



**British Gas**  
Looking after your world

Andrew Wright  
Partner, Markets  
Ofgem  
9 Millbank  
London  
SW1P 3GE

Ian Peters  
Managing Director  
Lakeside West  
1st Floor  
30 The Causeway  
Staines  
Middlesex  
TW18 3BY  
T 01784 874195  
F 01784 874755  
ian.peters@britishgas.co.uk  
britishgas.co.uk

23<sup>rd</sup> April 2013

Dear Andrew

### The Retail Market Review – Final domestic proposals

1. We welcome the publication of Ofgem's final Retail Market Review (RMR) proposals, and find much within the document which we support. Many of the proposals will improve customer engagement in the retail energy market and, as a package, represent an improved balance between delivering simplicity and allowing innovation.
2. In particular, we welcome the changes made to the proposals since the last consultation. Allowing suppliers to offer online discounts in the same way as they offer Dual Fuel discounts will promote customer engagement, and encourage customers to adopt cost saving behaviour without complicating their choice of tariff. Furthermore, allowing customers to access a range of smart and dumb tariffs after they have had a smart meter installed will allow suppliers to design a range of products which facilitate the roll out of the Government's Smart Meter programme.
3. Our detailed comments on these final proposals are set out below. We have also highlighted below a number of areas where we still have real concerns that the proposals will not be in the interests of consumers. We urge Ofgem to review these ahead of making a final decision. Specifically:
  - The requirement to implement the tariff simplification proposals by 31<sup>st</sup> December 2013 is unreasonable. The proposed RMR timetable provides for Ofgem to make a decision in June 2013, with supplier implementation programmes starting from August 2013. This affords suppliers less than six months in which to make complex and fundamental changes to their billing systems, customer communications and product range. This is an unreasonable expectation which we believe cannot be met. Ofgem should instead seek to align the implementation date for these proposals with the 31<sup>st</sup> March 2014 deadline for the migration of customers from more expensive "dead" tariffs. This would both provide suppliers with sufficient time in which to properly implement the proposals, and allow them to deliver the changes in one project, simplifying the process with consequential reductions in costs incurred and streamlining customer communications.
  - The inclusion of fixed term contracts due to expire after 31<sup>st</sup> December 2013 within the scope of the tariff proposals will force suppliers to break commitments already made to customers. British Gas has a significant number of customers currently on fixed term and fixed price contracts due to expire after 31<sup>st</sup> December 2013. Any regulatory requirement forcing suppliers to change the terms and conditions ahead of the agreed contract end date would break commitments made when the contract was agreed, resulting in unexpected price increases for many customers. It is difficult to see how this would either be in customers' interests, or compliant with the proposed Standards of Conduct

Licence Condition to treat customers fairly. Placing suppliers in a position where complying with one Licence Condition places them in breach of another is irrational and must be avoided. We also note that if this occurred, existing Licence Conditions would provide a right for affected customers to terminate their contract. Given the energy for these fixed term and fixed price contracts will have largely been purchased in advance, this would potentially expose suppliers to considerable commercial loss. Ofgem should instead allow suppliers to honour the existing terms and conditions of these tariffs, and oblige suppliers to roll affected customers off on to an RMR compliant tariff when their contract expires.

- The ban on 'joint mailing' will increase supplier costs and could well create direct consumer harm. Preventing suppliers from advising consumers about relevant information which may help lower their bills at the time of a price rise will cause real detriment. At times of rising prices, we know consumers value information about tariffs which are cheaper, or offer more price certainty. This is evidenced by the large number of customers who signed up to British Gas' "Fix and Fall" tariff following information provided during our last price increase<sup>1</sup>. They also value being informed about how they can improve the energy efficiency of their home at these times. Additional mailings will add significant extra cost. Each new mailing we are required to send out costs approximately £2m in postage alone; cost which ultimately will be passed on the consumers in the form of higher bills. We are yet to see a quantified impact assessment on this proposal, and continue to believe it represents a large net cost to consumers.
- The lack of information on how Ofgem will enforce the Standards of Conduct before they are fully implemented creates significant uncertainty and risk. We welcome recognition from Ofgem that ensuring business processes are demonstrably consistent with the Standards of Conduct will necessarily be an evolutionary process. However, the lack of specific detail over how Ofgem will decide whether to take enforcement action in relation to the Standards of Conduct is a real concern. It is vital that Ofgem use the current review of enforcement procedures to clearly set how they will assess whether a supplier's implementation process is progressing at a reasonable pace before they decide whether enforcement action is warranted.
- The draft Licence Conditions are overly complex and difficult to understand. The complicated nature of the proposed licence drafting creates a risk that suppliers will take differing, and possibly incorrect, interpretations about what is necessary to comply with the RMR decision. Whilst Energy UK are procuring an independent legal review of these draft Licence Conditions, without simplification there is a risk that suppliers may build systems and processes which unnecessarily over or under comply with the new obligations. Ofgem should seek to simplify the drafting wherever possible, and commit to holding several industry work groups where matters of interpretation can be discussed in open forum.
- Specific measures of success are still to be set out. It is vital that these proposals have sufficient time to take effect and that both Ofgem and Government (in light of the powers being taken under the Energy Bill from this autumn) have a consistent view of how the effectiveness of these proposals and the level of competition in the market will be measured. To that end, Ofgem needs to set out an objective set of measures against which the industry can be held accountable. Some progress has already been made on this point, both in the RMR document itself<sup>2</sup> and by think tanks such as Policy Exchange<sup>3</sup>. We

---

<sup>1</sup> Full details on the number of customers who signed up for this offer were provided to Ofgem as part of our response to the October 2012 proposals.

<sup>2</sup> The Retail Market Review – Final domestic proposals, paragraph 1.39

have also given this some consideration and have attached our thoughts on the metrics for a successful retail energy market as Appendix C.

4. In the following sections we set out our views on the proposals relating to Tariff Simplification, the Information Remedies, the Standards of Conduct and the Licence Condition drafting itself. Appendix A to this response also sets out our more detailed comments on the drafting of individual Licence Conditions, with a fully change marked version of the draft Licence Conditions provided as Appendix B.
5. This response is submitted on behalf of the Centrica group of companies (excluding Centrica Storage), is not confidential, and may be placed on the Ofgem website.

#### *Tariff simplification*

6. As set out above, we welcome many of the changes Ofgem have made to their tariff proposals. Taken as a package, we believe these will materially improve simplicity and comparability for consumers, without risking some of the most damaging unintended consequences of the Initial Proposals. However, there are a number of areas where we still have real concerns. These are:
  - The requirement to implement the tariff simplification proposals by 31st December 2013;
  - The inclusion of closed fixed term contracts within the scope of the tariff proposals;
  - The requirement to apply Reward Points Discount on a continuous basis; and
  - The derogation process for new tariffs ahead of launch.
7. Implementing the tariff simplification rules will be a complex and time consuming task, impacting both our product range and our billing systems. This will be exacerbated by the fact that the changes to discount and tariff structures will constitute a price change for a significant number of our customers. This will need to be carefully communicated to customers if we are to ensure that the introduction of the RMR does not damage consumer trust.
8. None of this work can substantively start until August 2013 – the point at which suppliers will have complete certainty on what they are required to deliver. It is unreasonable to expect suppliers to deliver such a fundamental and complex change in less than six months. The proposed implementation deadline creates the risk that suppliers will either be non-compliant or that the changes will be poorly implemented with consequential impacts on customer experience.
9. This is further complicated by the fact that suppliers will also be preparing to implement the changes necessary to migrate customers from expensive “dead” tariffs by 31<sup>st</sup> March 2014. Ofgem should address these problems by allowing suppliers until 31<sup>st</sup> March 2014 to both ensure all live tariffs are RMR compliant, and complete the migration of customers from expensive “dead” tariffs. This will both provide sufficient time to implement the proposals and allow suppliers to align their internal projects – reducing costs and minimising the disruption on customers.
10. Even if Ofgem were to allow suppliers a reasonable amount of time in which to implement the proposals, we would still strongly oppose the proposal to force suppliers to make all fixed term contracts due to expire after 31<sup>st</sup> December 2013 RMR compliant before their end date. A significant percentage of British Gas customers are currently on

---

<sup>3</sup> Report available here: <http://www.policyexchange.org.uk/publications/category/item/what-would-a-competitive-domestic-energy-retail-market-look-like-success-metrics-for-retail-market-reform>

such a deal, where the scheduled end date is after 31<sup>st</sup> December 2013. Any obligation which forces suppliers to vary the terms of such contracts before they are due to expire will damage customer trust.

11. Our Price Promise April 2014 tariff for example tracks our standard tariff rate and contains a two-tier tariff structure with discounts which are not RMR compliant. Changing this tariff to make it RMR compliant by 31<sup>st</sup> December 2013 will involve the introduction of a standing charge (and thus increased costs for low consuming customers), the removal of some discounts such as our Prompt Payment Discount, the adverse restructuring of other discounts such as our Direct Debit discount, and the removal of rights for customers to claim certain reward points. Although we have given these customers a guarantee that we will honour these terms and conditions until April 2014, the RMR proposals would place us in a situation where we are obliged to renege on them, often to the customer's detriment and would significantly damage customer trust.
12. We consider that this is likely to place us in breach of the Standards Conduct Licence Condition by treating these customers unfairly. It is irrational for Ofgem to oblige suppliers to break commitments made to customers on the one hand, to the detriment of many, and at the same time make the "fair" treatment of customers a Licence Condition.
13. Ofgem should resolve this situation by allowing suppliers to honour any fixed term contract agreed with the customer before the RMR decision, but with an expiry date beyond the RMR implementation date. If combined with an obligation to roll customers off these tariffs on to RMR compliant tariffs when their contract expires, a balance will be struck between ensuring the prompt implementation of the RMR proposals and enabling existing customer commitments to be met.
14. Ofgem should also seek to resolve the tension between the proposed ban on adverse unilateral variations for Fixed Term Contract customers and the requirement to ensure that all Discounts and Optional Bundles are offered commonly across all tariffs. As currently drafted, suppliers will be unable to ever reduce, remove or restructure a Discount or Optional Bundle where they also have customers on a Fixed Term Contract, without breaching one requirement or the other.
15. We are also concerned at the proposed restrictions on the use of Reward Points. We find the current drafting of the requirement for suppliers to apply these on a continuous basis<sup>4</sup> confusing and would welcome confirmation from Ofgem that this will not prevent their use in encouraging 'one-off' behaviours such as submitting a meter reading. Combined with the restrictions on discounts, such a prohibition would reduce suppliers' ability to reduce the overall cost to serve for customers – just at a time when such reductions are vital<sup>5</sup>.
16. This issue is not immaterial. Whereas encouraging customers to pay via Direct Debit or manage their account online can be incentivised through other means, these limits on the use of Reward Points will prevent suppliers from encouraging customers to engage with communications such as British Gas' "Tariff Checker"<sup>6</sup> or use smart phone technology to manage their account. Reducing these costs is important to suppliers. For example, prohibiting the use of rewards in these areas will prevent us taking the

---

<sup>4</sup> Draft SLC 22B.23(a)

<sup>5</sup> The need for suppliers to achieve year on year reductions in operating costs was highlighted by the Energy & Climate Change Committee in their report on Consumer Engagement with Energy Markets report, page 4. Report available here: <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmenergy/1036/1036.pdf>

<sup>6</sup> British Gas now write to each customer on a regular basis to highlight if there is a cheaper tariff on offer for them. Reward points may in future be used to encourage customers to engage with that communication.

opportunities to reduce the burden on our call centres (as opposed to directing traffic through a smart phone application).

17. Furthermore, given that – unlike discounts - Reward Points have no cash value, their use in rewarding ‘one-off’ behaviours does not create confusion to decisions over which tariff to choose. Even if Ofgem were unconvinced on this point, consumers could still be protected by less intrusive measures, such as a requirement not to include the use of conditional benefits in the features assigned to any tariff for promotional or comparative purposes. Ofgem should therefore take steps now to remove the requirement to apply reward points continuously.
18. Whilst Ofgem’s confirmation that affinity partners will be able to rebrand existing supplier tariffs is welcome, we remain concerned that their inability to differentiate the tariff in any other way (without using another tariff slot) will be insufficient to maintain their interest in the market. “White label” tariffs play an important role in driving customer engagement, and bring trusted third parties such as M&S and Sainsbury’s in to the market. Ofgem should take further steps to ensure that differentiated “white label” tariffs are not removed from the market as a result of the RMR.
19. Finally, we are encouraged that Ofgem has recognised it is in the interests of consumers for suppliers to be able to trial new tariffs ahead of launch. The concept of a derogation for trialling innovative new tariffs is helpful, however to be effective, the process for reviewing such applications will need to be fast and efficient (reflecting the highly dynamic nature of the retail market). In the absence of an automatic derogation, it is therefore important that Ofgem sets out a clear, efficient and effective process for how suppliers can secure derogations on a case by case basis including a clear timetable for the review of such applications. This should be set out as soon as possible to allow suppliers to apply for derogations far ahead of any implementation date.

#### *Information Remedies*

20. We welcome the decision to reduce the extent to which the format and content of the bill and annual statement is prescribed. The revised RMR proposals strike a good balance between ensuring all consumers receive the information they need in order to make an informed decision, and allowing suppliers sufficient flexibility to ensure the message is delivered in the most engaging way possible.
21. We have real concerns however with the proposal to ban the joint mailing of Annual Statements, Price Increase Notifications, End of Fixed Term Notices and Dead Tariff Notices. Whilst we understand the concern that customers may not easily identify these communications if they are sent along with a bill, this must be balanced with both the extra cost a separate mailing represents and the availability of less damaging solutions. It is disappointing that, for a proposal that introduces such clear cost and dis-benefit to customers, the benefits of this proposal have not been readily quantified.
22. We estimate this proposal will increase our costs by over £2m for each additional mailing in postage costs alone, costs which will inevitably pass through to household bills. Furthermore, the proposal will prevent suppliers from sending customers relevant information, for example at the time of price rise which may help them mitigate the impact of that increase. This information is valued by consumers, and helps millions mitigate the impacts of rising energy prices by engaging them at precisely the point when they are most likely to take action.
23. We also note that the proposals to change the format and labelling of the Annual Statement and Price Increase Notification will ensure that these communications will

appear distinct from other items in the envelope, directly addressing Ofgem's concerns here. Ofgem could further prevent the overall message about the price rise being unnecessarily diluted by allowing "relevant" information to be provided alongside such communications, and defining which information may be deemed "relevant". These would be far more proportionate and effective policy responses, which avoid the issues identified above.

24. Finally, though we recognise that the move to calculating the Tariff Comparison Rate (TCR) on a regional rather than national basis is an improvement, we continue to believe that the TCR has the potential to mislead and confuse customers. Specifically, the decision to calculate the TCR at only average consumption is likely to lead to low or high consuming customers making poor quality switching decisions – particularly given the reintroduction of the standing charge. Whilst any TCR message can be appropriately qualified, our experience is that customers will rely on the information provided by suppliers and therefore expect a certain level of accuracy. Basing the TCR calculation on an "average" level of consumption will prevent customers from making accurate tariff comparisons and potentially erode trust.

#### *Standards of Conduct*

25. We continue to strongly support the proposed Standards of Conduct, and believe they have the potential to play an important role in rebuilding consumer trust in the retail energy market. The introduction of Standards of Conduct into licence represents a fundamental shift in the nature of regulation (away from prescription to a principles based model). We are therefore pleased that Ofgem recognises that ensuring all business processes are demonstrably consistent with the Standards of Conduct will necessarily be an evolutionary process.
26. This being said, the lack of specific detail regarding how Ofgem will decide whether to take enforcement action in relation to the Standards of Conduct remains a concern. In particular, we ask Ofgem to clarify the process it will follow in assessing whether a supplier's implementation process is progressing at a reasonable pace (in the context of deciding whether to commence enforcement action).
27. Given the subjective nature of the Standards of Conduct, we also ask Ofgem to ensure there are proper controls against the risk of inconsistent or disproportionate enforcement decisions. Whilst the proposed independent Enforcement Panel is welcome, we do not consider this to be a sufficient safeguard in itself.
28. We have previously highlighted good practice from other Principles Based Regulation regimes that may be helpful for Ofgem when reviewing how Standards of Conduct will be enforced (e.g. the financial services sector). One aspect of such regimes is independent scrutiny of enforcement decisions – and a route to seeking independent review (without the more drastic step of seeking a full Judicial Review). Such a step can be helpful in providing Ofgem and licensees with assurance that regulatory action will be fair and consistent. We therefore ask Ofgem to consider making access to independent review (e.g. to an independent tribunal) a standard part of the enforcement process.

#### *Licence conditions*

29. We welcome the fact that Ofgem have shared the draft Licence conditions with us ahead of the statutory consultation. Given the extent of change being proposed under the Retail Market Review, the Licence conditions are necessarily detailed in many places. In reviewing them however, we have identified a number of issues which are set out in more detail in Appendix A. Of these, we particularly highlight the following:

- The draft Licence Conditions are overly complex and difficult to understand in places. This gives rise to the risk of suppliers incorrectly interpreting what is required of them as they implement the changes. It also means suppliers may inadvertently over or under comply with the new obligations, creating unnecessary cost and regulatory risk. It may also lead to different practices amongst different suppliers.
- Defined terms are found in a variety of places throughout the drafting. This increases the level of complexity of, and hinders suppliers' ability to understand, the obligations.
- A number of the draft conditions require suppliers to ensure that the terms and conditions of their contracts are updated to reflect the new obligations. We are concerned that the effect of these requirements will be to make our standard terms and conditions of supply overly lengthy and complex, causing unnecessary customer confusion
- It is impracticable to require suppliers to have updated all terms and conditions to ensure they reflect the requirements of particular licence conditions by August 2013. Suppliers will need at least four months from the date the final Licence Conditions are published to implement any changes. Ofgem should allow suppliers until the implementation date of the actual proposals to make the necessary changes.
- Finally, Ofgem should seek to simplify the drafting wherever possible, and commit to holding several industry workgroups where matters of interpretation can be discussed in open forum.

#### *Conclusion*

30. Ofgem's final RMR proposals represent a significant improvement over the proposals set out in the October 2012 document. There are however a number of areas of significant concern which prevent us from accepting the package as proposed.
31. We would be happy to continue helping Ofgem develop these proposals further, and to be part of the proposed industry working group looking at the Market Cheapest Deal initiative, if that would be beneficial. We will be in contact shortly to arrange a suitable time to discuss these points in more detail.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian Peters', with a stylized flourish at the end.

**Ian Peters**