

Jemma Baker
Retail Price Regulation
Consumers and Competition
Ofgem
9 Millbank
London
SW1P 3GE

31 October 2018

Dear Jemma,

Providing financial protection to more vulnerable consumers

ESB Energy welcomes the opportunity to respond to your consultation on extending the safeguard tariff to more vulnerable consumers. Our response largely focuses on Question 2 – “What are your views on our backstop option that requires suppliers to use the information they hold (such as Priority Services Register and debt information) to identify vulnerable consumers?”

Ofgem has set out a sensible set of objectives for assessing the effectiveness of the proposals. Any protection should:

- Be capable of rapid implementation (in time for winter 2018-19);
- Minimise unintended consequences for consumers and market distortions;
- Complement our wider market reforms by maintaining an incentive for consumers who are able to engage;
- Ensure that suppliers with efficient costs can compete; and
- Minimise the administrative burden and cost of implementation.

You propose to implement the ‘preferred approach’ to extending the safeguard tariff for suppliers who participate in the Warm Home Discount (WHD), while other suppliers will apply the ‘backstop approach’.

We strongly believe that this will cause unintended consequences for consumers and create distortions in the market.

Those subject to the primary approach will be able to differentiate their default prices without a thought. They are essentially told who is and isn’t eligible for the safeguard tariff and can price accordingly.

On the other hand, ‘backstop’ suppliers will have to use their discretion in applying the safeguard tariff. In a context where there’s a clear financial incentive to minimise the number of customers that are subject to the tariff cap¹, significant resource and cost would need to be spent to ensure and demonstrate that any tariff differentiation is compliant. This would place ‘backstop’ suppliers at a competitive disadvantage. Alternatively, this cost may even outweigh the benefits of any differentiation, forcing the supplier to apply the safeguard tariff to all default tariffs. Again, this would place ‘backstop’ suppliers at a competitive disadvantage.

We have identified three alternative options you could consider in expanding the safeguard tariff. They all address the market distortion issue we’ve identified above². The assessment we’ve provided is weighed against your initial proposal:

- All suppliers will apply the backstop approach. Suppliers participating in the WHD will be subject to the primary approach in addition to the backstop approach.

¹A supplier with higher compliance risk appetite could reduce the number of customers it treats as vulnerable in order to reduce the number of customers that are eligible for the cap. The means by which they do this could be quite subtle. For example, Standard Licence Condition (SLC) 26.1(c) requires that suppliers take all reasonable steps to identify and place eligible consumers on the Priority Services Register (PSR). SLC 26.5(f) encourages suppliers to develop additional priority services beyond what is prescribed in the licence to meet the needs of its customers. The more services developed, the more customers are clearly eligible for the supplier’s PSR. If a supplier chooses to not develop additional priority services, they reduce their exposure to the cap. Ofgem’s work to improve energy switching performance is a strong illustration of the power of financial incentives. In that context, licence obligations haven’t sufficiently improved performance, so Ofgem has recently proposed a financial incentive to address the issue.

²The market distortion issue would also not exist should the preferred approach not be ready for winter 2018-19 and all suppliers are required to apply the backstop approach as a consequence.

- Measured against Ofgem's objectives:
 - Be capable of rapid implementation (in time for winter 2018-19); - No impact
 - Minimise unintended consequences for consumers and market distortions; - Removes the market distortion. Challenge of correctly applying the backstop approach will apply to suppliers.
 - Complement our wider market reforms by maintaining an incentive for consumers who are able to engage; - No impact
 - Ensure that suppliers with efficient costs can compete; and – No impact
 - Minimise the administrative burden and cost of implementation. – will increase admin costs for suppliers that participate in the WHD.
- Other considerations:
 - May capture some vulnerable consumers that are not captured by state benefits, for example the working poor.
 - Will allow for a more consistent experience for consumers across suppliers.
- No suppliers will apply the backstop approach. Suppliers that aren't subject to WHD will be given an extra year to deliver the primary approach (in time for winter 19/20).
 - Measured against Ofgem's objectives:
 - Be capable of rapid implementation (in time for winter 2018-19); - Delay in implementation for a small proportion of vulnerable consumers (less than 7% of vulnerable consumers, based on the information provided in your consultation).
 - Minimise unintended consequences for consumers and market distortions; - Suppliers who don't participate in the WHD will benefit from no cap for winter 18/19. However, this must be weighed against the investment needed to apply the primary approach in subsequent years. No distortion from winter 19/20 onwards.
 - Complement our wider market reforms by maintaining an incentive for consumers who are able to engage; - No impact
 - Ensure that suppliers with efficient costs can compete; and – No impact
 - Minimise the administrative burden and cost of implementation. – removing the backstop approach will decrease admin costs for small suppliers in the short term. Savings can be re-invested in getting ready for primary approach in winter 19/20.
 - Other considerations:
 - Will be 100% consistent for consumers across suppliers from winter 19/20 onwards.
- Develop a backstop approach that relies on information that isn't open to interpretation in order to determine who is eligible for the extended price cap. For example, the definition of customers who are in arrears is universally understood. We would be happy to engage with you on developing this approach.
 - Measured against Ofgem's objectives:
 - Be capable of rapid implementation (in time for winter 2018-19); - Your overall timetable for delivery of an expanded safeguard tariff is challenging. It may be difficult to identify enough useful objective measures and implement in time for winter 2018-19.
 - Minimise unintended consequences for consumers and market distortions; - This approach should remove the distortion issue discussed above.
 - Complement our wider market reforms by maintaining an incentive for consumers who are able to engage; - No impact
 - Ensure that suppliers with efficient costs can compete; and – No impact
 - Minimise the administrative burden and cost of implementation. – relying on objective metrics will be less burdensome for small suppliers.
 - Other considerations:

- As with any regulatory intervention, the proportionality of this approach would need to be considered. Are you protecting enough consumers to make the intervention and associated regulatory burden worthwhile? Fortunately, with objective metrics, it should be relatively straightforward to assess how many consumers would be protected.

We look forward to engaging with you further to explore ways of maximising the benefits of an expanded safeguard tariff while allowing for fair competition between suppliers.

Yours Sincerely,

Paul Fuller
Regulation Manager
ESB Energy