

Energy suppliers, consumer groups and other interested parties

Date: 20 June 2014

Open letter – Treatment of low and zero consumers of gas

In February, we wrote to suppliers to raise concerns about their treatment of consumers using little or no gas. We challenged them in the context of their legal obligations to treat these customers fairly and requested information on the steps they are taking to meet their needs. Since then, we have engaged the industry collectively through a workshop and held a series of bilateral discussions with the larger suppliers to discuss these issues in more depth. This letter sets out our findings so far (see Annex 1), the principles we think suppliers should be applying particularly in the treatment of zero users, and the flexibility within the Retail Market Review (RMR) arrangements for meeting the needs of low users.

Through our engagement with suppliers, we have identified a variety of practices, some good and some which we consider to be unfair. In terms of the latter, two of the larger suppliers apply a deemed contract even when a consumer has never consumed at a property. We are determined to take action to stop this practice as we think that it is unfair and it is not in line with our existing guidance (see Annex 2).

In terms of good practices, we are pleased to see, for example, that three of the larger suppliers offer to remove a meter free of charge for all zero use consumers. An additional two suppliers provide this service for free when a customer is considered to be vulnerable. We also have evidence that all suppliers, in certain circumstances, will waive the standing charge for customers in vulnerable situations who may have periods of zero usage.

We consider that there are two important principles in relation to consumers in vulnerable situations. First, they should not have to pay a standing charge if they are not consuming gas at all. Second, they should not have to pay for the removal of their meter, should this be appropriate. We will be encouraging all suppliers to bring their practices in line with these principles over the summer. We will also explore the extent to which suppliers are following these principles and how they are communicated to consumers.

MPs, consumer bodies and others have raised concerns about suppliers withdrawing zero standing charge tariffs and the effect of this on low users. While suppliers are still allowed to offer a low or zero standing charge tariff under the RMR rules, we recognise that this trend resulted in part from our RMR reforms. These include a ban on complex multi-tier tariffs, which make the market simpler, clearer and fairer for consumers. We do not intend to compromise on offering consumers the simplicity in the energy market they told us they want.

However, we are very concerned to make sure that the RMR rules do not have a detrimental impact on consumers in vulnerable situations. When we introduced RMR, we made it clear that suppliers can apply for a derogation to introduce additional tariffs if the

tariff specifically helps consumers in vulnerable situations.¹ Such an exemption route would apply to low or zero standing charge tariffs aimed at addressing the needs of low gas consumers in vulnerable situations. Our Chief Executive, Dermot Nolan, spelled this commitment out during his recent appearance before the Energy and Climate Change Committee and we are encouraging suppliers to take up this option.

While there has been a removal of zero standing charge tariffs over the past year, suppliers still offer tariffs with a range of standing charges. As of today, there are around ten tariffs in the market with standing charges between zero and £60 per year. Low users can make savings on their energy bill by switching to a tariff with a low standing charge. Our RMR information remedies, introduced in March 2014, will help consumers make more informed switching decisions. Customers will be told regularly which tariff is cheapest for them with their current supplier and they will now be able to make quick comparisons across the market using the Tariff Comparison Rate and Tariff Information Labels. We will also continue to work with consumer groups to help make sure that people have the independent advice they need to find the best deal for them.

Our next steps will involve taking action in relation to the application of deemed contracts. We will also work with suppliers to make sure that they consider the fair treatment of consumers in vulnerable situations when they are zero users of gas and when they request removal of their meter. We also stand ready to consider any derogation requests.

We welcome views on the content of this letter and the information we provide in Annex 1. If you would like to discuss any of the issues raised in this letter, please contact Sweta Deb on 0207 901 7000 or at Sweta.Deb@ofgem.gov.uk.

Yours sincerely,



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¹ [RMR Final Domestic Proposals](#) (March 2013) and our published [Derogation Guidance](#) (September 2013) provides information on when a derogation would be considered.

Annex 1 – Analysis on low and zero users

Background

Ofgem has received correspondence from consumers, their elected representatives across Great Britain, from consumer bodies, and from the Residential Landlords Association (RLA) on the impact of standing charges on certain groups and in certain situations. These concerns include the increase in bills for zero and low users since the widespread removal of zero standing charge tariffs from the market.² The RLA have requested an obligation on suppliers to provide at least one zero standing charge tariff within their four core tariffs and Citizens Advice advocate a multi-tier tariff for low energy (gas) consumers who are considered vulnerable.

This correspondence has highlighted a number of concerns about the fairness of having to pay a standing charge for some individuals who do not use their gas supply and therefore have zero consumption. Typically, these individuals will have a gas meter and supply in their property but use electricity for heating and cooking. Many may therefore have previously been on a zero standing charge tariff and hence paid nothing.

Currently, suppliers are faced with ongoing costs associated with maintenance of a meter. Many of these costs are typically passed onto the customer through the standing charge. These costs include:

- Charges for the use of transmission and distribution networks
- Meter asset provision (includes owning or renting a meter)
- Meter asset management (includes safety inspections, meter read, and billing processes)

Related to concerns raised, British Gas (BG) has requested a derogation from the RMR tariff cap, to offer a tariff with a zero or low standing charge open to all customers.

Actions we have taken

We have taken a number of actions to better understand the issues raised. These include:

- **Information request** – in February 2014, we issued a request for information on the actions suppliers are taking to meet the needs of individuals with low or zero gas usage.
- **Energy UK workshop** – we participated in a workshop in March 2014 to discuss different scenarios in which individuals may have periods of zero consumption.
- **Bilaterals with larger suppliers** – we discussed what actions suppliers are taking to meet the needs of their zero and low use customers and whether they are treating them fairly.
- **BG derogation** – we have analysed BG's derogation request.

What we have found

Customers with zero or low usage

We have identified that a minority of individuals may have experienced an increase in their bills following the removal of zero standing charge tariffs in the market. These individuals include:

² In this document we use the terms 'market' and 'markets' as shorthand for referring to different segments of the energy sector. For the avoidance of doubt, these terms are not intended to describe or otherwise suggest the approach that may be taken by Ofgem for the purposes of market definition in competition law investigations.

- **Zero users:**
 - o Properties containing a gas meter but where gas consumption does not take place
- **Low users:**
 - o consumers who only use gas for cooking or have occasional use of a gas fire
 - o landlords
 - o periodic zero-consuming customers such as seasonal homeowners
 - o customers in vulnerable circumstances, such as low income households

From DECC data³, we have found that there is a maximum of 323,000 zero gas consuming domestic meters. This equates to 2% of the total gas domestic customer base. Information provided by the larger suppliers suggests that there are at least 4,500 customers who are considered as vulnerable with zero gas usage.⁴ In reality, we think that the number of customers in vulnerable situations who are zero gas users is likely to be higher than this figure. We have a fluid definition⁵ of a vulnerable customer, some of who may not be captured by the figures reported by suppliers. We recognise that reporting this can be technically difficult.

The total number of customers affected by the new structure of tariffs with a standing charge greater than zero is likely to be lower than 323,000. This is because:

- Some would already subsequently have been on a standing charge tariff.
- Some would have already switched to tariffs with zero or low standing charges.

There is a range of different categories of low users as outlined above, each with different average consumption levels. There are also some low income households with high consumption levels who have benefited from the new structure of tariffs with a standing charge and lower unit rates. We therefore have not provided an estimate of the number of customers that may have been affected by a tariff with a standing charge as this is not possible to determine from the data we have available.

Tariffs available in the market

Since RMR, we have seen the widespread removal of zero standing charge tariffs from the market by suppliers. We have also seen the withdrawal of social tariffs. This may have resulted from the introduction of the Warm Home Discount (WHD) scheme, whereby suppliers are no longer able to attribute their spend on legacy social tariffs towards their WHD obligation.

In relation to tariffs with a low standing charge, which low users may benefit from, we know from our analysis that there is a range of such tariffs available. For example, as of today, for a dual fuel direct debit customer, there are at least 10 different gas tariffs in the market with standing charges between zero and £60 per year.⁶

Supplier practices

We are sympathetic to consumers in vulnerable situations who are zero and low energy users and have experienced higher bills as a result of the removal of zero standing charge tariffs from the market. From our consultation with the larger suppliers we have seen a variety of good and bad practices in dealing with these customers.

³ 2011 DECC sub-national consumption statistics

⁴ One of the Big Six reported 0 customers with zero gas usage.

⁵ Our definition of vulnerability is provided in our [Consumer Vulnerability Strategy \(July 2013\)](#)

⁶ These tariffs are available for customers paying by monthly direct debit.

Examples of good practice include:

- Three of the larger suppliers remove the meter free of charge where a customer does not use gas and has requested for it to be removed. An additional two suppliers waive the cost of a meter removal when a customer is considered to be vulnerable.
- Five of the larger suppliers waive the standing charge in cases when a home is affected by flooding and it is unsafe to use gas/electricity for a period of time.
- Two of the larger suppliers may waive the standing charge where a customer is a low consumer of gas and in a financially vulnerable situation.
- All of the larger suppliers would consider, in particular cases, waiving (or delaying collection of) the standing charge in periods when a customer is in hospital or there has been the death of a sole occupant.

Suppliers are able to waive the standing charge in certain circumstances through the use of compensation payments. Some suppliers have expressed uncertainty around how compensation payments could be used in a way that is compliant with our RMR rules. We have previously provided guidance for some suppliers on the definition of compensation payments (see Annex 3).

Options for suppliers within the current regulatory framework

Suppliers currently have options within the regulatory framework to meet the needs of consumers with zero or low usage, particularly those who are vulnerable. Where there is substantial evidence that RMR compliance would have unintended consequences on consumers, licensed suppliers can apply for a derogation⁷ from our RMR rules.

This is consistent with our duty to have regard to the interests of vulnerable consumers, including those who are disabled or chronically sick, of pensionable age or on low incomes. We are likely to consider favourably any derogation requests that are beneficial for and targeted narrowly at customers who are in vulnerable situations and have been affected by the lack of zero standing charge offers.

BG's derogation request does not provide any evidence that their tariff is targeted at vulnerable consumers nor does it guarantee that zero or low users would be better off on their tariff compared to offers currently available in the market. We have discussed these matters with BG and are waiting for them to come back with more details.

We have however, granted on 17 January 2014 a formal derogation from the 4 core tariff cap to EDF⁸, in respect to its Barkantine social tariff. This electricity tariff is 20% cheaper than the average of standard electricity tariffs offered by other suppliers, and it is offered to a limited number of eligible customers (185) living in the London Borough of Tower Hamlets, a significant proportion of whom are vulnerable or on low incomes.

Collective switching is another avenue for meeting the needs of particular consumers. A scheme can be run targeted at customers with low consumption and suppliers are able to introduce a new fixed-term tariff outside of the four core tariff cap, provided the scheme meets certain conditions.⁹

Suppliers are also able to offer additional tariffs, targeted at a specific group of customers, within the current RMR rules via our definition of a region. Our definition provides some flexibility in how a region is defined and suppliers are able to offer four core tariffs per region.

⁷ Our published [Derogation Guidance](#) (September 2013) defines the minimal information requirements that any derogation request should include.

⁸ The [derogation](#) will remain in force until 31 October 2025 (which is the date of expiry of the Barkantine Agreement).

⁹ See SLC 22B.38 definition of collective switching scheme

Annex 2 – Guidance on Deemed contracts

Statement on Deemed Contracts – published 24 June 2010

The purpose of this statement¹⁰ is to set out Ofgem’s general view on an aspect of the interpretation of the deemed contract provisions¹¹ of the Gas Act 1986 and the Electricity Act 1989, namely whether they only apply once gas and/or electricity is consumed.

“Deemed contracts” arise as a result of statutory provisions and come into existence between a person and a licensed supplier in certain circumstances, where the licensed supplier supplies gas and/or electricity otherwise than in pursuance of a contract.

Ofgem’s general and non-binding view, on the basis of our interpretation of the relevant statutory provisions as a whole, including consideration of the Government’s original policy proposals¹² for the deemed contract provisions, is that gas and/or electricity would need to be consumed in order for a deemed contract to arise between a licensed supplier and the occupier/owner of premises. However, Ofgem wishes to make clear that the interpretation of legislation is ultimately a matter for the courts. Further, the precise legal position will depend on the individual circumstances of each case.

In so far as an interpretation of any aspects of the deemed contract provisions is necessary for the performance of its statutory functions¹³, Ofgem intends to adopt a case-by-case assessment of all relevant circumstances¹⁴ before reaching a view on any particular matter.

¹⁰ This statement is being published pursuant to section 35(1) of the Gas Act 1986 and section 48(1) of the Electricity Act 1989.

¹¹For the purposes of this statement, the ‘Deemed Contract provisions’ are paragraph 8(1) of schedule 2B to the Gas Act 1986 and paragraph 3(1) of Schedule 6 to the Electricity Act 1989.

¹² See ‘A Fair Deal for Consumers: Modernising the Framework for Utility Regulation, The Future of Gas and Electricity Regulation, The Government’s Proposals for Legislation’ (September 1999).

¹³ For example, the enforcement of licence conditions or consumer protection law.

¹⁴ For example, this may include reviewing evidence as to whether gas and/or electricity has been consumed during the period of time when a deemed contract is alleged to have come into effect.

Annex 3 – Guidance on Compensation payments

Provided to Energy UK - 25 April 2014

We participated in an Energy UK workshop in March 2014, to discuss different scenarios which individuals can have periods of zero consumption. Some suppliers at this workshop expressed uncertainty around how compensation payments could be used in a way that is compliant with our RMR rules. We have provided guidance for some suppliers on the definition of compensation payments to offer some clarity on the rules within the current regulatory framework.

Please note that the information provided is not intended as any form of legal advice or to be fully comprehensive. Ultimately, all suppliers are responsible for ensuring that they comply with licence conditions and obtaining their own legal advice on compliance.

We note that the definition of compensation payment does not specify that it must be in response to an expression of dissatisfaction. It also refers to customer service, complaint handling or redress as distinct issues. We consider that customer service is not limited to complaints or an expression of dissatisfaction, although it may involve a complaint. We consider that there are situations in which a compensation payment may be appropriate and the situation is not brought to the supplier's attention as a complaint.

We would also like to reiterate our statement in the workshop that, while we do not define the frequency with which a compensation payment can be used, or the time period for which it could be used, it must be made solely on the basis of a specific issue unless it is required by point (a) in the definition of compensation payment.¹⁵ It may at times be appropriate for a supplier to offer compensation payments on an ongoing basis once the supplier is alerted to the existence of a customer service issue. However, the use of "on the basis of a specific issue" in the definition of compensation payment indicates that if that issue were to finish, the compensation payments must stop – otherwise this would likely constitute a cash discount. An example could be where someone enters hospital, the supplier is notified and waives the standing charge for the period of hospital stay. It would not be considered a compensation payment in a scenario when the standing charge is waived for all over 65s.

¹⁵ Point (a) of SLC 1 definition of compensation payment