

Statutory consultation for a vulnerable customer safeguard.

Thank you for the opportunity to comment on the above consultation.

The proposed cap will bring some welcome relief to around one million customers. However, we have serious objections both to the **principle** and the **detail** of the proposals. While hoping, in the medium term, for a change to the principle (with or without legislation), we believe that the detail can and must be amended now to ensure that some of the people who are most desperately in need of the cap are not left to freeze in their homes.

1. The principle

- a. You yourselves say there may be around 5.6m households on SVTs containing at least one individual in receipt of income or disability-related benefits (para 4.15). In addition, there are 19 million customers on SVTs that the Government has agreed are being “ripped off”, to the tune of £2 billion, and who have been led to believe that they will be protected. Rising energy prices, in the context of falling incomes for the people who already have least, and huge profits for suppliers, are a national scandal.
- b. In this context, introduction of a cap for this very limited number of customers is a way to avoid a much wider cap or other protection for many more people. The energy suppliers should not be making a killing out of any of us, whether we are disabled people whose benefits have been slashed, asylum seekers who don’t qualify for any, single mothers choosing between food or warmth for our children, teachers and nurses with full time jobs who are forced to rely on food banks, students or pensioners. Even those of us on a decent wage are struggling.
- c. Entitlement would be a cliff edge. As soon as we cross the threshold by getting a job or an increase in pay, or by being denied off disability benefits by the DWP and Maximus (however unjustly), fuel bills would rise.
- d. As you admit, there is a risk that people outside the cap may pay even more than if no cap had been introduced. Ofgem’s “technical document” says (at 5.28) that you would not expect suppliers to increase their prices to other consumers in order to offset revenue reductions resulting from the impact of the temporary safeguard tariff – and would hope that any supplier that sought to do so would lose customers to its rivals. This is in no way reassuring. It is widely acknowledged that competition does not work in the energy sector. John Penrose, the Conservative MP behind the party’s energy price cap plans as they stood before the election, [notes](#): “Under this plan, fewer than 3m customers will be helped *and the remaining 14m will see their energy bills rise as energy companies recoup the cost of the cap*” (our emphasis).
- e. The specific provisions proposed in your consultation not only fail to introduce the universal cap that is needed, but arbitrarily exclude many hundreds of thousands of the households that need it most. Your technical document recognises some “weaknesses” of the proposals (see below), but you seem to find these acceptable

on the grounds that the cap must be brought in quickly (see 5.14). If a more just scheme “with the data currently available to suppliers, . . . is not possible to address by this winter”, that is no excuse for making the cap so acutely inadequate throughout its period of application. If households whose circumstances would entitle them to WHD end up being arbitrarily excluded for the sake of bringing in a cap by Feb 2018, they could and should still be added before winter 2018 – 19.

- f. We understand that you are looking for a quick fix for a life-threatening emergency, and that the cap could prevent some deaths this winter if it comes in fast enough. But this has been in the air for long enough it should by now have been possible to produce and consult on a plan for cap for everyone.
- g. We do not accept that Ofgem lacks the power to bring in a universal cap without further legislation. Ofgem’s remit is to ‘protect the interests of existing and future electricity and gas consumers’ as well as to promote ‘value for money’ in the industry. As John Penrose has pointed out, intervening to protect customers from overcharging is part of the purpose for which Ofgem were formed. It may well be true that, as you have argued, suppliers would complain to the CMA, who oppose the universal cap. But the roles are different: Ofgem’s is primarily to protect customers, the CMA’s is to protect the market. It would be helpful therefore, if Ofgem took a stand for what is necessary to protect customers, instead of allowing the decision of another body to dictate what you yourselves put forward.
- h. There is, of course, the government’s Draft Domestic Gas and Electricity Tariff Cap Bill. No one can have any idea how long this legislation will take – if indeed it ever is enacted. The history of repeated U-turns on the question is not encouraging, and nor is the pressure on parliamentary time in the light of Brexit, or the current state of the Government. Unsurprisingly, there are now signs that the Government is backtracking yet again, and even [reassuring the industry](#). In this context, for Ofgem to excuse themselves from implementing necessary protections by reference to legislation that will likely never come to pass, is a total failure to fulfil its obligations.

2. The Detail

- a. We agree with your suggestion that any cap should be absolute, not relative (related to the best tariffs on offer). Arguments that the cap must be relative in order to respond flexibly to market rise and fall do not hold up to scrutiny. “Flexibility” has always meant that prices go up when wholesale costs go up but don’t go down, or go down much less when wholesale costs fall. In addition, the Prepayment Meters cap has shown that flexibility is possible even with an absolute cap.
- b. We agree with your suggestion that the cap should apply not only to SVTs but to any default tariff.
- c. Your 11 October press release says “Ofgem will work on extending price protection to at least a further 2 million vulnerable households for winter next year once the timing of the Government’s price cap is confirmed”. However, there is nothing about this in the actual consultation papers; instead you repeatedly say that to bring the cap in quickly, you will limit it to people who already get the Warm Home Discount.
- d. The NEA suggested using Cold Weather Payments as a criterion instead of the WHD. If the principle of a limited cap is maintained, we believe this would be a better solution. But, assuming the proposed criterion of WHD will also be

- maintained, we believe the following injustices can and must be remedied:
- e. Because the data is already gathered and money would be lost to many people if there were a delay, you want to apply the cap to existing recipients of Warm Home Discount (we assume, although it is not made explicit, this includes recipients added after the cap comes into force). This means that people in the Core Group of WHD recipients (that is, recipients of the Guarantee Credit element of Pension Credit) will see their tariffs capped, but people who meet the eligibility criteria for the Broader Group will not benefit from the cap unless they've already applied and been accepted for WHD, on a first-come-first-served basis. We appreciate the rush towards implementation – lives are at stake – but the same is true for people who will miss out simply because they are unlucky with the timing of an application.
 - f. Among the people who will miss out are people below pension age (or over pension age but not in receipt of the Guarantee Credit element of Pension Credit) who have a disability or long-term illness. It is unacceptable to in effect discriminate against this group of people who are also most likely to be fuel poor by reason not only of low income but of needing a lot of heat, whether because they may not be out at work in the daytime, and may in fact be home most of the time altogether, or whether because they need a more constant or higher temperature for medical reasons. They have also borne the brunt of a series of devastating benefits cuts. Disabled people have been hit nine times harder by the cuts than non-disabled people, and for people with high support needs who need social care support, this figure rises to nineteen times higher. They will suffer the most pain, injury and illness (both mental and physical), and potentially even death, if they cannot afford the heat they need. In our view this is a shocking and unacceptable decision.
 - g. Similarly, we cannot accept that people with different suppliers for gas and electricity should have the capping of their gas tariffs dependent on Ofgem “urging” suppliers to include them: “we urge WHD Compulsory Suppliers, especially those with large numbers of single fuel gas customers, to pay particular attention to their treatment of single fuel gas customers” (para 4.2.4) Whatever the problems may be in gathering data in time for a February 2018 start, this should not prevent suppliers applying, soon after that, a cap that will potentially apply until December 2019. Perhaps that is intended; we cannot see it in the technical document.
 - h. Para 4.20 of the technical document says, “In principle, we consider that eligibility for the temporary safeguard tariff should not depend on whether a consumer’s supplier is in scope, as this would result in similar consumers with different suppliers being protected or not. We want to ensure that eligible consumers do not lose out.” We agree: eligibility alone should be sufficient to benefit from the cap. Yet in fact, the consultation document itself makes clear that suppliers who do not offer the WHD are not “in scope” and that their customers will not benefit from the cap, which could otherwise be applied, if not in February 2018, at least in time for the winter of 2018, and the next.

3. Immediate measures needed

- a. **We therefore believe that, while implementation must be as quick as possible for existing WHD recipients, there is no reason why the cap cannot also protect people who have applied, or later apply, for WHD and meet the criteria, whether or not they are among the lucky ones to be “first served”. Even if this protection is**

not in place for February, there is no excuse for allowing suppliers to continue to overcharge this group of people between next February and December 2019. Similarly, protections must be put in place to protect people on single fuels whose gas supplier may not know of their Warm Home Discount, and people whose suppliers are not part of the WHD scheme. The Priority Services Register would be a good place to begin to identify eligible customers.

- b. Unless and until it is possible to identify the millions of customers who would qualify under the “broader group” as eligible for WHD, or until a cap is brought in to mitigate the rip-off of *all* energy customers on default tariffs, at least those people who apply for Warm Home Discount and are eligible for it should benefit from the cap, whether or not they actually receive the WHD.
- c. **This makes it crucial for the WHD to be well publicised**, with intelligible and accessible explanations making clear that it will also enable the applicant to have their tariffs capped whether or not the WHD application is in time to be successful. Energy suppliers should publicise it, especially but not only to customers on the Priority Services Register. The DWP should publicise it to benefit recipients. Health providers, disability organisations, schools and nurseries, could help to spread the word. It is essential that the publicity be made available in a wide range of languages, and in formats that are accessible to all, and be disseminated in ways that will reach isolated Deaf and Disabled people not in contact with services, always explaining who is eligible, what is the procedure, and where people can turn for help.
- d. Like you, we are concerned about the potential effect of this cap on implementation of the WHD scheme itself, given that this scheme is largely discretionary for the “broader group” of potential recipients (paras 5.34-6). It is Ofgem’s responsibility to monitor and deal with any pulling back from the Warm Home Discount.