put forward any analysis to suggest that the outcomes from allowing significantly indebted customers to switch through its schemes would differ from those outlined by Ofgem in its review. If BEIS is seeking to continue its thoughts on debt as a barrier to switching, it should only do so outside of the development of the switching schemes. Such a piece of work will require significant analysis of the impacts in today's and the future market, and take into account innovation as a result of market-wide half-hourly settlement, and the investment and innovation undertaken by suppliers to decarbonise the energy system and help the UK achieve its 2050 Net Zero target.

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<sup>5</sup> [Review of Domestic Debt Objections: Our Decision](#), Ofgem, July 2016