



Neil Barnes
Ofgem
9 Millbank
London SW1P 3GE

Dear Mr Barnes,

Addressing unfair price differentials

Age Concern and Help the Aged are due to merge in April 2009 to form one single UK charity dedicated to improving the lives of older people and tackling the disadvantages they experience. As part of this process we are submitting joint responses to current consultations. We are pleased that Ofgem has issued this consultation so soon after the initial findings of the Energy Supply Probe showing the priority it places on unfair pricing differentials. We have been concerned for some time that existing tariff differentials were unjustified and consider that Ofgem should take urgent action to ensure this is remedied as soon as possible.

A summary of our response is:-

- We are concerned that the use of the words 'substantial, extensive and persistent' in defining when a supplier would be in breach of any licence condition cast doubt on when, if ever, Ofgem is likely to take action should the licence condition be breached
- Given the uncertainty we think this use of language gives we consider it is imperative that Ofgem issues guidance to give greater clarity on what it considers would be 'substantial, extensive and persistent'
- We oppose any introduction of a new multi stage mechanism for resolving unfair differentials
- Given we think Ofgem has already been long overdue in addressing unfair price differentials, there is an urgency to ensure this issue is addressed as soon as possible. We urge Ofgem to try to come to some reasonable agreement with suppliers to avert a possible reference to the Competition Commission
- However, after careful consideration of the proposed options for licence requirements in the document, we consider that none of the Options A, B and C as currently drafted address all of our concerns.

- We support the implementation of licence Option D

It is encouraging that the energy suppliers have already taken action to reduce some of these unfair differentials since this indicates that they will accept changes to their licence conditions on this issue. However we note that none of the supplier actions outlined in paragraph 1.9 of the document have reduced standard credit tariffs. Given the urgent need to address this problem it would be extremely disappointing should Ofgem need to refer the matter to the Competition Commission which would take a considerable time to report.

We are extremely concerned at the wording in paragraph 2.8 of the document. The probe found that the current price differentials had significant impact on vulnerable households. Research conducted by Ofgem found that older people, who are the group most likely to be in fuel poverty, were less likely to be on the cheapest tariffs. It also showed that despite being able to make significant savings, vulnerable households continue not to switch. Ofgem estimates that 50% of the fuel poor, including a significant number of older households pay by standard credit. Yet paragraph 2.8 states that Ofgem will only take action if the breach has been 'material' with the price differential needing to be 'substantial, extensive and persistent'. The use of this language makes it very uncertain when, if ever, Ofgem states that they would be more likely to take action about unfair price differentials if it 'disproportionately impacted on vulnerable consumers'. However their probe has already established this. We therefore disagree with Ofgem that it does not think there is a further need for clarity on what they would consider a 'materiality threshold.' If Ofgem continues to use this language we think there should be much clearer guidance on what they would consider to be a material breach, particularly with regard to what would be considered to be substantial, extensive and persistent.

Our concern about the likelihood of Ofgem taking any enforcement action is further exacerbated by the proposal in paragraph 2.13 to introduce a new multi stage mechanism for 'resolving unfair price differentials.' This could take considerable time if all the stages were gone through which could encourage suppliers to disregard the licence condition for as long as possible before being faced with the possibility of a fine. We do not support a special mechanism being introduced for resolving breaches of unfair price differentials. This should have any effect on innovation and competition since suppliers could always seek advice from Ofgem before introducing new tariffs or making price changes.

We note that Ofgem proposes in paragraph 2.10 to supplement any new licence conditions with appropriate guidance. We trust that Ofgem will consult on any proposed guidance it intends to issue to be sure consumer concerns are taken fully into account.

We have found it difficult to choose which of the options A, B or C would be most appropriate in meeting our particular concerns. These are:- there should only be cost reflective pricing between payment methods; in area customers should not pay more than out of area customers on the same tariff

unless this can be justified; that the licence condition should not lead to lack of clarity or certainty since this is likely to disadvantage consumers; that cost reflective pricing should not encourage suppliers to include costs arising from inefficiencies. In addition, in view of what we consider to be undue delay in dealing with this issue, we want to minimise the time it will take to implement the new licence conditions.

We support the proposals in 2.5 of the document determining what cost would be acceptable in determining any differentials but consider none of the proposed options A, B or C address all of our other concerns. Option A fails to address the in/out of area issue, Option B does not offer clarity and Option C does not offer speed of resolution. In addition we have some concern that in outlining Option C, the document seems to assume that there is some justification in charging in area customers more than out of area ones. We consider this is unlikely to ever be the case and we would want assurance that this would only be allowed where the supplier can demonstrate that it is justified. We also reject the proposal to allow headroom in the proposed formula for Option C since this means consumers would still be paying more than is justified by cost reflectivity.

We support Option D that there should be a separate licence condition that prohibits cross subsidy between electricity and gas supply. It seems logical that if this is introduced in electricity supply licences it should also be introduced in licences for gas supply, even though the Probe did not find problems in gas supply.

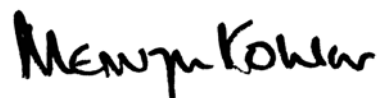
We look forward to seeing further proposals on remedies to address the other probe findings relating to improved information and sales and marketing in due course.

Yours sincerely,



Consumer Affairs Policy Adviser

Age Concern England



Special Adviser

Help the Aged