



Jemma Baker  
Vulnerable Financial Protections  
Ofgem

12<sup>th</sup> November 2017

Dear Jemma,

**Statutory consultation for a vulnerable customer safeguard tariff**

I refer to the above statutory consultation, associated notices and technical document / impact assessment, published 11<sup>th</sup> October 2017. Thank you for the opportunity to comment. I'm responding on behalf of the gas and electricity supply licensees within the Npower Group PLC.

At the highest level we have a concern that even if on balance Ofgem now believes that a price cap is warranted, that as specified it excludes vulnerable consumers for whom the stated policy is intended. Ofgem states for example, that in principle, it considers that eligibility for the temporary safeguard tariff should not depend on whether a consumer's supplier is captured by the prospective licence condition. Similarly, as specified, consumers do not have their gas tariff protected if they take gas and electricity from different suppliers.

Ofgem held a supplier workshop on 24<sup>th</sup> August where it made clear the intention to have two phases - Phase I immediately to some consumers and Phase II as soon as possible to a better target. We recognised the issues and debate and engaged positively. At the same time we made very clear the need not to exclude customers for whom the policy is intended. We said at the workshop and repeat here that we are keen to help find a solution that protects vulnerable consumers whilst enabling tariff choice. Striking the right balance is hard but we remain committed to working with Ofgem to do so.

The Competition and Markets Authority (CMA) market investigation concluded in December 2016 after 30 months of detailed study and consultation. The CMA set a price cap for prepayment meter (PPM) consumers and no wider. Our position to the CMA on price caps is a matter of public record<sup>1</sup>, has not changed, and is not repeated here.

Regarding the price level, our comments to the CMA on the level for PPM are also a matter of public record<sup>2</sup>, have not changed, and are not repeated here. In addition to the problem of initial inaccuracy as a cost reflective level, the problem of inaccuracy increases as the consumer cohort widens, and flaws in indexation (e.g. omission of smart costs, which are increasing) increase over time.

---

<sup>1</sup> RWE response to CMA's Provisional Decision on Remedies, dated 21 April 2016

<https://assets.publishing.service.gov.uk/media/5728b4c3e5274a036a00001a/rwe-pdr-response.pdf>

<sup>2</sup> npower's response to CMA's Prepayment Charge Restriction Order Consultation, dated 11 November 2016

[https://assets.publishing.service.gov.uk/media/58347537e5274a5918000000/prepayment\\_price\\_cap\\_draft\\_order\\_response\\_RWE\\_npower.pdf](https://assets.publishing.service.gov.uk/media/58347537e5274a5918000000/prepayment_price_cap_draft_order_response_RWE_npower.pdf)

The consultation and response times are challenging. We believe that it is in the public interest for Ofgem to answer to all stakeholders and ourselves the questions in Appendix A, listed below. Appendix B covers points of detail and seeks clarification.

npower continues to make significant efforts to engage with all of our customers, including those on Standard Variable Tariffs (SVT), through numerous activities, initiatives and trials. We are committed to reaching out to those who have been less able or willing to engage in the market.

We remain keen to work with Ofgem to find the right answer for vulnerable consumers.

This letter is not confidential.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Chris Harris". The signature is fluid and cursive, with the first name "Chris" being more prominent than the last name "Harris".

**Chris Harris**  
**Head of Regulation**

07989 493912  
chris.harris@npower.com

## **Appendix A: Questions that it would be helpful if Ofgem can answer**

- 1) **The price level** – Ofgem has been actively considering a cap for vulnerable customers since at least early July 2017, but has not yet resolved the known flaws of the PPM cap. Ofgem states that it is proportionate to use the current prepayment safeguard tariff level because this is a short-term measure. It will consider the case for amending the design and increasing the coverage of the vulnerable customer safeguard tariff as the government’s legislative timetable firms up. Please can Ofgem confirm its plans to do so?
- 2) **The CMA decision** – Ofgem has been debating the “two-tier pattern of prices that has prevailed since the beginning of competition” since at least 2004<sup>3</sup> and made a referral to the CMA for an independent market investigation in June 2014. At the conclusion in December 2016 the CMA decided that a price cap was needed only for customers on prepayment meters (PPM) but not beyond this. Please can Ofgem explain the overturning of this decision? Has something significant changed or does Ofgem have a different opinion based on the same facts. What is Ofgem’s basis for arriving at a different remedy (the CMA having overturned Ofgem decisions, with the clear vires to do so)?
- 3) **Datashare** – The Energy Act 2010 gives specific powers to the Secretary of State to set prices on a temporary basis to disadvantaged cohorts. The datashare requirements to identify the eligible customers were presumably obvious. There have been numerous opportunities since then to resolve the legal and data privacy hurdles to datashare and Ofgem has a duty to advise government. These include opportunities within the last few months *and indeed currently*. This is clearly important for Phase II. Please can Ofgem explain what has and has not happened, is and is not happening, and why?
- 4) **Selection of beneficiaries** – In addition to the c£110<sup>4</sup> per year saving from the cap, the core group eligible consumers receive £140 Warm Homes Discount (WHD) and, depending on age, between £100 and £300 Winter Fuel Payment (WFP), i.e. a total of up to £550 per year. In addition to this, they are mostly eligible for Cold Weather payments and the homeowners have largely been eligible for free insulation (e.g. Energy Companies Obligation Affordable Warmth and the former “Super Priority Group” eligibility requirements). Can Ofgem confirm and explain its view that this is indeed the best target cohort<sup>5</sup>, consistent with the application of its duties?
- 5) **Exclusion of single fuel gas customers** – Ofgem’s stated policy intention would be for all eligible consumers to receive the temporary safeguard tariff for each fuel. Can Ofgem confirm: i) its estimate of c100,000<sup>6</sup> affected consumers, ii) whether this exclusion does not in practice discriminate amongst suppliers during Phase I, and iii) its intention or not (and when) to capture these later in Phase II?
- 6) **Eligible customers of excluded suppliers** – Some WHD customers who have switched from mandated WHD suppliers will be paying above the cap with no protection from it. Can Ofgem confirm that they would be protected in Phase II? Can Ofgem consider what

---

<sup>3</sup> April 2004 – Domestic Competitive Market Review

<https://www.ofgem.gov.uk/ofgem-publications/38538/6757-dcmr-publication-ch-1-3.pdf>

<sup>4</sup> Ofgem figures, dual fuel, typical median consumption, receipt of bill payment method

<sup>5</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/514324/Final\\_Warm\\_Home\\_Discount\\_consultation\\_for\\_publication.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/514324/Final_Warm_Home_Discount_consultation_for_publication.pdf) for example, with regard to Fuel Poverty amongst WHD consumers

<sup>6</sup> This may be underestimated and could be in excess of 0.3m households (Ofgem uses averages, assuming the WHD population is the same as the general population).

rudimentary protections it could apply in Phase I (e.g. mandating all suppliers using self-declaration of eligibility or opt-in data share) to address the customers that it has excluded?

- 7) **WHD Core and Broader Group customers** – To “pull” the WHD from their supplier, the Broader Group have necessarily engaged regarding their energy bills to a much greater extent (albeit in a different manner) than the engagement required to switch supplier/tariff. No engagement is required for Core Group to have the benefit from WHD “pushed” to them. Please can Ofgem provide a commentary with regard to the exclusion of some Core Group eligible and the inclusion of some Broader Group in Phase I and potentially Phase II?
- 8) **Fuel Poverty** – For England, Scotland and for Wales, many consumers are already taken out of Fuel Poverty by the WHD or the WFP<sup>7</sup>. Noting that the reporting on the Levy Control Framework recognises<sup>8</sup> the flow through of supplier obligations to consumers, what is Ofgem’s view of negative individual and total effect on Fuel Poverty in each country, should there be flow through of supplier costs to consumers? Ofgem states that it has assessed the indirect impacts on both eligible and non-eligible consumers, with a particular focus on the vulnerable such as the fuel poor. Ofgem believes that competition and safeguard tariff design (“efficient” cost allowance and headroom) will mitigate the risk of increased prices for non-eligible customers. There is therefore significant dependence on the accuracy of the level of the cap. Ofgem states that the government has the primary role in addressing fuel poverty, particularly for policy aimed at redistributing costs between energy consumers. Has the potential effect of the proposal on Fuel Poverty and its metrics been discussed with UK government and devolved administrations in Wales and Scotland?
- 9) **The formal process** – We have found the exchanges between Ofgem and government somewhat difficult to follow. For example referring to formal powers and to the manifesto. Our best understanding is that Ofgem is formally acting under its general duties as independent regulator, rather than under a direction. If the formal situation is otherwise then it is in the general interest to know that, for example to understand the interaction between this action and the scrutiny and passage of the various stages of the proposed energy bill.
- 10) **Discrimination** – Does Ofgem have a view on whether the application to designated suppliers is non-discriminatory, noting that the impact of a discriminatory price cap would be exacerbated by the fact that the same suppliers already face the costs of WHD, Energy Companies Obligation and other selective obligations?
- 11) **Standard Special Licence Condition** – as proposed, the licence condition will apply to a named set of suppliers. If Phase II continues as Ofgem indicated then this will be replaced by a new licence condition. Therefore, for Phase I it seems to us that the currently proposed licence condition should be a Standard Special Licence Condition and not a Standard Licence Condition. Please can Ofgem give a view on this?
- 12) **Price setting powers and conditions of exercise** – The checks and balances are important, especially if there is risk of them being bypassed . We note that 2.20 of the Technical Document states “It is our view that such action would be consistent with our statutory objective

---

<sup>7</sup> Technically, WFP is applied to income not fuel bills, but in evaluating this question it should be considered also as applied to bills

<sup>8</sup> E.g. National Audit Office – Controlling the consumer-funded costs of energy policies: The Levy Control Framework  
<https://www.nao.org.uk/report/controlling-the-consumer-funded-costs-of-energy-policies-the-levy-control-framework/>

of protecting the interests of existing and future energy consumers, and our general duties to have regard to the interests of certain groups who are vulnerable and to consider protecting the interests of consumers via means other than the promotion of competition.” Before liberalisation there was clearly the need to set prices for the monopolies. It was therefore necessary to continue to set (by increment from previous prices) some prices during transition to liberalisation. Hence Ofgem’s<sup>9</sup> price setting powers in the Electricity Act 1989 and Gas Act 1986 were essentially adopted and inferred under its general duties (with a very general reference to prices), rather than specific. Ofgem decided in 2002<sup>10</sup> to abandon price control in favour of competition rules. The clear direction of travel in Great Britain and Europe was not to reassemble price controls relinquished<sup>11</sup>. Since then the legal and regulatory regimes have changed considerably, in the context of Ofgem not setting prices. In particular both Secretary of State (SoS) and the CMA have acquired *specific* price setting powers in legislation and Ofgem is omitted despite having several other concurrent powers with both. These powers are associated with *specific* conditions of exercise. Can Ofgem confirm the formal basis on which it considers itself to have price setting powers, as well as the conditions applicable to any price setting powers? Can Ofgem explain how the exercise of its powers complies with such conditions?

- 13) **Personal Data:** Please can Ofgem confirm that current WHD Regulations permit the use of, and sharing of, our customer data and the Department of Work and Pension’s data to facilitate the implementation of the safeguard tariff? Please can Ofgem also confirm that it has liaised with the DWP and the Information Commissioner regarding Data Protection Act and General Data Protection Regulation compliance? For example, using previous scheme years’ data which will be over a year old by the time it is used.

---

<sup>9</sup> For brevity we refer to the Authority and previous incarnations all as “Ofgem”

<sup>10</sup> “Review of domestic gas and electricity competition and supply price regulation: Conclusions and final proposals”, February 2002, Ofgem

<sup>11</sup> “Domestic Gas and Electricity Supply Competition, Recent Developments, June 2003” Ofgem <https://www.ofgem.gov.uk/ofgem-publications/38550/3775-dcmr04july.pdf>

## **Appendix B: Operational/technical questions and comments**

- 1) **Timing and Customer Experience** – a February effective date, April PPM cap review date and the WHD scheme year, risks customer confusion and a poor experience. For example, suppliers could potentially write to a customer in February about moving them to the safeguard tariff, only to potentially write again in the event of the PPM cap being revised.

Further and as Ofgem indicate (5.13 of the Technical Document), a 2016/17 WHD customer may be placed on the tariff in February, only to be removed in April if they do not receive WHD in respect of 2017/18. There is a significant risk of confusion and complaints. It would be a better customer experience to align the vulnerable safeguard tariff with the PPM cap / WHD scheme year i.e. April 2018 effective date.

- 2) **Interpretation** – the proposal is that customers receiving a WHD rebate in the current (2017/18) or previous (2016/17) scheme year are protected by the cap (subject to the above paragraph). We would welcome clarification on the following points:
- i) In respect of the Core Group, we will receive weekly files of customers from DWP up until the end of March 2018. What is the expectation in terms of when such a customer would benefit from the safeguard tariff? Our reading of SLC 28AA.15 is that we would have 30 days from receipt of the file to place the customer on the safeguard tariff (i.e. from the point of identification, rather than payment of WHD). This will encourage the right behaviours and avoid those suppliers trying to do the right thing being penalised. Please confirm.
  - ii) In respect of the 2016/17 Broader Group, this is relatively straightforward as suppliers already hold the data. Our assumption is that for the 2016/17 scheme year there will be people who applied, but were not eligible, so they are not eligible for the safeguard tariff. For the 2017/18 scheme year, there will be customers who have not yet applied. Again, what is the expectation in terms of when such a customer would benefit from the safeguard tariff? 30 days from verification? Please confirm.
  - iii) For the Broader Group, we have customers who will have been randomly selected for verification as part of the 2017/18 year and may be rejected through that process. If their application was approved for the previous scheme year, it seems that they should initially benefit from the cap? If that's the case and their 2017/18 application is rejected through the verification process, it seems that they should be removed from the safeguard tariff. It would be a better customer experience if they were only put on the safeguard tariff if their 2017/18 application is approved. Please confirm.
  - iv) In principle and as seems to be consistent with para 5.13 of the Technical Document, it does not seem appropriate for a customer to be protected by the cap if they were in receipt during the previous WHD scheme year, but not the current WHD scheme year. However, this seems inconsistent with the definition of "Relevant 28AA Customer". Please clarify.
  - v) Please clarify the circumstances when a supplier is permitted to move a customer off the safeguard tariff and to what extent a supplier may exercise discretion.

- vi) As indicated above, we understand that the safeguard tariff would not apply retrospectively. For example, a Core Group customer file received or Broader Group customer verified on or before 31<sup>st</sup> March, must be placed on the safeguard tariff by 30<sup>th</sup> April, not back-dated to February. Please confirm.
  - vii) BAU fixed term tariffs: It is our assumption that the safeguard tariff would only apply to default fixed term contracts for a Relevant 28AA Customer. That is to say, the cap would not apply to any other customer who is rolled over onto a default fixed term tariff, although they would be afforded protection under revised SLC22C i.e. the default fix would need to be as cheap as or cheaper than SVT. Please confirm.
- 3) **30 day compliance timescale:** This is a very challenging timescale when allowing time for customer data to be processed and informing the customer in advance (noting SLC23). 60 days would be achievable. Alternatively, notification could be provided as soon as reasonably practicable. Please consider.
- 4) **New customers:** Ofgem acknowledge the difficulty in identifying whether a potential new customer is eligible for WHD and the likelihood that customers are gained on a fixed tariff. As a Relevant SLC22AA customer is defined as previously/already identified by the obligated licensee, we assume that there are no obligations on suppliers to identify eligible customers on acquisition and place them on the safeguard tariff. Such obligations would be disproportionate to the risk. Please confirm.
- 5) **Monitoring:** Ofgem will need to ensure reporting requests and timescales are reasonable. Ofgem intends to cross-check safeguard tariff compliance with the number of WHD rebates paid. It is important to note that this will provide limited comparison for a number of reasons. Firstly, it appears that the cap will at times relate to recipients across two scheme years, whereas our reporting for WHD rebates is for that scheme year only. Secondly, WHD reporting relates to customers on all tariffs whereas reporting on the safeguard tariff will relate to those just on SVT. Thirdly, WHD payments are cumulative up to the end of a scheme year, whereas the cap would be ongoing through the year and fluctuating as new customers are identified and also as accounts close due to reasons such as switching supplier or moving house.
- 6) **Administration Costs:** Ofgem believe that the proposals will only lead to a marginal increase in administration costs to suppliers. Our initial estimate is several £00ks to deliver this change (IT, people and communication costs), so individually and cumulatively the costs are not insignificant.