



Campaigning for Warm Homes

Comments from National Energy Action (NEA) on Ofgem Consultation

Addressing undue discrimination – final proposals

Background

NEA recognises the significance of regulatory intervention to promote greater fairness in the competitive energy market and welcomes the opportunity to comment on Ofgem's proposals to remedy some aspects of market failure in protecting disadvantaged consumers. Fuel poverty currently affects some 4 million households in England and the unacceptable increase in the scale of the problem since 2007 is almost entirely attributable to unprecedented increases in energy prices. Consequently, whilst recognising that low household incomes and poor energy efficiency standards are key elements in fuel poverty, NEA supports any measures that can bring about reduced energy costs for low-income and other vulnerable customers.

NEA believes that eliminating negative discrimination in the market is not sufficient to achieve fuel poverty objectives and that the market must be shaped in such a way to provide real positive discrimination on behalf of vulnerable customers – we see this as more an issue of fairness and equity than of discrimination. NEA's comments on Ofgem's proposed remedies will follow the framework of the consultation document and will concentrate on area of greatest relevance to disadvantage energy consumers.

Licence Condition A: a requirement for any difference in the terms and conditions offered in respect of different payment methods to be cost reflective – *Any difference in terms and conditions as between payment methods for paying Charges for the Supply of [Electricity/Gas] shall reflect the costs to the supplier of the different payment methods.*

NEA recognises that objective analysis of cost-to-serve is an essential precondition of any informed discussion of differential pricing. However NEA recognises and welcomes Ofgem's view that cost-reflectivity is not always intrinsic to pricing structures and that it will not compromise tariff adjustment intended to serve a social purpose e.g. equalisation of prepayment charges. In this context we wonder if the wording of the Licence Condition is overly prescriptive.

We also note Ofgem's view that adoption of this condition effects compliance with the relevant EU Directives and that it is not intended that any additional obligations should be introduced as a result of this condition. NEA assumes that supplier flexibility in not adhering rigidly to cost-reflective pricing where a social welfare purpose is intended will not be compromised by the EU Directive.

Licence Condition B: a prohibition of undue discrimination in any terms and conditions offered to customers – *the licensee must ensure that in supplying or offering to supply [electricity/gas], the Principal Terms on which it does so do not discriminate without objective justification between one group of Domestic Customers and any other such group. For the purpose of this condition it shall be for the Authority to decide whether there is any such objective justification and The licensee shall only be in breach of this condition if and to the extent that the nature of the discriminatory terms offered and/or their impact on any Domestic Customers is material in any respect.*

NEA notes Ofgem's belief that introduction of a licence condition prohibiting undue discrimination will deliver 'significant benefits for many vulnerable customers'. In passing, NEA suggests that substituting 'unjustified' for 'undue' might be more equitable. The former term relates to equity whilst the latter relates more to proportionality i.e. it seeks to limit rather than exclude unfairness. We also note Ofgem's concerns that such a condition might hinder the intensity of competitive activity with a degree of incredulity. NEA takes the view that any form of discrimination is unacceptable in principle where it acts against the interests of vulnerable consumers.

Conversely, NEA supports the type of positive discrimination implicit in social tariff development and will return to this issue later.

Geographical issues and legacy customers

NEA notes Ofgem's justification of differential charges relating to network charges and geographical location. Whilst this may be justifiable from a purely economic perspective it does have implications for many disadvantaged customers. It may be advisable that where Ofgem supports a case that defends such pricing differentials the implications are reported to Government. Since there is no provision within the welfare benefits system to accommodate such differential charging the issue should at least be identified and communicated.

In relation to geographical pricing and incumbent suppliers, NEA has already welcomed supplier movement to reduce or eliminate what we considered to be an indefensible practice. Voluntary action on the part of energy suppliers should also help resolve the degree of detriment suffered by households off the gas network. However, voluntary action is an unsound basis for addressing unfair practice and these issues should be kept under constant and rigorous review. Our expectation is that the arbitrary and exploitative treatment of legacy customers will now cease, failing which the regulator will act to address this area of discrimination.

Social tariffs

NEA commends Ofgem on the work it has done in monitoring energy suppliers' social offerings and in setting out specific criteria for what can be designated as a social tariff. We also note that the regulator will treat social tariffs and other discounted tariffs as being outside the scope of Licence Conditions A and B relating to cost-reflective charging and undue discrimination. Nevertheless this still raises the issue of equity in that access to the social tariff, or equivalent, will be subject to the discretion of the supplier in terms of eligibility criteria and limits on numbers.

NEA believes that this approach is neither equitable nor rational. We recognise Ofgem's reluctance to be prescriptive on the grounds that this may hinder innovation and enterprise but are not convinced. NEA believes that the principles

adopted in Licence Condition B should be incorporated within the social tariff structure i.e. no negative discrimination within a group defined as eligible for a social tariff.

NEA anticipates resistance to this suggestion on the part of suppliers and the regulator and accepts that a different route will be needed. Consequently, NEA will continue to press for a universal social tariff where eligibility criteria and the degree of benefit will be consistent across all suppliers and all geographical areas.