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Position statement      **Utility warrants for pre-payment meters and the issue of vulnerability**

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## Summary

This position statement only addresses utility warrants for entry to install a pre-payment meter. It does not cover other types of warrants of entry, nor smart meters switched to pre-payment meters without reference to a court.

Magistrates have a very limited role under the current process. This involves them making an adjudication based on the evidence before them, and thus relies on the assurances given under oath by representatives of the utility companies that licence conditions and codes of practice—including vulnerability checks—have been met. This limited role is not widely understood, which has led to a misleading impression that magistrates are ‘waving through’ warrants and are not fulfilling their role as they should. This is incorrect and unfair.

As the current process relies heavily on assurances given by utility company representatives under oath, considering the recent media coverage regarding vulnerable utility customers, we are concerned as to whether those assurances under oath can now be relied upon. Therefore, we welcome the suspension of the process announced by the Senior Presiding Judge. We believe the process should not be restarted until we can be certain that the assurances under oath can be relied upon, or the process and/or Ofgem codes of practice is/are reformed.

Finally, we would welcome a revision of the process that would give a greater role to magistrates in questioning the steps taken by utility companies in line with codes of practice with regard to vulnerable customers when they apply for warrants. However, we caution that this could take up considerable court time and resources. These would need to be adequately provided for to avoid a knock-on effect on other court business. We also caution that the regulator, rather than the courts, is best suited to ensure the code of practice is adequate and to investigate companies’ compliance, including vulnerability checks.

## The role of magistrates

1. This paper covers the process governing utility company court applications for the granting of warrants to gain access to domestic premises for the purpose of installing pre-payment meters (henceforth called ‘utility warrants’). This process has come under intense scrutiny in light of the cost-of-living crisis and high energy costs, which has led to a large increase in the number of warrant applications coming before magistrates’ courts.
2. The Magistrates’ Association is acutely aware of the immensely challenging economic times in which we are all living and the significant problems that many are facing with energy prices at this time. Magistrates themselves are not immune to these pressures.
3. Utility warrants are governed by the Rights of Entry (Gas and Electricity Boards) Act 1954, the Gas Act 1986, and the Electricity Act 1989. The role of a magistrate is to apply the law, as set by Parliament.

4. If and when any changes are introduced, magistrates will fulfil any new legal requirements, as is their sworn duty. However, the decision to change this process will be for others to decide, rather than magistrates. The separation of responsibilities between those who make the laws and those who uphold the laws is a cornerstone of our democracy.
5. The Rights of Entry (Gas and Electricity Boards) Act 1954, the Gas Act 1986, and the Electricity Act 1989 govern the process to be followed when an energy company seeks a warrant in court. This legislation makes it extremely difficult for magistrates to challenge a warrant on any basis other than, for example, clerical errors in the application. This is unless the application has been contested and the householder provides information to show that there is no debt due to the utility provider, or that they have not been given the requisite notice. The Adult Court Bench Book provides magistrates with more guidance on the relevant considerations in such cases.
6. Once the energy companies' representatives have stated under oath the grounds for the warrant (for example, debt) that access is reasonably required (for example, to fit a pre-payment meter), and that the correct procedures have been followed, there is virtually no judicial discretion, and a magistrate must grant the warrant.
7. The burden of proof in utility warrant applications is a civil rather than criminal one. Therefore, if the information given under oath is not rebutted, and is cogent and consistent, magistrates have no grounds to refuse to accept it. Giving assurances under oath to a court is an extremely serious matter. If any such assurances are falsely provided, then this becomes a matter for others—not magistrates—to investigate and consider what action should be taken.

### **Our position on vulnerability**

8. When presenting warrant applications to the court, an energy company's representative swears an oath that, in part, states that they have complied with their supply licence as agreed with Ofgem. Supply licences for both gas and electricity stipulate specific conditions relating to vulnerability and highlight that seeking a warrant against a vulnerable person is not permitted. In light of recent media coverage and Ofgem's own suspension of the process, it seems that warrants may have been sought to enter the homes of vulnerable people. This may be because the current Code of Practice is not sufficient to identify these people.
9. We are, therefore, concerned that the oaths given by energy companies in court that they have complied with their supply licenses—which give them obligations towards their vulnerable customers—cannot be safely relied upon to ensure that those for whom warrants are sought are not vulnerable, but only that they are not known to be.
10. Energy companies—and their regulator Ofgem—must ensure that companies comply fully with their supply licence by proactively identifying those customers who are vulnerable. This is so that magistrates can be confident that energy companies have taken into account any vulnerability in those customers affected by applications for utility warrants.
11. We welcome the previous Secretary of State of Business, Energy and Industrial Strategy's decision to ask Ofgem to review the process for the installation of utility warrants and the compliance of utility companies with their obligations. We also welcome the Senior Presiding Judge's announcement on 6 February 2023 that utility warrants will not be listed in courts and the process will be halted. As well as highlighting that magistrates have, thus far, been following the correct procedures with regards to such applications, it reiterates that energy companies must follow due process regarding vulnerability assessments.

12. Before the applications process restarts, action should be taken by Ofgem and the utility companies to ensure that magistrates can be confident applications presented to them do indeed comply with their supply licences, including those elements regarding vulnerability.

### **Our view on next steps and reform**

13. There is ongoing public debate over whether a new process is needed that would provide greater safeguards to utility company customers, and this will no doubt be considered as part of the current review.
14. There is also debate about the appropriateness of applications for utility warrants being processed in bulk rather than on a case-by-case basis.
15. If the process changes, magistrates will fulfil any new requirements as necessary. However:
  - (i) We would question whether magistrates are the most appropriate people to investigate compliance of licencing conditions, including those concerned with vulnerability, when reviewing utility warrant applications. The role of Ofgem is vital in this regard.
  - (ii) We do not view the process of bulk applications that is currently used to handle uncontested applications as being an impediment to the process. Each of the applications follows an identical process. If each were dealt with individually, there would need to be a large increase in court resources, including magistrate and legal adviser numbers, without court backlogs growing significantly. However, we would welcome the opportunity for greater scrutiny to ensure that the correct process is being followed—for example, through sampling of applications—though more resources would still be needed to for this to happen.
  - (iii) We continue to hold concerns about ensuring that such cases are subject to open justice principles, allowing for their proper scrutiny if requested. We have previously expressed our concern about the [Single Justice Procedure](#) and [open justice](#), and we have similar concerns regarding applications for utility warrants.
16. The wider question of the process going forward is something that should be considered by the new Secretary of State for Energy Security and Net Zero in a review into the whole process.
17. We note that the water industry involves the courts less in dealing with water bill debts, and there have also been calls for so-called ‘social tariffs’ for those struggling with payment. These are issues for others—not magistrates—to decide.