



Jemma Baker
Retail Price Regulation
Ofgem

31st January 2018

Dear Jemma,

Providing financial protection to more vulnerable consumers

I refer to the above consultation published 20th December 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.

npower will continue to support solutions that deliver targeted and proportionate support for vulnerable customers. Our position to the CMA on price caps is a matter of public record¹, has not changed, and is not repeated here. Similarly, our position to Ofgem on targeted price caps is a matter of public record² and has not changed. In this response we posed questions to Ofgem that have as yet not been answered. As we stated during the development of Phase I, we remain concerned that eligibility for any price protection deemed necessary should apply regardless of the consumer's supplier or fuel supplied.

We support data-matching as the most effective means of identifying vulnerable customers in order to deliver targeted support. The emphasis should be on properly identifying those in need of support, rather than simply providing support to an easy to identify cohort. We also agree with Ofgem about the need to minimise unintended consequences. We urge Ofgem to work with BEIS, DWP and all suppliers to implement the framework and processes for wider data-matching. There has been ample opportunity to resolve the legal and data privacy issues. If there is the political will to do so, we do not see material impediments to achieving this by winter 2018/19. That said, we believe the trade-off of a slight delay to ensure a properly targeted solution, would outweigh the risks and consequences of rushing in a poorly designed backstop option.

The socialisation of costs from customers in debt / arrears to customers who pay their bills raises significant policy issues and risks being a disincentive to paying for energy used. We do not think this is an appropriate basis for price protection. Suppliers offer a considerable amount of support for customers with payment difficulties and where appropriate, customers will benefit from the PPM price cap.

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¹ 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>

² npower's response to Ofgem's Vulnerable Customer Safeguard Tariff, dated 12th November 2017
https://www.ofgem.gov.uk/system/files/docs/2017/12/npower_-_whd_safeguard_tariff_response.pdf

In our view, the Priority Services Register (PSR) is a poor proxy for low-income vulnerable customers. Customers need to engage with their supplier to access certain non-financial services, which may not be disability related. Coverage would be inconsistent across suppliers.

We note Ofgem's plan to issue a full impact assessment with the statutory consultation. It is important to ensure that the costs for extending the temporary safeguard tariff are proportionate. We are concerned that Ofgem is only considering two options for the tariff methodology. Expediency should not be at the expense of due process, with all the options properly considered and full analysis and impact assessments produced to ensure that any such significant market intervention is proportionate and able to deliver its specified objectives without resulting in unintended consequences.

We do not support the basket of market tariffs approach due to the complexities involved, the risk of gaming and potential impact on competition. Whilst it would be relatively straightforward to extend the safeguard tariff on the basis of the PPM CMA benchmark, it is essential to re-calculate this to address the known current flaws.

Our comments to the CMA on the level of the PPM cap is also a matter of public record³ and not repeated here. We reiterate that in addition to the initial inaccuracy of its use as a cost reflective level, the importance of accuracy increases as the cohort widens, and flaws in indexation (e.g. omission of smart costs, which are increasing; wholesale costs) increase over time, making the level even more inaccurate. There comes a point where the flaws in the indexed cap become too great for application to a large number of consumers.

It is essential to allow the full recovery of efficient costs, continue to facilitate tariff choice and minimise the impact on competition. Ofgem has acknowledged⁴ that PPM prices have converged around the cap and that PPM switching levels have fallen somewhat. Other commentators and industry parties have also highlighted this trend. To minimise such unintended consequences, we believe that there is merit in only applying price protection to vulnerable customers who have been on SVT for greater than 3 years, in line with the CMA's disengaged database remedy.

Ofgem will be required to consult on the methodology of a SVT-wide tariff cap if/when the Tariff Cap Bill is introduced to the Parliament. We would urge Ofgem to commence a full review of the current PPM tariff cap methodology, now. This is important in its own right for a Phase II vulnerable safeguard tariff cap and would support the work necessary in the event of a wider cap. We do of course expect this to follow the normal course, including the normal appeal routes.

We would welcome clarity of timing and potential overlap with both Phase I and potentially, any Government SVT-wide cap (Phase III). It would be important to maintain the customer experience and avoid confusion, for example, the timing of multiple price change notifications.

The stated intent of the draft Domestic Gas and Electricity (Tariff Cap) Bill is to impose a cap on all domestic standard variable and default rates (with the exception of those already benefitting from the PPM cap) in a non-discriminatory manner.

We note that a price cap set by primary legislation would coincide with the Ofgem cap. If these caps are set differently their evolutions will cause problems as any difference between them will

³ 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

⁴ Ofgem's State of the Energy Market 2017 report; Oral evidence from Ofgem's Chief Executive to the BEIS Committee 10th January 2018

change as their indexes de-couple. We recognise the Ofgem view that a vulnerable customer cap may need to continue after a general cap has lapsed. The solution to this is for there to be a single primary legislative cap (i.e. no coincident Ofgem cap) until the sunset date, at which point the applicable cohort shrinks from all consumers to a specified cohort.

We would also welcome Ofgem's view on the extent to which data-matching could be used (in terms of the Digital Economy Act and data protection/privacy laws) to drive PSR take-up, consistent with suppliers' licence obligations to identify vulnerable customers. promote the PSR and add eligible customers to it.

Our answers to the consultation questions are provided in Appendix A.

A number of issues and questions we raised in our response to Phase I remain relevant and are set out in Appendix B.

This letter is not confidential.

Yours sincerely,



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Appendix A: npower's response to consultation questions

Question 1 – What are your views on our preferred approach of identifying consumers for safeguard tariff protection by primarily relying on data-matching?

We are supportive in principle of data-matching as the best means of delivering targeted support for vulnerable customers in a consistent manner across all suppliers. If Ofgem proceeds with a solution based on data-matching, this should be implemented across all suppliers for the consistent treatment of vulnerable customers.

Given the temporary nature of the cap, it would be important that any bespoke data-matching exercise was delivered at least cost. This would also facilitate participation by wider, non-mandatory WHD suppliers.

We note that the relevant provisions of the Digital Economy Act and Energy Act 2010 are geared towards tackling fuel poverty. This is understandably an area of particular concern in the context of a safeguard tariff. Whilst we recognise the broader concerns around disengagement, certain disabilities and perceived detriment, it's important that measures target the right cohort within the boundaries of relevant legislation.

As all suppliers should be required to participate in data-matching, it would be prudent for them to take action now, engaging with DWP in advance of the necessary legislation. Any supplier experiencing a delay could be required to apply the delayed benefit retrospectively, or incentivised to expedite by a requirement to apply the cap to all their SVT customer customers until they are able to execute data-matching.

Notwithstanding our point about universal coverage, we would expect Ofgem to confirm as a minimum that new mandatory-WHD suppliers would be within scope of a safeguard tariff based on data-matching. In addition, could Ofgem confirm the minimum time between becoming obligated and having to participate in mandatory data-matching? We would suggest that the rules that apply for WHD should also apply for the safeguard tariff i.e. if a supplier becomes obligated for WHD, they have to meet the criteria for secure and encrypted data transfer within a reasonable timescale.

Further, could Ofgem confirm that customers would continue to be protected if a supplier's customer numbers fell below the WHD threshold?

Some other specific points on data-matching:

- It would need to be based on gas and electricity to ensure single fuel gas customers are not excluded;
- We estimate costs in the range of £1-3m (Including Ofgem, DWP and supplier costs plus further set up costs). It would also be important to recognise subsequent service/process costs e.g. queries. This is informed by the Government's impact assessment for the WHD 2016-18 extension, which showed costs of £1m in relation to an established process;
- Ofgem should request more detailed analysis from DWP to validate the high level numbers cited in the consultation and fully inform final proposals.

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?

PSR

The PSR is a poor proxy for low-income vulnerable customers and customers need to engage with their supplier to access certain non-financial services which may or may not be disability related. For example, the use of passwords for security or quarterly meter reading due to an inaccessible meter, do not indicate an impediment to engagement or financial difficulties.

Coverage would vary and be inconsistent across suppliers. There is also a risk that PSR customers become less commercially attractive.

If Ofgem decides to progress with a PSR backstop option (which we do not support), we think that price protection should only apply where inclusion on the register clearly indicates a low income and/or barrier to engagement.

As the PSR is an imperfect solution for the reasons identified, non-Mandatory WHD suppliers should participate in data-matching. However, we would support the PSR backstop option for other suppliers to deliver a level of protection whilst they complete the data-matching exercise.

Debt information

We do not support a policy of socialising costs from customers in debt / arrears to customers who pay their bills. Even if the solution is limited to customers with a debt repayment arrangement (rather than arrears), there would still be a risk that eligibility for price protection becomes associated with non-payment and could drive the wrong behaviours. Suppliers offer a considerable amount of targeted support for customers with payment difficulties. For example, benefit checks, tariff reviews, tailored debt collection pathways, signposting to third party support, debt relief. Where safe and reasonably practicable to install a PPM, vulnerable customers will benefit from the PPM price cap and the waiving of warrant charges.

Question 3 – Are there other methods for identifying vulnerable consumers that we should consider, either alongside or as an alternative to, our preferred approach?

We think there is merit in considering recipients of the Cold Weather Payment as an alternative, more targeted means of identifying vulnerable consumers eligible for price protection. We estimate that that this would extend protection to around an extra 1m households by capturing the majority of customers eligible for the WHD Broader Group. This would support low-income vulnerable customers and help to alleviate fuel poverty. It may also assist suppliers in achieving their Broader Group target, as they could use CWP data to target customers they already know to be eligible and automatically verified. This would also pick up customers who have separate electricity and gas suppliers.

We note that Ofgem hasn't looked at HMRC data such as tax credits and child benefit. This may be a means of ensuring protection is better targeted, rather than solely on the basis of disability data. A focus on vulnerable customers who have been on SVT for more than 3 years would also target support in line with the CMA's concern and database remedy. This would help to minimise any distortion of the competitive market.

Question 4 – What are your views on our proposal for all suppliers to be required to provide safeguard tariff protections to vulnerable consumers? What impact would this have on suppliers? Please provide evidence to support your views.

We fully support this proposal as we believe there is no justification for supplier exemptions. Eligibility should not depend on who supplies a vulnerable customer. We note that Phase I of the Vulnerable Safeguard Tariff Cap, which applies only to currently WHD obligated suppliers, means that eligible WHD customers who are with non-obligated suppliers on SVT benefit neither from the WHD nor the cap.

Exemptions and the resultant cost advantage exacerbates the SVT / FTC differential that Ofgem is seeking to address.

Question 5 – What are your views on our proposal regarding the tariff types and meter types our extended safeguard tariff protections would apply to?

We agree with the proposal.

Question 6: Which of our two options for setting the benchmark component of the safeguard tariff would be most effective?

We are not convinced that it will be possible to design a suitable basket of tariffs due to the complexities involved, the risk of gaming and potential impact on competition. We do not support this option and expand on the reasons for this, below. A basket of tariffs approach could particularly undermine engagement and competition if customers think Ofgem is effectively tracking the market for them.

Whilst it would be relatively straightforward to extend the safeguard tariff on the basis of the PPM CMA benchmark, it is essential to address some of the known current flaws. We reiterate that the importance of accuracy increases as the cohort widens, to ensure full recovery of efficient costs and minimise distortion of the competitive market.

We believe that the PPM CMA benchmark should be at least modified, ideally re-calculated, to ensure it is cost-reflective. This should dovetail into Ofgem's consultation on the methodology for the Government's proposed SVT cap, subject to the Tariff Cap Bill being introduced to Parliament. It should also draw on the existing Supplier Cost Index produced by Ofgem. The existing flaws of the SCI have not at this point been resolved, and the evolution of supplier cost structures do mean that the model would need revisiting.

In relation to a basket of market tariffs approach (which we do not support), for the reasons stated by Ofgem in paragraph 3.20 of the paper (e.g. supplier exemption from certain policy costs), our view is that the cheapest tariffs would need to be excluded for the basket to represent the costs of an efficient larger supplier. The market is not a level playing field, with cross subsidies and distortions caused by policy decisions. This would make choosing an appropriate reference basket very difficult. Suppliers with fewer than 250k customers are not subject to policy costs. Indeed, they're not subject to full policy costs until they reach 500k customers. There is also evidence of suppliers trying to game policy costs, with one supplier publicly stating that they were aiming to lose customers to avoid policy costs. On that basis, tariffs of suppliers with fewer than 250k customers should be excluded with an argument for excluding tariffs of suppliers with fewer than 500k customers.

The basket of tariffs would always be backward-looking and risk that the cap will not align with costs. At best, at the start of the price control period the prices will be on average 90 days out of date. By the end of the period, pricing is based on something that happened 9 months ago.

It is also unclear how Ofgem would determine which tariffs would be included/excluded based on contract term. Not all tariffs are 12 months duration, indeed our short term tariffs are 13 – 15 months at launch to allow for a sales period.

Tariffs with exit fees would also need to be excluded from the basket as the role of these fees are to reduce the risk premia associated with mid-term customer losses on fixed tariffs. Customers benefitting from the safeguard tariff would be free to switch without penalty. Without exit fees, a risk premia would likely be built into the unit rate, thus increasing the underlying cost of the tariff. An alternative might be to uplift the basket of tariffs by the value of exit fees.

Only tariffs of suppliers actively trying to grow their business should be included in the basket. Therefore, if a tariff is not available for sale on one of the most popular TPI websites (and therefore paying commission for that sale), then that tariff should not be included in the basket.

The number of tariffs per supplier should be contingent on whether the tariffs are genuinely different/distinct from one another, as required under the supply licence.

Only tariffs that are available in every GB region should be included to avoid gaming by artificially reducing the basket in one area and thereby impacting a supplier that has a large proportion of customers in a particular area.

There would also need to be a means of suppliers independently verifying Ofgem's calculations relating to the basket of tariffs.

For the avoidance of doubt and the reasons stated above, we do not support the basket of tariffs approach and believe that the PPM CMA benchmark should be re-calculated.

Question 7: Do you have any comments on the design issues for either of our two options?

While we did not explicitly comment on the default tariff option proposed by Professor Dieter Helm in his Cost of Energy Review, we would emphasise two key design elements raised by him which we believe are core to the design of any price cap:

- The necessity for any price cap to be cost-reflective, automatically and explicitly reflecting the costs of the full supply chain – as Professor Helm notes, failure to do so, merely means that someone else will have to pay more to compensate;
- The inclusion of an error-correction mechanism to adjust for changes in exogenous elements at regular intervals and reduce supplier risk.

Our comments to the CMA on the competitive benchmark used to determine the level of consumer detriment and set the level of the PPM are a matter of public record. It is inappropriate and flawed to benchmark smaller or mid-tier suppliers in a growth phase (with high levels of newly acquired direct debit customers on heavily discounted short term tariff products and facing lower policy obligation costs) with larger suppliers (with a range of different types of customers, paying by different methods and facing the full costs of delivering the government's social and environmental obligations). Any efficiency benchmark should include all obligations and all customer types, taking into account payment type differentials.

Our analysis of the current Direct Debit prices of the CMA's benchmark suppliers suggests that prices are significantly above the cap level than if indexing were applied to their prices. This further indicates that the CMA's base level for the cap is flawed.

Precedent in other markets has shown how difficult it is to set accurate, cost-reflective price caps, enabling cost recovery, investment, a fair margin and effective competition, while also meeting consumer desires for low prices. Our concerns around the flaws in the setting of the

PPM price cap are well known, including but not limited to the omission of smart costs and debt costs from indexation, but the commercial and market impact of any inaccuracies in the price cap level becomes even more critical as the consumer cohort widens.

Nil Consumption

In order to ensure efficient recovery of fixed costs a standing charge is an absolute requirement. Prepayment standing charges are probably a reasonable proxy. Using some sort of basket of market Direct Debit / standard credit standing charges would be difficult due to the way different suppliers pay Direct Debit discounts to customers.

Medium consumption

We do not see an issue with retaining the medium Typical Domestic Consumption Values (TDCV) used for the PPM cap.

Payment Method uplifts

There is a fundamental question of whether it is appropriate to apply different payment method uplifts for direct debit and standard credit, where the cap is significantly discounted to current prices. It would be essential that different safeguard tariff levels enable the full recovery of efficient costs for each payment method. The detail of any payment method uplift should be subject to further consultation and part of the formal calculation process for transparency and to minimise market distortions.

A blended cap for both payment methods would also need careful consideration. How would the “blend” be created? It could be based on the weighted average of payment methods in BEIS’s payment method reports, but that still leaves the question of what the optimal DD discount to be blended should be. This could be based on the average level of Direct Debit discount within the market or based on suppliers’ own view of cost differences between payment methods. The CMA calculated the differential between DD and ROB at £100, which our analysis indicates to be broadly cost reflective.

We would welcome clarity on the potential interaction between two cap levels for standard credit and Direct Debit, and the cost reflectivity licence condition (SLC 27.2A). What would be the status of this SLC, based on an EU directive, in the event of regulated prices? Further issues would be, as Ofgem recognises, maintaining two price caps for each area and fuel.

Headroom

We agree with Ofgem that headroom is required to allow for competition below the level of the cap. As we have observed with the Prepayment cap, if set too low there is the risk that switching rates will stall and competition is reduced.

A percentage headroom is more likely to be reflective of costs as costs will increase with consumption. A fixed headroom will mean higher margins on lower consumers and vice versa.

It is clear that the current level of headroom in the Prepayment cap is not facilitating competition. Previous market research has indicated that very few customers would be willing to switch for less than £100 per year⁵. We believe that headroom of 10% per fuel would be reasonable, with a minimum level of 8%. The headroom should be above full costs, hence for example include costs to which smaller suppliers are exempt, or tariff proxies that do not

⁵ TNS/Ofgem: Consumer engagement in the energy market since the Retail Market Review 2016 Survey Findings

recover fixed costs. This would give dual fuel headroom levels of c£85 and c£65 respectively, at typical consumption.

Ofgem briefly consider whether a higher level of headroom could be set for each individual supplier based on the level of customer service (possibly for a market-wide cap). We agree that it would be hard to develop a methodology and think it would be fraught with complexities. For example, how would “customer service” be defined, as opposed to “customer satisfaction”? In the case of the former, would offering a Freephone number rather than a 0345 number result in greater headroom? Customer satisfaction is very subjective and often driven by perception.

Smart Meter Costs

We note that Ofgem states that smart costs are implicitly included in the cap based on the then DECC’s input to the CMA. What is unclear is the extent to which the benchmark suppliers had priced smart or stranded asset costs from replacing traditional meters, into their tariffs.

The current cap will not include DCC overruns and increased costs, or the higher costs of a compressed roll-out. We agree that DCC costs should be added to the cap as a pass-through charge.

On indexation, our experience is that smart costs are increasing significantly above CPI. It is appropriate to consider some form of adjustment.

Policy Costs

The optimal approach would be to fully cost policy costs within the cap. Ofgem propose to adopt the same methodology for ECO and EII as the CMA i.e. the additional cost of EII is offset by the reduction of ECO. This only works where (a) EII is still £5 per customer p.a. and (b) the PPM cap mechanism is retained. Ofgem should re-open the index mechanism if these costs no longer net one another off.

Commodity Costs

For the reasons already drawn out in our CMA submission⁶, suppliers are also exposed to the material risk (several £ms) of not being able to perfectly match hedging to the wholesale index. We have experienced the impact of this as a result of the PPM price cap. This justifies the development of a recovery mechanism within the price cap, for any over/under-recovery during a charging period. As noted above, Professor Helm recommended the inclusion of an error-correction mechanism in the default tariff or future price cap, to adjust for changes in exogenous elements at regular intervals and reduce supplier risk.

We would also highlight that due to the workings of the current wholesale index, in order to match the wholesale element of the safeguard tariff cost in each applicable charging period, purchasing has to start at least 6 months before each cap period. For example, the wholesale index for a period commencing 1 October is an average price over the period 1 February to 31 July for the delivery period in question. By contrast, energy purchased for SVT customers is typically purchased over a much longer period in order to mitigate price volatility. In effect, there are two average wholesale costs in play.

For this reason, suppliers need to know which customers to allocate to each hedging logic. Otherwise, the risk is that outturn wholesale costs will not match the allowance within the cap. The solution would be to allow suppliers sufficient time between the final decision on the cohort /

⁶ npower response to CMA’s Prepayment Charge Restriction Order, dated 11th November 2016
https://assets.publishing.service.gov.uk/media/58347537e5274a5918000000/prepayment_price_cap_draft_order_response_RWE_npower.pdf - see paragraphs 7-14

customer numbers and the effective date of the price cap, or to introduce a recovery mechanism (as mentioned above).

Update Frequency

6-monthly updates seems to strike the right balance between the number of price changes per year and managing the associated cost.

In practical terms, we would ask Ofgem to be mindful of resource constraints during periods of low staffing numbers e.g. Christmas and summer holidays.

Online tariffs

We note that Ofgem's RFI also covers online account management costs. For the relatively small cost to serve differential compared to offline customers, and as online customers are relatively engaged, a tariff cap differential would be disproportionate, adding complexity and system costs. Online discounts should continue to be an optional means for suppliers to differentiate, rather than mandatory.

Appendix B: Common Issues / questions for Phases I and II

- 1) **The price level (PPM/CMA benchmark)** – Ofgem has been considering a cap for vulnerable customers since at least early July 2017, but has not yet sought to resolve the known flaws of the PPM cap. For Phase I, Ofgem stated that it was proportionate to use the current prepayment safeguard tariff level because this is a short-term measure. We do not think that this is a credible position for Phase II and beyond. We urge Ofgem to commence an immediate and full review of the PPM methodology.
- 2) **Datashare** – The Energy Act 2010 (and the Electricity and Gas Acts before that) gave specific powers to the SoS 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. We are encouraged to hear that the necessary secondary legislation is being progressed and urge Ofgem, Government and suppliers to take all steps necessary to implement wider data-matching at the earliest.
- 3) **Exclusion of single fuel gas customers** – Ofgem’s previously stated policy intent would be for all eligible consumers to receive the temporary safeguard tariff for each fuel. We agree and should this exclusion also apply to Phase II, we would again ask Ofgem to confirm whether this exclusion does not in practice discriminate amongst suppliers?
- 4) **Eligible customers of excluded smaller suppliers** – In Phase I, some WHD customers who have switched from mandated WHD suppliers will be paying above the cap with no protection from it. It is important that this is addressed for Phase II to ensure protection for all eligible customers. Exemptions and the resultant cost advantage exacerbates the SVT / FTC differential that Ofgem is seeking to address.
- 5) **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. As noted above in our answer to Question 3, there is an opportunity to “push” more targeted protection to more customers eligible for the Broader Group by applying datashare to those in receipt of Cold Weather Payments.
- 6) **The formal process** – we note that Ofgem appears to be acting under its statutory duties, rather than a legislative Direction to *act* (as distinct to *advise*) or an Order or other direction from government.
- 7) **Discrimination** – in the event that Phase II is only applied to certain suppliers, we would again ask Ofgem to confirm that this is non-discriminatory, noting that the impact of a discriminatory price cap would continue to be exacerbated by the fact that the same suppliers already face the costs of WHD, Energy Companies Obligation and other selective obligations.
- 8) **Price setting powers and conditions of exercise** – as we noted in our response to Phase I, the checks and balances are important, especially if there is risk of them being bypassed. We noted that 2.20 of the Technical Document states “It is our view that such action would be consistent with our statutory objective 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 some prices during transition to liberalisation. Hence Ofgem’s⁷ 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 2002⁸ 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 relinquished⁹. 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 concurrent powers with both. These powers are associated with *specific* conditions of exercise. We would ask again that Ofgem confirm the legal 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 any such powers complies with such conditions?

- 9) Personal Data:** Please can Ofgem confirm that it has liaised with the Information Commissioner regarding Data Protection Act compliance?

⁷ For convenience we refer to the Authority and previous incarnations all as “Ofgem”

⁸ “Review of domestic gas and electricity competition and supply price regulation: Conclusions and final proposals”, February 2002, Ofgem

⁹ “Domestic Gas and Electricity Supply Competition, Recent Developments, June 2003” Ofgem