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CAS Response to the Ofgem consultation on Energy Company Obligation (ECO3): Improving Consumer Protection (December 2019)

Who we are

The policy teams at Citizens Advice Scotland use research and evidence to put people at the heart of policy and regulation in the energy, post and water sectors in Scotland. We work with government, regulators and business to put consumers first, designing policy and practice around their needs and aspirations. We aim to represent the views of different consumer groups using evidence of consumer views and supporting research wherever possible.

Citizens Advice Network in Scotland

Citizens Advice Scotland (CAS), our 59 member Citizen Advice Bureaux (CAB) and the Extra Help Unit, form Scotland's largest independent advice network. Advice provided by our service is free, independent, confidential, impartial and available to everyone. Our self-help website Advice for Scotland provides information on rights and helps people solve their problems.

In 2017-18 the Citizens Advice Service network helped over 295,100 clients and dealt with almost 874,000 advice issues for clients living in Scotland. With support from the network clients had financial gains of over £138 million and our self-help website Advice in Scotland received approximately 3.2 million page views. On energy consumers issues in particular, we advised on over 41,000 energy-related issues in 2017-18, generating over £1.8m in client financial gain.

Our extensive footprint is important in helping us understand how issues impact locally and nationally across the country and the different impacts that policies can have in different areas.

General Comments

CAS welcomes the proposals for ECO3. The ECO scheme has helped deliver energy efficiency measures to vulnerable consumers in two other phases and we were pleased to see that BEIS and Ofgem are expanding consumer protections in this third iteration. In particular, we are pleased to see the incorporation of Trustmark into ECO3 to certify suppliers, so that high quality standards are more accessible, and redress for consumers easier. This makes sense given the wider industry move under Each Home Counts to integrate standards and protections under one certification mark for the Repair Maintenance and Improvement (RMI) market and energy efficiency sectors. Below we answer the consultation questions for which we have relevant expertise, aiming to highlight the Scottish consumer issues.

While accreditation is an important component of consumer protection, it alone is not sufficient; it needs to be backed up with monitoring and enforcement by an independent adjudicator. This is critical to ensure that the Trustmark scheme has teeth to sanction and enforce compliance which in turn leads to good outcomes for consumers, whilst also building credibility and trust.

While we are pleased to see the integration of Trustmark within ECO3, we still have some concerns that the Trustmark Framework Operating Requirements (V2.0 draft) are overly vague in respect of section 9 'consumer safeguarding', section 6 and Annexe A. This risks making the requirements open to interpretation by installation companies and certification bodies, which in turn could lead to inconsistencies in the way they are applied and enforced for consumers. For example 1.3.4 states 'Take appropriate steps when dealing with vulnerable people', but it doesn't state what steps should be taken or how vulnerable people should be identified. In relation to enforcement and sanctions, Section 7.2.1 states "the Scheme Provider should undertake a review to *consider potential application* of a sanction to immediately suspend and remove from the public register pending further investigation". The 'potential application of a sanction' could be highly subjective. We would welcome tighter wording in this regard with explicit scenarios in which a sanction may be appropriate. This reduces the risk of misinterpretation and subjectivity, which in turn strengthens protections.

Over time it will be important that there is an independent review of the Trustmark scheme periodically, to assess whether Trustmark is maintaining the required or adequate number of inspections to carry out effective monitoring as well as efficiently and robustly following up on installer fails or non-compliance matters in a timely manner. We believe it is essential that ongoing monitoring of Trustmark's

Operating Requirements is required to ensure it is fit for purpose, and satisfactory from a consumer perspective. Without it, it risks being overly industry-led and self-serving, instead of consumer-focused as it intends.

Areas for improvement

On a more general point, we would like to identify some areas where we believe the programme as proposed could be improved:

- 1) We welcome Trustmark taking over from 2021, offering consumers assurances that their installer is registered with an improved certification scheme. However, as we often see consumers left without recourse to redress when their installer goes out of business, we are concerned that Trustmark cannot offer any redress in these situations.
- 2) Whilst installers need to be Trustmark registered we have concerns over the protections for consumers when sub-contractors are used and the primary installer uses this to avoid responsibility for consumer redress.
- 3) We acknowledge that Ofgem is not able to consult on the replacement of the broken heating systems cap, however, we are not sure of the merit of having a 21.023% cap on suppliers for the total number of replacements of broken heating systems measures.

We acknowledge that District Heating Systems (DHS) are to be excluded from the Trustmark requirement, and request clarification that membership of the Heat Trust is an interim solution.

We recognise that the regulation of heat networks is currently under review by BEIS following the conclusions of the CMA investigation in July 2018. There are devolved dimensions to consider in Scotland where the Scottish Government doesn't have the devolved power over consumer protection, but is considering introducing a new licensing body for heat network operators and developers. Regardless of who is elected to oversee consumer protection in heat networks, it is essential that consumer protection is regulated given the risk the consumers face in monopoly market with no choice. This is something we have called on for a number of years, and we reiterate our appeal for regulation, price-control mechanisms and consumer protections. For further information, please refer to our report *Different Rules for Different Fuels*¹.

Increased financial protections should apply to all energy efficiency works, including ECO works, demonstration actions and District Heating Systems (DHS) measures. In addition to increased financial protection, it should be made clear to consumers, that

¹ https://www.cas.org.uk/system/files/publications/different_rules_for_different_fuels_-_cfu_insight_report.pdf

it is the supplier or company that holds the contract who is liable for poor quality works (both installation and materials) and any damage caused during the installation, including paying for and organising remedial works.

Consultation Questions

- 1. Do you agree with our proposal to create three new fields in the notification template to capture an installer's TrustMark license number, lodged certificate ID and TrustMark Unique Measure Reference Number for verification purposes? If you disagree, please provide alternative suggestions, including any evidence, to support your response.**

Not applicable to us.

- 2. Do you agree with our proposal to verify certain data fields with Trustmark's Data Warehouse? If you disagree, please provide alternative suggestions, including any evidence, to support your response.**

Not applicable to us

- 3. Do you agree with our proposal on how the transition of appropriate guarantees will be carried out? If you disagree, please provide alternative suggestions, including any evidence, to support your response.**

Not applicable to us.

- 4. Do you agree with our proposal that suppliers will be required to conduct technical monitoring and score monitoring until TrustMark are able to take full responsibility of the process? If you disagree, please provide alternative suggestions, including any evidence, to support your response.**

We agree with the transition from Ofgem to Trustmark for the responsibility for technical monitoring and some of the score monitoring. If Trustmark require more time to build capacity or technical experience beyond the start of 2021, will Ofgem be able to extend the transition period to accommodate this?

Will there be ongoing monitoring of Trustmark beyond the pilot period to ensure capacity is being met and non-compliance issues addressed?

5. Do you agree with our proposed approach to the administration of FTCH insulation requirements? If you disagree, please provide alternative suggestions, including any evidence, to support your response.

We support the extension of insulation pre-conditions for FTCH as this adopts a fabric first approach. We would like to see insulation pre-conditions extended to all measures.

We have some outstanding questions which the proposals do not appear to cover and we would ask for clarification on:

- Does the current requirement for insulation pre-conditions for DHS impact the number of installations in social housing?
- Will this extension to all FTCH measures negatively impact the level of installations for social housing?
- Are targets imposed on suppliers for the number of FTCH measures they need to install, to ensure the numbers do not drop despite the new insulation pre-conditions?

Whilst the changes to lifetimes has been amended but is not being consulted on we would ask for clarity on how accurate the new lifetimes are, and whether a lifetime connection to gas of 20 years is a sustainable approach.

To support Trustmark's Framework Operating Requirements for 'customer interfacing skills' and 'providing good customer service' we ask that easy to understand and comprehensive advice on how to operate the new heat system is provided to customers as part of the commissioning process.

6. Do you agree with our proposal that weather / load compensation should be a stand-alone measure type, rather than the savings being included in scores for installing gas and LPG boilers? If you disagree, please provide alternative suggestions, including any evidence, to support your response.

Not applicable

7. Do you think that a change in approach is necessary for scoring multiple measures? If so, please indicate your alternative approach, including any evidence, to support your response.

We have concerns about the new proposal for installers to continue to notify individual measures, as these measures will remain unapproved until all measures have been completed in the new design plan. It appears to be creating an unnecessarily complicated process.

- 8. Do you agree with our proposal to split out the existing underfloor insulation score into solid underfloor insulation and suspended underfloor insulation? If 63 Consultation – Energy Company Obligation (ECO3) Improving consumer protection you disagree, please provide alternative suggestions, including any evidence to support your response.**

We agree

- 9. Do you know of any other situations where failed cavity wall insulation would need to be removed that we should be aware of that would help us to clarify the guidance? If so, set out any examples, and provide supporting evidence as required.**

We are concerned that the purpose of this new provision may fail where a guarantee is in place but the consumer has been unable to claim under it - see case study below.

We are also concerned that a 'household' approach rather than a 'building' approach (para 7.13) has the potential to undermine the 'whole building' PAS 2035 approach.

Case Study: Client is disabled and was eligible for free insulation from her supplier, who put her in touch with an installer to have the works carried out. 8-12 weeks after the installation, Client's home began to show signs of damp, causing £6,000 of damage to carpets and walls. Client, who is deaf and cannot speak on the phone, emailed both her supplier and the installer, who sent an inspector out a few weeks later. The inspector identified that the insulation had not been installed correctly, and would have to be removed and replaced. Client has emailed her supplier to arrange for repairs, and they have directed her to the installer. The installation company has said that the required remedial work is too expensive to fix. Client has been emailing both companies since, with no resolution.

- 10. Do you know of any heat sources which would fall within the 'Gas room heaters' pre main heat source category which are not fuelled by mains gas? If you do, please provide evidence to support your response.**

Not applicable

- 11. Do you know of any other categories of HMO that we should be aware of that would help us to clarify the guidance? If so, set out any examples, and provide supporting evidence as required**

We are not aware of any other categories. However, we are concerned the division in the two types of HMO for this purpose, will frustrate the 'whole building' approach of PAS 2035 and potentially create a patchwork of insulation within one building.

- 12. Do you agree with our proposal to rename the measure categories and to move the measure types "Cavity Wall – External Insulation" and "Cavity Wall – Internal Insulation" into the measure category "Cavity Walls"? If you disagree please provide alternative suggestions, including any evidence, to support your response.**

No issue with renaming categories

- 13. Do agree that the approach of introducing a separate and transparent behavioural usage factor would be an effective way of recognising that systems might be turned off or removed? If you disagree please provide alternative suggestions, including any evidence, to support your response.**

Cannot comment

- 14. Are there any areas where you think further guidance would be useful?**

In section 2.42 of the consultation where the fail rate is greater than 10% "Ofgem will require suppliers to take further actions to provide us with confidence in the quality and accuracy of measures concerned". Can Ofgem provide guidance on what "confidence" Ofgem are looking for that ensures large fail rates are being robustly dealt with and in a timeous manner?.

In sections 2.43 and 2.44 of the consultation, how remedying failed measures is covered, however, we are aware in our CAB network, of instances of installers repeating installation mistakes/poor workmanship across a number of properties /consumers. As such, whilst we agree with remedying fails we would also ask that a fail triggers an automatic requirement for further testing of other properties from that installer.

- 15. Do you have any further comments on our proposed administration for ECO3?**

We would like to see ongoing assessment of Trustmark beyond 2021. This would provide reassurance that Trustmark are effectively assessing measures and providing a robust consumer protection mechanism. Ongoing assessment of Trustmark should include regular reporting from Trustmark to

Ofgem of how it is managing the capacity, what the figures are for the numbers of fails of technical and score monitoring, as well as how they remedy fails from a consumer perspective. This should include how timeous remedies are for fails and whether monitoring is being used to track and identify patterns identified at individual fails.

We have concerns about the lack of procedures that have been put in place for remedying fails for the consumer when the installer no longer exists.

In order to prepare for a new Scottish Quality Mark we believe the UK Government and the Scottish Government should collaborate over the interaction between Trustmark, ECO3 and the potential new Scottish Quality Mark. Preparations should include how to communicate messages publically and to industry about the co-existence of two certification schemes, so as to avoid confusion.

CAS welcomes efforts to strengthen consumer protection under ECO. However, as the Scottish supply chain is different from the supply chain elsewhere in the UK, we would like to express concerns surrounding the costs of the Trustmark for Scottish small and micro businesses. In particular, consideration should be given to the impact of the new design plan and the new notification process for measures, for small and micro businesses, and whether the new notification process could create cash flow issues.

As previously mentioned, the Scottish Government is considering developing a Scottish Quality Mark to be used in the Energy Efficient Scotland programme, as per a recommendation by an independent Short Life Working Group. If the Scottish Quality Mark has a similar fee schedule to the Trustmark accreditation process, many small and microbusinesses, particularly in rural areas, could be priced out of the scheme. Many businesses, especially on the Islands, are not officially part of accreditation bodies that could spread the cost of joining Trustmark or a quality mark across businesses. These small businesses would additionally struggle to absorb the cost of upskilling or hiring a PAS-2035 compliant retrofit coordinator. In remote and rural areas, these small and micro businesses may not act through an intermediary as they might be the only contractor in their area. We therefore urge Ofgem to consider what support it could offer to small and micro installation businesses to assist with the cost of accreditation, and/or consider different models of procurement under ECO3 which could support smaller, local businesses within a given geographical area e.g. Frameworks of contractors.

As previously mentioned, due consideration must be given to how sub-contractors operate under Trustmark to ensure that the same technical quality and customer service standards are adhered to by sub-contractors, and that sub-contractors are also subject to robust monitoring and periodic inspections.