By email only

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Dear Ms Cosac,

Proposals to improve outcomes for consumers who experience self-disconnection and self-rationing

Please find npower's response to the above consultation. It is not confidential and we are happy for it to be placed in the public domain.

We welcome Ofgem's addressing of these important matters and its recognition that there is an inconsistent approach by suppliers in how they deal with them. As Ofgem also recognises, most suppliers already undertake a considerable amount of work in identifying and assisting customers who can be affected by self-disconnection. In npower's case, this is not just through the mechanisms under discussion in the consultation (that is emergency, friendly and discretionary credit), but, for example, via our Fuel Bank, a way of seeking to counter one of the underlying problems that cause customers to go without energy - namely, a lack of income. While we appreciate that this is outside Ofgem's purview, there are, however, problems associated with, for example, late or less frequent payments linked to the introduction of Universal Credit; these can stop customers from being able to afford to top up their prepayment meters (ppm). Suppliers should, therefore, not be expected to 'pick up the pieces' because of problems associated with government policy.

As well, in establishing npower's Fuel Bank, we were conscious that a considerable proportion of ppm customers who would and do benefit from it viewed their inability to buy sufficient credit as not being their supplier's problem. As such, we realised that by providing eligible customers approximately two weeks' free ppm credit, apart from the direct benefit - namely a supply of energy - they do not end up having to choose between, say, 'heating and eating'. It also allows a breathing space for them to resolve possible short-term problems. Finally, it can mean that customers do not end up taking out short-term loans at very high rates of interest.

Self-disconnection and self-rationing cannot be considered in isolation of customers' income. If customers do not have enough money to meet their reasonable outgoings (whatever these might encompass), including energy, nothing suppliers can do will provide anything more than short-term amelioration. We acknowledge that Ofgem alone cannot solve this problem: not having sufficient income must be something that government social policy has to address. The provisions under discussion cannot be substituted for that.

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Linked to this, in placing an obligation to identify self-disconnection and self-rationing, customers' expectations must not be raised that suppliers will be able to help in every case. While they (suppliers) will do all they can and to signpost customers where additional assistance may be available, as set out above, the issues are likely to be wider than just the provision of additional credit.

Before commenting on the proposals themselves, there are a number of comments we would also make about the consultation process.

First, Ofgem has given suppliers in actuality less than 4 weeks to respond to the proposals (because of the bank holiday period when the document was published). While we understand the need to move quickly, the proposals as currently promulgated will have an impact on suppliers (including financial) and they will need to consider matters internally. In addition, as with most changes, there are bound to be unintended consequences that may only come to light with the benefit of mature consideration. It would have been much better, therefore, to allow suppliers the opportunity to assess the proposals during a usual 8- to 12-week period allowed for a consultation.

Second, Ofgem has decided against an impact assessment. We fundamentally disagree with this. There will be cost implications for, for example, suppliers being required to take 'all reasonable steps' (ARS) to identify self-disconnection and self-rationing. The ARS concept has no definition anywhere in the supply licences; there is and has been no indication what Ofgem's expectations are in this regard. Furthermore, the proposals on self-rationing go beyond what is currently in place voluntarily. Ipso facto, suppliers will certainly incur additional costs in having to comply with these requirements. A further corollary is the probable impact on the ppm price cap costs, which, as well, does not appear to have been considered.

Finally, linked to the above, there are data protection considerations inherent in these proposals. They will require suppliers to be, potentially, more intrusive when dealing with customers and in using data in ways that the latter may not have consented to. It is not clear, either, that the GDPR has been considered. A data protection impact assessment would have addressed these matters.

Taking these matters into account, we hope that Ofgem will reflect and seek to address them before moving to issuing a statutory consultation.

Our comments on the individual questions are contained in the annex to this letter.

Yours sincerely,

Paul Tonkinson
Regulation and Compliance

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Annex

Proposals to improve outcomes for consumers who experience self-disconnection and self-rationing

Question 1: Do you agree with our proposal to require suppliers to identify prepayment self-disconnection and the associated proposed licence conditions?

As a responsible supplier, npower, currently, does and will do all that is legal, technically and administratively possible, and considered reasonable to identify prepayment self-disconnection. In our response to the request for information issued earlier this year, we set out in detail how we currently do this. Part of the problem that appears to concern Ofgem is not that that suppliers are not doing enough, but that what is being done is applied inconsistently.

Ofgem must, however, also recognise that the problem of identifying SD cannot rest solely with suppliers. Legacy prepayment meters, unlike their smart meter equivalents, in not having a real-time two-way communication facility that can alert suppliers quickly to an instance of self-disconnection places some responsibility on affected customers to contact the former. Obviously, with the penetration of smart meters increasing, it will become easier for suppliers to monitor customers' circumstances remotely. Until then, aside from what they do currently to monitor and address self-disconnection, suppliers will remain, to a certain degree, reliant on customers contacting them.

Question 2: Do you agree with our proposal to require suppliers to identify self-rationing and the associated proposed licence conditions?

Self-rationing is much more difficult to identify than self-disconnection (as Ofgem accepts in that no supplier provided data as to its scale (paragraph 2.17 of the consultation refers)). Self-rationing does not just affect prepayment meters (and the draft licence condition reflects this); anecdotally, we believe that some smart meter customers are also limiting their consumption.

The definition of self-rationing as set out in the draft licence *('When a Domestic Customer deliberately limits its [gas/electricity] use to save money for other areas')*, seems to be requiring suppliers: (a) to establish what a customer's intention is; and (b) to intrude into aspects of their customers' lives that have nothing to do with energy. As well, SLC 27.6(b) requires suppliers to provide customers in difficulty with information about how to use energy more efficiently; the effect of which can mean a reduction in consumption, but not because the customer is self-rationing.

Taken together, from a practical viewpoint, identifying self-rationing will be very difficult for suppliers and may lead to a reduced level of cooperation from customers (not least because they think value judgements may be made as to how they spend a limited income), and hence the assistance that may be able to be provided. However, until the ubiquity of smart meters becomes such that suppliers may be able to create some sort of 'big data' view of their customers' behaviour (perhaps, for example, developing a form of customer profiling based on common characteristics of smart meter usage indicating energy rationing), it places them in an invidious position in terms of the level of intrusiveness necessary to ascertain whether or not customers are self-rationing.

Even if, as Ofgem posits, there are practicable ways to infer that self-rationing is taking place, the supplier systems likely required to do so and to then address matters will take time to develop; this will attract a cost (and must therefore be taken account of in the relevant price cap). Changes to suppliers' contractual terms and conditions will also likely be required to allow for potential changes to the use of customer data. Amongst other things, this is why we believe both an impact and a data protection impact assessment are necessary.

Question 3a: Do you agree with our proposal to require suppliers to offer emergency and friendly credit functions for all customers?

There are issues of affordability arising here. By their very nature, these functions are meant to be exceptions; effectively 'to tide customers over' short-term for a variety of reasons. They are not meant to be a substitute for an ongoing lack of income. Subject to technical constraints, both emergency (EC) and friendly credit (FC) are available to all our customers. However, by putting the requirement to offer EC and FC in the licence, it is likely that their use could become more prevalent. As customers have to repay these types of credit (usually before they receive a supply of energy), greater reliance on them without addressing customers' overall circumstances at a macro level will have a detrimental impact going forward.

Question 3b: Do you agree with our associated proposed licence conditions? Please refer to Appendix 1 for the draft licence conditions

The draft licence condition states that suppliers 'must offer' EC and FC, where it is technically feasible to do so. The condition then goes on to say that in so doing, they must take account customers' ability to pay in calculating repayment instalments. There is an inherent tension here. We see the use of EC and FC as a straightforward short-term advance on an ad-hoc basis; It is an intrinsic part of most prepayment meters' functionality. As such, unless it used so often or in such a way that it clearly indicates an underlying problem, ability to pay is not normally an issue to be considered. However, if it becomes apparent that in offering such forms of credit, the customer cannot repay it, will suppliers be potentially penalised if they refuse?

The definitions of EC and FC in the draft licence condition refer to *'an interest free fixed loan of credit…'* and *'an interest free loan of credit…'* respectively. Does this mean they are caught, inadvertently, by financial services or consumer credit law considerations that may place additional obligations on suppliers (for example, will suppliers require a consumer credit licence and/or be required to comply with provisions of the Consumer Credit Act 1974)?

Question 4a: Do you agree with our proposal to require suppliers to offer discretionary credit for customers in vulnerable circumstances?

Discretionary credit (DC) by its nature (and name) is, at the moment, an optional offering. With the proposed requirement that it 'must be' offered, it can no longer considered thus. It should only be offered when deemed suitable and through discussion with the customer. By requiring it to be available and mandatory, even if only for vulnerable customers, and on a case-by-case basis, it removes suppliers' flexibility (in essence, it becomes 'additional' credit) and may inhibit them to help customers better manage their energy. This may mean eligible customers: (a) simply place a greater reliance on DC availability; and (b) fail to seek help or advice that may address the need for them to have sought DC in the first place (the comments in our covering letter apply here).

Question 4b: Do you agree with our associated proposed licence conditions? Please refer to Appendix 1 for the draft licence conditions.

The definition of DC in the draft licence condition refers to it as being *'an interest free loan of credit…'*. Does this mean it is caught, inadvertently, by financial services or consumer credit law considerations that may place additional obligations on suppliers (for example, will suppliers require a consumer credit licence (for example, will suppliers require a consumer credit licence and/or be required to comply with provisions of the Consumer Credit Act 1974)?

Question 5: Do you agree with our proposal to incorporate the Ability to Pay principles in the supply licence?

SLC 27.5 requires suppliers to take all reasonable to ascertain the customer's ability to pay and must take this into account when calculating instalments for recovery of charges for energy. In its letter[1] introducing the Ability to Pay principles ('the Principles'), Ofgem states *'The Principles reflect the key considerations which the Authority will look for, and take into account, along with any other relevant factors, when assessing compliance with the supply licence condition.'* On the face of it, then, this already provides Ofgem with sufficient vires to take action against licensees which it believes are not applying the Principles. They have been widely referred to and used by Ofgem since their introduction in 2010 and it accepts that most suppliers are applying them (paragraph 5.12 of the consultation refers). It therefore raises the question of what mischief is being addressed by enshrining the Principles in licence. We agree that if the intention is to level things up between suppliers, putting the Principles in the supply licence may be the best way forward. This does, nonetheless, seem to hark back to a more prescriptive approach to regulation.

While it may be the case that for the majority of suppliers (like npower) that already apply the Principles in their dealings with customers, placing them in the supply licence will not have a material effect, without an impact assessment, this cannot be certain. Ofgem does accept that for those suppliers that are not applying them fully will incur additional costs (again, paragraph 5.12 refers). An impact assessment would confirm this.

Question 6: Do you agree with our proposal to update the Ability to Pay principles to reflect changes in supplier debt recovery practices? Are there other changes that we should implement?

Future-proofing the Principles seems sensible, particularly in relation to smart meters. Without, however, seeing the proposed revisions, we are not able to comment definitively. It would also be helpful to confirm whether or not the Principles apply to both debt and ongoing consumption, or just the former.

[1] **Debt Review report: key Principles for taking ability to pay into account – Ofgem letter, 3 June 2010**