

## RMR policy intent and legal drafting workshop - Tariffs

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To explain the intent/effect of key RMR policies. To explain the legal drafting and seek suggestions for drafting improvements to achieve greater clarity and simplicity.	From Date and time of Meeting Location	Ofgem 9 <sup>th</sup> May, 2013 9:30-17:00 76 Portland Place
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### 1. Present

Alun Rees – Energy UK  
Andrew Lindsay – Utility Warehouse  
Barry Coughlan – Ofgem  
Camilla Oakley – British Gas  
Christopher Ashbourne – Ofgem  
David Hunt – Ofgem  
David Mannering – RWE Npower  
David Watson – British Gas  
Fariha Sikondari - Ofgem  
Fiona Lunn – Ofgem  
Gillian Cooper – Consumer Focus  
Iain Steele – Blackstone Chambers/Ofgem  
John Cooper – Utility Warehouse  
Jon Parr – EDF Energy  
Jordon Glossop – E.On UK  
Katie Brennan – Ofgem  
Malcolm Henschley – First Utility  
Martin Campbell – Ofgem  
Maxine Frerk – Ofgem  
Pamela Mowatt – Scottish Power  
Patrick Whitehead – DECC  
Paul Huffer – Ofgem  
Richard Sweet – Scottish Power  
Roger Hutcheon – SSE  
RWE Npower – Legal representative  
Steve Russell – E.On UK  
Steven Eyre – EDF Energy  
Sweta Deb – Ofgem  
Tom Mountford – Blackstone Chambers/Ofgem  
Victoria Volossov – Ofgem

### 2. General comments on legal drafting

- 2.1. Feedback from the industry was that the legal drafting was very complicated and is likely to lead to mistakes in implementation.
- 2.2. Suppliers also felt that there are some areas where the policy does not go into enough detail and it is not obvious what the intent is. Similarly, it was felt that the policy intent does not apply to particular cases of the legal drafting easily.
- 2.3. The industry questioned whether the licence drafting is intended to be a standalone document. Suppliers stated that they are likely to focus on the licence conditions as this is what is used to write script for systems.

- 2.4. Cross referencing in licence drafting does not help. Repetition is useful within reason.
- 2.5. Further guidance documents were requested.

### **3. Tariff structure**

- 3.1. Suppliers raised the issue of specific meter types, such as two circuit heating systems where the tariff structure policy and the legal drafting do not easily apply. Ofgem stated that they are aware of the issue and are working to come up with a solution.
- 3.2. Some suppliers stated that there is an overlap between the definitions of meter types, with particular meters capable of fitting more than one definition. Ofgem was requested to determine the appropriate prioritisation and precedence rules under the tariff cap.
- 3.3. The industry requested clarification over the difference between 'Charges for Supply Activities' and 'Charges for the Supply of [Gas/Electricity]' under SLC 22A. Ofgem clarified that the former relates to the nature of a charge and the latter relates to the actual charge.
- 3.4. It was flagged that telephone charges had been included in the list of 'Separate Charges' under SLC 22A.6 but not under SLC 22B.1. Ofgem confirmed that this had been amended and that telephone charges would be included in both lists.

### **4. Tariff cap**

#### *Initial discussion*

- 4.1. Suppliers were not definitive about the treatment of prepayment meters, and whether they should be treated as a payment method or meter type under the Tariff cap. Ofgem confirmed that prepayment is being treated as payment method. Suppliers responded by saying they felt that this is not accurately reflected in the legal drafting of SLC 22B. Guidance was also requested as to whether a supplier is able to offer a separate four core tariffs for credit and prepayment customers.
- 4.2. The industry was concerned that there is effectively a limit on the number of Time-of-Use (ToU) tariffs that can be offered. In response Ofgem explained that the definition of Region under the Licence conditions allows suppliers to choose regions, enabling them to offer four core tariffs to any bespoke metering arrangement. Suppliers understood this but said that this does not solve the problem of properties with two meters, for specific heating arrangements. It was questioned whether these properties would require two tariffs.
- 4.3. It was felt that the term 'offering' is better than 'using' in SLC 22B.1(b). Ofgem explained the preference about the term 'using'. One supplier questioned however whether this, and the tariff cap, would capture tariffs that are being advertised but are not yet available to customers. Ofgem indicated that, as long as customers could not enter into a contractual agreement, a supplier is able to advertise a future tariff without it being captured under the cap, but would look into it in more detail. Suppliers requested further guidance around this.
- 4.4. Another supplier asked if it should include a tariff they know they are going to withdraw in the Cheapest Tariff Messaging. Ofgem clarified that suppliers must offer all open tariffs at a point in time as near as practically possible to when the CTM communication is produced. They are allowed to caveat tariff availability.

*Break out group sessions – Group 1*

- 4.5. Group 1 found SLC 22B.1(a) confusing and potentially unnecessary. They proposed changing the definition of "Relevant Metering Arrangement Categories" in SLC 22B to 'must only supply on the basis of one non-ToU arrangement and/or one of each ToU arrangement'. The group questioned whether this would work when supplying domestic premises with two or more MPRN/MPANs. It was suggested that the definition could include MPRN/MPAN to address this situation.
- 4.6. Under SLC 22B.2(b) Group 1 requested further guidance on the definition of "use". They also proposed amending the sentence "in relation to the Relevant Metering Arrangement Category" to "for each Relevant Metering Arrangement Category". The group requested further guidance on SLC 22B.2(c) "one tariff name". The group wanted to know what would be considered the tariff name and whether there is flexibility to add branding for white label suppliers. Ofgem clarified that the licence condition allows for a suffix or a prefix to the tariff name to accommodate any branding, and that this would not increase the number of core tariffs.
- 4.7. In reference to the Relevant Definitions under SLC 1 the group noted that Dynamic Teleswitching and Economy 10 and Variants are currently limited to 'two separate Unit Rates'. The group felt that this does not capture all of these meter arrangements. The group proposed a change to 'two or more Unit Rates'.
- 4.8. The group felt that in SLC 22.1(b) the term 'Region' is not clear. A number of the group members did not know that this does not refer to the ex-PES regions. The group questioned as to whether it would be better to change 'Region' to 'Customer'. Another supplier asked whether the region means the supply region or the sale region.

*Break out group sessions – Group 2*

- 4.9. Group 2 requested that it should be made clear in the definition that prepayment can operate in ToU. They also wanted further clarity as to whether prepayment would have to be offered as a payment method across all core tariffs, or only on a select few. Ofgem confirmed that prepayment did not have to be offered on all core tariffs.
- 4.10. Group 2 also raised the issue of domestic premises with multiple MPANs. The group said that they would need more guidance and/or case studies on how these should be treated by suppliers.
- 4.11. The group said that four core tariffs per individual customer should be better reflected in the licence conditions.
- 4.12. It was suggested that rather than defining specific meter types in SLC 1, meters should be categories based on the number of unit rates they operate under. It was thought that this would better capture legacy and smart meters. However, the group were unsure how smart meters would operate under the tariff cap as it is a specific meter type but has the ability to operate as any type of meter. Ofgem confirmed that all tariffs, irrespective of the meter type, would be available to customers with a smart meter.
- 4.13. Under the definition for Economy 7 in SLC 1, Group 2 thought "continuous" was too restrictive as some Economy 7 meters are split. They proposed removing "continuous" from the definition.
- 4.14. Participants indicated that they would understand SLC 22B.1(b) better if the reference to the customer was replaced by a reference to the metering arrangements to four

core tariffs. The group also thought it would be clearer if the definition of "Relevant Metering Arrangement Category" was moved from SLC 1 to the beginning of SLC 22B.

- 4.15. Group 2 also raised an issue with the interaction of collective switching and the tariff cap. The group was concerned that they could unintentionally breach the tariff cap by entering into a collective switching scheme which does not meet the definition set out by Ofgem in SLC 22B.36. They stated that the definition is very subjective and is open to interpretation. This may discourage suppliers from entering into collective switching schemes. The group recommended Ofgem should approve collective switching schemes.

#### *Break out group sessions – Group 3*

- 4.16. Group 3 thought the distinction between ToU and Non-ToU confusing. They questioned whether this could be removed without creating loopholes in the licence condition.
- 4.17. Similarly to Group 2, Group 3 also thought that there should be categories for meters rather than defined meters. The categories recommended were:
- single unit rate;
  - two unit rates over any number of periods;
  - three unit rates over any number of periods; and
  - DTS or any other.
- 4.18. Group 3 asked for Ofgem to clarify rules of precedence where one meter falls under several categories.
- 4.19. The group reiterated the point that prepayment should be clarified as a payment method. However they identified a conflict between the condition that "all tariffs must be available to all customers" and the ability for suppliers to grey out some tariffs for prepayment.
- 4.20. The group felt that the licence conditions should have an overarching comment on the intention of the cap limiting a customer to only see four core tariffs. It was also felt that "Locality" would be more appropriate than "Region".

## **5. Discounts, bundles and reward points**

- 5.1. Ofgem began the discussion outlining the policy intent and impact of the discounts, bundles and reward points rules. It was set out that the policy intention is restrictive, allowing only two cash discounts (dual fuel and online) and that a number of bundles currently offered would be effectively banned.
- 5.2. The majority of the discussion was around what offers would be allowed.
- 5.3. With mandatory bundles a supplier stated that it is not always appropriate to present them as £/year or p/kWh. For example a mandatory bundle made up of telecoms and water, both of which are charged by consumption, should be allowed to be presented as p/call and p/litre. Ofgem confirmed that this would be possible and is captured in current licence drafting, which sets out that bundles should be presented as £/year or p/kWh unless otherwise inappropriate or confusing. There was a further question as to whether the value of a bundle can be split out on a bill.

- 5.4. A number of suppliers were under the impression that a bundle can be applied to the unit rate or standing charge. Ofgem stated that this is not allowed. Suppliers responded saying that there is a conflict between the policy document and the licence drafting in this area. Ofgem will look to amend this conflict.
- 5.5. Suppliers asked whether bundles have to be offered across all meter types and meter modes. Ofgem stated that any optional bundle must be available across all core tariffs whereas a mandatory bundle must be tied to a specific core tariff and counts as one tariff. One supplier said that some bundles such as an in-home display unit will not work with all meter types.
- 5.6. One supplier wanted to know how prescriptive a bundle can be. If a mobile phone tariff is offered as a bundle, can a customer choose between a number of mobile phone tariffs and this still count as one bundle?
- 5.7. Suppliers questioned whether shopping vouchers are allowed. Ofgem said they would be. Overall, suppliers felt they needed more guidance on what Ofgem would consider as redeemable for cash. One supplier felt that this is an area where a two-stage enforcement approach would be appropriate so as to build up case law of precedence for suppliers to understand where the boundary lies.
- 5.8. One supplier questioned whether the no cash back rules would impact on TPIs who offer cash back. Suppliers asked whether they would be in breach of licence conditions if a switching site offered cash back to customers for using the site. Some suppliers distinguished between whether it was in their control or not, they felt that it would be unfair to penalise the suppliers if a switching site offered cash back of their own accord. Other suppliers considered that it would be within the control of a supplier to take steps to stop third parties from providing cash back linked to their energy tariffs and expressed the view that this could work as an all reasonable steps requirement for suppliers. There was a further discussion on rebates from switching sites. Suppliers viewed this as an area of regulatory gap. They would need clarity as to how far a supplier is responsible for their representatives, i.e. would a supplier be responsible for an affiliate of a representative. Suppliers asked whether this is an area that Ofgem could address through the Confidence Code.
- 5.9. Suppliers disagreed with the rule stating that bundles which are discounts can only be offered if they are capable of being used in advance of the supply start date. Suppliers thought this was impractical and did not see how this could be applied to existing customers when they change contract. It was thought that if the policy intent is to prevent locking customers in, this could be achieved by stating that bundles must be irrevocable and not conditional. Ofgem noted these concerns.
- 5.10. Suppliers requested further clarification in the legal drafting that discounts and bundles which are discounts must be applied in totality everyday rather than pro rata. Further clarity was asked for on the 'no less than every three months' rule. Some suppliers asked whether Ofgem could try to incorporate this on a pro-rata basis as it is better for billing systems.
- 5.11. Suppliers raised the issue of employee discounts and whether these would be allowed. They asked whether the regional rule would solve this issue. One supplier said that it would be easier for Ofgem just to make an exemption for employee discounts. Ofgem reiterated the policy intention and made clear that this was not how it envisaged the regional rule being applied. It also made clear that this is an area that will be monitored in the future.
- 5.12. Suppliers also asked for a carve out for the write-off of bad debt and the waiving of charges. Another supplier proposed the exemption for ECO, WHD, Green Deal and FiTs crediting on bills. Ofgem mentioned that it would look into it and indicated that

these programs may potentially fall under the “requirements under licence conditions and legislation”.

- 5.13. One supplier brought up ‘surprise and delight’ and whether this would still be allowed. For example, whether a supplier could send out Christmas cards to all their customers. Ofgem thought that this would be allowed under the provision that no cash or other type of discount was awarded.

## 6. Dead tariffs

- 6.1. Ofgem clarified the policy intention on dead tariffs, and clarified that suppliers would be able to choose whether they wanted to maintain a dead tariff – in which case they would have to follow the process prescribed under SLC22D, or whether they wanted to terminate the dead tariff and move customers at the outset.
- 6.2. Ofgem also clarified that it envisaged suppliers adopting an approach which would result in the least disruption to customers. Ofgem made clear that it expected the initial process to make the dead tariff compliant with tariff rules. The subsequent process of comparing the compliant tariff with the cheapest live evergreen tariff would be taken offline, and the customer would only see the end result (i.e whether the supplier is proposing a change to the dead tariff, or if it is proposing to close the dead tariff and put forward a new tariff to the customer).
- 6.3. Suppliers were unsure how moving customers onto the cheapest relevant evergreen tariff would work in practice for unique ToU meter types. In particular a ToU tariff which uses a specific number of hours that do not easily compare to another ToU tariff.
- 6.4. Clarity was requested over the minimal change rule and whether this is practical for suppliers. Suppliers also wanted further clarity over the process for terminating a dead tariff and moving customers over onto a deemed contract.
- 6.5. One supplier questioned whether Ofgem can change SLC 22D to allow suppliers to move customers off dead tariffs where the cheapest relevant evergreen tariff is “as cheap as” the dead tariff, rather than “cheaper than”.
- 6.6. A number of suppliers flagged a logistical problem when moving customers from dead tariffs. The transition of customers is not instantaneous, which is a problem when a supplier wants to stop offering an evergreen tariff. If a supplier is using their four core tariffs and wishes to close an evergreen tariff to open up a new one, customers cannot be instantly transferred across the tariffs, and there will be a period of time where there are customers on both tariffs. This would put suppliers in breach of the tariff cap. The suppliers feel that this is too restrictive, and wish for some flexibility in allowing a soon to be dead tariff to remain open as the customer transition takes place. One supplier further flagged that this will also allow them to spread out the resources required to deal with customer queries over a longer period of time. Ofgem said they will consider this as an option.
- 6.7. One supplier asked if SLC 22D.5(c) refers to when the notices are sent or received. Ofgem confirmed that it is when the notices are received. A number of suppliers felt this was impractical as they cannot control how quickly a letter is delivered and therefore cannot guarantee that it will be received within the specified timeframe. Another supplier stated that this is against contract law which states it should be from when the notice is sent. Ofgem did not agree and explained that the window for receipt of the notice by a customer was more generous than some existing licence conditions that require information to be received by a customer “on or about” a precise period of time.

- 6.8. Suppliers wanted clarity over the implementation timeframe. With the Cheapest Tariff Message and Personal Projection being implemented after the dead tariff rules, suppliers wanted to know if they can start making dead tariffs RMR compliant and begin the migration process before these are implemented.
- 6.9. One supplier also asked what happens when a customer on a dead tariff or an expired fixed term tariff moves house. Would the customer be allowed to remain on that tariff? There are further complications if a customer is moving across regions. Ofgem said that this is allowed as often a contract is with the customer rather than a house. A supplier would have to seek to agree a new price under the mutual variations process, and the dead tariff would still be subject to an annual check.

## **7. Fixed Term contracts**

- 7.1. Ofgem announced that it proposed to exempt some fixed term contracts from some RMR rules following on from the consultation responses received. The exemptions will be made on the tariff structure, discount, bundles and reward point rules and the ban on unilateral variations to fixed term offers. Expired fixed term tariffs that were signed up to a certain date in the past will be allowed to run their course.
- 7.2. Suppliers welcomed this change in policy and agreed that they were happy with it. They mentioned however that would like to see the date for exemption being set after the final proposals were published.
- 7.3. There were further questions about what would happen with evergreen contracts with a time-bound discount and whether these will be honoured.
- 7.4. One supplier also brought up that they have a No Standing Charge (NSC) tracker fixed term offer that is linked to a NSC evergreen contract. That evergreen contract will be removed from the market as it is not RMR compliant. Ofgem said that the supplier will have to link the fixed term tariff to a new index.
- 7.5. A final question was whether switching sites would be required to keep these expired non-compliant tariffs on their databases. Ofgem said they would look into it.