Appendix 5.5: Withdrawing the ‘simpler choices’ component of the RMR rules retail supply to domestic customers

Scope of the remedy

1. Our proposed remedy focuses on the SLCs set out below that make up the ‘simpler choices’ component of the RMR rules. These SLCs apply to both electricity suppliers and gas suppliers.

The ban on complex tariff structures

2. SLCs 22A.3(a) and (b) state that all tariffs must have a single standing charge (which may be zero) and either a single unit rate or time-of-use rates (which cannot vary according to the level of consumption).[1]

The four-tariff rule

3. SLC 22B.2(b) states that the licensee must only offer up to four core tariffs per fuel per metering arrangement in any region.[2]

The simplification of cash discounts

4. The following rules apply to the offer of cash discounts:

   (a) all cash discounts are prohibited except for dual fuel, online account management and dividend payments – SLCs 22B.3 to 22B.4A;

   (b) the licensee must ensure that any cash discount (other than dividends) is continuously applied – SLCs 22B.5(a) and 22B.6(a);

   (c) the licensee must ensure that any cash discount (other than dividends) is offered with all its tariffs – SLCs 22B.5(b) and 22B.6(b);

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[1] SLC 22A.2 requires that all charges for supply activities (such as charges relating to billing, meter reading, use of the network) must be included in the unit rate (or time-of-use rates, as applicable) and/or the standing charge, except for those charges listed in SLC 22A.9. Ofgem said this was intended to prevent ‘drip pricing’. This SLC is outside the scope of our proposed remedy and we are therefore minded only to make any consequential amendments that may be necessary to implement the provisional decisions in this PDR.

[2] SLC 22B.2(c) requires that, in any region, the supplier must not use more than one tariff name for each core tariff at any time. Ofgem said this was intended to enable consumers to identify their tariff easily when comparing options, for example when using a PCW. This SLC is outside the scope of our proposed remedy and we are therefore minded only to make any consequential amendments that may be necessary to implement the provisional decisions in this PDR.

(d) the licensee must ensure that any cash discount (other than dividends) is subject to the same terms and conditions across GB in respect of all its tariffs – SLCs 22B.5(c) and 22B.6(c);

(e) the licensee must ensure that any cash discount (other than dividends) is of the same monetary amount across GB in respect of all its tariffs SLCs 22B.5(d) and 22B.6(d);

(f) the licensee must ensure that any cash discount (other than dividends) is not expressed as a percentage – SLCs 22B.5(e) and 22B.6(e); and

(g) the licensee must ensure that any cash discount (other than dividends) is presented only as a monetary amount in £ per year – SLCs 22B.5(f) and 22B.6(f).

Offer of bundled products and reward point discounts

5. The following rules apply to the offer of bundled products and equivalent rules apply to reward point discounts.

6. Licensees must ensure that all bundled products:

(a) with similar features have the same terms and conditions, and are of the same monetary amount or charging methodology across all tariffs with which they are offered – SLC 22B.15(a);

(b) comply with discount rules, eg they cannot be cash or a cash substitute used for energy charges – SLC 22B.15(b);

(c) are presented as a monetary amount in £/year or p/kWh, not a percentage – SLCs 22B.15(c), (d); and

(d) are 'continuously applied' at the same level on a daily or per kWh basis, unless the exception in 22B.28 applies – SLC 22B.16.

7. For tied (mandatory) bundles, licensees must:

(a) only offer one tied bundle with each tariff – SLC 22B.12(a) (although licensees may link any one tied bundle across a selection of tariffs – SLC 22B.11);

(b) make tied bundles available to all customers who choose those tariffs – SLC 22B.12A; and

(c) the licensee must not offer a tied bundle where an optional bundle with similar features is offered with any tariff – SLC 22B.12(a).

8. For optional bundles, the licensee must:

   (a) offer them across all tariffs, but may offer one or more optional bundles and restrict the number of optional bundles that a customer may opt to receive – SLC 22B.13;

   (b) make optional bundles available to all customers who choose those tariffs – SLC 22B.14A; and

   (c) not use optional bundles with similar features to another optional bundle or a tied bundle – SLC 22B.14.

Prohibition against tariffs exclusive to new/existing customers

9. SLC 22B.30 states that the licensee must ensure that all its tariffs are available to new and existing consumers subject to the exceptions in SLC 22B.31.

Parties' views on the proposed remedy

10. In the Remedies Notice we invited views on the effectiveness and proportionality of this remedy. We asked whether:

    (a) this remedy would be effective in increasing competition between domestic retail energy suppliers and/or between PCWs and what additional tariffs energy suppliers would be likely to offer that they currently do not due to the RMR rules; and

    (b) it would be more effective and/or proportionate to increase the number of permitted tariffs/structures rather than removing all limits on tariff numbers and structures and, if so, how many should be permitted and what tariff structures should be allowed; for example, whether requiring domestic energy suppliers to structure all tariffs as a single unit rate in pence per kWh, rather than as a combination of a standing charge and a unit rate, would reduce complexity for customers while avoiding restricting competition.

11. We note that some aspects of this proposed remedy overlap with aspects of other remedies that are assessed elsewhere in this PDR (eg remedies [9 and 10]), and therefore the effectiveness and proportionality of this proposed remedy is to be assessed together with the rest of the remedies package concerning the domestic weak customer response provisional AEC.

12. We received responses from parties including the SLEFs, the mid-tier suppliers, PCWs[3] and consumer groups.[4]

13. The SLEFs and mid-tier suppliers (with the exception of First Utility), were supportive of our proposed remedy.[5]

14. In particular, parties said the following in relation to whether this remedy would be effective in increasing competition between domestic retail energy suppliers and/or between PCWs:

(a) The SLEFs,[6] Co-operative Energy,[7] Ovo Energy[8] and Utility Warehouse[9] all agreed that the 'simpler choices' component of the RMR rules had constrained suppliers' ability to innovate and support our proposed remedy. They agreed that the remedy would facilitate innovation and be effective in increasing competition between suppliers and between PCWs.

(b) Centrica,[10] E.ON,[11] RWE[12] and SSE[13] all said the remedy would enable suppliers to negotiate exclusive offers with PCWs. However, Ofgem[14] and uSwitch[15] said that such offers were not offered pre-RMR when it was possible so there might be other barriers preventing this.

(c) Scottish Power,[16] SSE,[17] EDF Energy[18] and Utility Warehouse said that to be fully effective the remedy should remove from domestic retail energy

[3] In particular, Gocompare, MoneySuperMarket, MoneySavingExpert and uSwitch.
[4] Which?, Age UK and Citizens Advice.
[5] Centrica response to provisional findings and Remedies Notice, p51 (Centrica also said that the remedy should be extended to include a repeal of the rules which limit what can and cannot be bundled with energy tariffs, as well as relaxing the prescriptive information remedies introduced by Ofgem as part of the 'clearer' element of the RMR); EDF Energy response to Remedies Notice, p4; E.ON response to provisional findings, p3, paragraph 13; RWE response to provisional findings, p8, paragraphs 50–54; Scottish Power response to Remedies Notice, p6, paragraph 3.1; SSE response to Remedies Notice, p8; Co-operative Energy response to Remedies Notice, p4; Ovo Energy response to Remedies Notice, p16. Utility Warehouse response to Remedies Notice, p4.
[6] Centrica response to provisional findings and Remedies Notice, p52. EDF Energy response to Remedies Notice, pp14 & 15; E.ON response to provisional findings, p20, paragraphs 91 & 92; RWE response to Remedies Notice, p3, paragraph 17; Scottish Power response to Remedies Notice, p8, paragraph 3.4; SSE response to Remedies Notice, p22.
[7] Co-operative Energy response to Remedies Notice, p4.
[8] Ovo Energy response to Remedies Notice, p16.
[9] Utility Warehouse response to Remedies Notice, p4.
[10] Centrica response to provisional findings and Remedies Notice, p52. Centrica also said that in order to facilitate this change, the obligation to provide the Cheapest Tariff Message (CTM) should be removed.
[11] E.ON response to provisional findings, p20, paragraph 92.
[12] RWE response to Remedies Notice, p34, paragraph 2.2.
[13] SSE response to Remedies Notice, p22.
[14] Ofgem response to Remedies Notice, p2.
[15] uSwitch response to Remedies Notice, pp8 & 10.
[16] Scottish Power said this meant SLC1, SLC22A, SLC22B, SLC22C.7, SLC22C.9, SLC22CA, SLC22CB, SLC22D, SLC22E, SLC22F, SLC31A, SLC31C and SLC31D.
[17] SSE said this encompassed: (1) unit rate and standing charge requirements (2) the tariff cap, (3) discount restrictions and (4) bundling restrictions – (SLCs 22A and 22B).
[18] EDF Energy response to provisional findings. EDF Energy also said that issues of potential increased complexity for customers needed to be addressed.

suppliers' licences all aspects of the 'simpler choices' component of the RMR rules.

15. First Utility said that it did not agree that market distortions had arisen wholly as a result of the 'simpler choices' component of the RMR rules and that it would be more proportionate to focus a remedy on the derogation process available to suppliers wishing to depart from the 'simpler choices' component of the RMR rules. It said that the remedy would not be effective in increasing competition as it did not of itself address the issue of sticky customers.[19] First Utility also said that it did not think the four-tariff rule restricted innovation. It said it had launched nearly 40 tariffs this year.

16. The Behavioural Insights Team said that competition would only increase if the demand side of the market operated effectively, which could be achieved by providing consumers with tools to help them choose.[20]

17. Some parties identified as a potential risk that increased complexity of suppliers' offers could adversely impact on customer engagement. In particular:

    (a) EDF Energy[21] said that the remedy was likely to increase complexity, which risked reducing customer engagement without the right tools to help customers;

    (b) First Utility[22] said that the remedy risked unintended consequences in the active part of the market by adding to the complexity and confusion; and

    (c) Gocompare.com[23] said that the reintroduction of tariffs that consisted of a variety of costs and discounts might lead to further confusion, and that the current pricing model, based on unit rates and standing charges, plus discounts for more than one fuel and online billing, was not overly complex.

18. Ofgem said that it did not want to return to the 'confusopoly' that existed prior to the RMR rules[24] and that multi-tier tariffs, tariffs with multiple components and loyalty discounts might make tariff comparisons more difficult.[25] Ofgem said that it had not identified a risk to customer engagement from suppliers responding to the remedy by offering more tariffs. This was because growth in

[19] First Utility response to Remedies Notice, p23.
[20] Behavioural Insights Team response to Remedies Notice, p1.
[21] EDF response to provisional findings, paragraph 4.5, p17; EDF Energy response to Remedies Notice, paragraph 3.3, p13.
[22] First Utility response to Remedies Notice, p23.
[23] Gocompare.com response to Remedies Notice, p3.
[24] Ofgem response to Remedies Notice, p1.
[25] Ofgem (18 November 2015), Paper 1: Impact of remedy 3 on consumer engagement, working paper.

the number of suppliers in recent years meant there were already a large number of tariffs on offer. Moreover, PCWs could significantly reduce the search costs of comparing a large number of tariffs.

19. However, E.ON[26] said that PCWs handled complexity on behalf of customers and SSE[27] said customers could use the personal projection to compare tariffs. GoCompare.com[28] said that unrestricted choice might discourage searching, but PCWs helped make searching easy. GoCompare.com[29] and MoneySuperMarket[30] said that the number of tariffs was not of major importance.

Specific number/structure of tariffs

20. Many SLEFs,[31] the mid-tier suppliers[32,33,34] (with the exception of Ovo Energy), Age UK,[35] uSwitch[36] and Ofgem[37] did not support a remedy that allowed for a specified increase in the number of permitted tariffs/structures, as an alternative to removing all limits on tariff numbers and structures.

21. However, uSwitch[38] said it was still sensible to broadly constrain how tariffs were structured as while PCWs were well placed to cut through tariff structure complexity, not all customers would be able to access a PCW. Which?[39] said the CMA should consider whether it would be more effective to increase the number of permitted tariffs.

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[26] E.ON response to provisional findings, p22, paragraph 98.
[27] SSE response to Remedies Notice, p23.
[28] Gocompare.com response to Remedies Notice, p3.
[29] Gocompare.com response to Remedies Notice, p3.
[30] MoneySuperMarket response to Remedies Notice, p4.
[31] Centrica response to provisional findings and Remedies Notice, p56. EDF Energy response to Remedies Notice, p16. EDF Energy said that this approach became less effective as a comparison tool as tariffs became more complex with features such as cashback or tiered rates. E.ON response to provisional findings, p22, paragraph 98. E.ON said it believed that a remedy that allowed for a specified increase in the number of permitted tariff/structures would be a less effective alternative to removing all limits on tariff numbers and structures. RWE response to Remedies Notice, p36, paragraph 2.10. RWE said it did not support a remedy that allowed for a specified increase in, or cap on, the number of permitted tariffs/structures. Scottish Power response to Remedies Notice, p10, paragraph 3.13. SSE response to Remedies Notice, p24. SSE said it did not advocate a remedy that allowed for a specified increase in the number of permitted tariff/structures.
[32] Utility Warehouse response to Remedies Notice, p6.
[33] Co-operative Energy response to Remedies Notice, p5.
[34] First Utility response to Remedies Notice, p24.
[35] Age UK response to Remedies Notice, p4. Age UK also said that some supervision of the presentation of multiple tariffs could be necessary to assist consumers in making their choices.
[36] uSwitch response to Remedies Notice, p12.
[37] Ofgem response to Remedies Notice, p3.
[38] uSwitch response to Remedies Notice, p12.
[39] Which? response to Remedies Notice, p4.

Single unit rate

22. The SLEFs,[40] Utility Warehouse,[41] First Utility,[42] Citizens Advice,[43] the Behavioural Insights Team,[44] uSwitch[45] and Ofgem[46] did not support requiring domestic energy suppliers to structure all tariffs as a single unit rate.

23. E.ON[47] said the current tariff structure did not create too much complexity and was the most cost-reflective approach. Co-operative Energy[48] said that the current tariff structure requirements worked well and Citizens Advice[49] said it was content with the current tariff structure provided derogations were available for selected consumers.

What suppliers said they would be likely to introduce with the removal of ‘simpler choices’

24. Suppliers said that with the removal of the ‘simpler choices’ component of the RMR rules they would be likely to introduce the following offers:

    (a) [✂].[50]

    (b) EDF Energy said it would expect to see the re-emergence of some of the types of tariff that were available before RMR. These might include ‘green’ tariffs, tariffs targeted at specific groups of customers (eg vulnerable) and other niche offers including tracker tariffs.[51]

    (c) E.ON said it would be excited to develop new tariffs, [✂]. As the market moved through the digital transformation with the introduction of smart meters and digital data centres, it was highly likely that a greater number

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[40] Centrica response to provisional findings and Remedies Notice, p56; EDF Energy response to Remedies Notice, p16; E.ON response to provisional findings, p23, paragraph 101; RWE response to Remedies Notice, p36, paragraph 2.12; Scottish Power response to Remedies Notice, p10, paragraphs 3.14–3.17; SSE response to Remedies Notice, p25. SSE said that the distributional impact would lead to adverse unintended consequences for competition
[41] Utility Warehouse response to Remedies Notice, p7.
[42] First Utility response to Remedies Notice, p25.
[43] Citizens Advice response to Remedies Notice, p16.
[44] Behavioural Insights Team response to Remedies Notice, p4. The Behavioural Insights Team said it did not support structuring all tariffs as a single unit rate because the best option for some people was a £0 standing charge but high unit rates because they used energy in those homes infrequently, while others benefited from higher standing rates but much lower variable rates because of how much energy they used.
[45] uSwitch response to Remedies Notice, p13.
[46] Ofgem response to Remedies Notice, p4.
[47] E.ON response to provisional findings, p23, paragraph 101.
[48] Co-operative Energy response to Remedies Notice, p6.
[49] Citizens Advice response to Remedies Notice, p16.
[50] Centrica response to Remedies Notice, p55.
[51] EDF Energy response to Remedies Notice, p15, paragraph 3.14.

and variety of tariffs would be brought to market, maximising the effectiveness of this remedy.[52]

(d) RWE said that the removal of the four-tariff rule would create an opportunity for domestic energy suppliers to create differentiated and bespoke tariffs that were positioned to appeal to different customer groups, such as social, green, landlord, charity, electric vehicles, and that incentivised engagement, for example by offering lifestyle bundles, loyalty and reward schemes. It would also increase price competition, both by allowing PCWs to drive competition, and by allowing suppliers to offer cash and non-cash discounts on SVT and, for example, to target different lower price offers at low and high consumption customers. Suppliers could also develop exclusive partnership deals, ie employee or community offers, which would be aimed at consumers who may not have otherwise been engaged. Having the ability to offer a greater choice of tariffs was essential with the introduction of smart meters, to enable suppliers to develop a wider choice of time-of-use tariffs. In addition, removal of the 'simpler choices' component of the RMR rules would also enable suppliers to trial new concepts, for example time-of-use tariffs for electric vehicles, thereby building consumer engagement over time and speeding up advancement of technology to market.[53]

(e) Scottish Power said that based on previous experience, energy suppliers might consider returning to offering discounted tariffs (where the tariff was priced for a fixed term at a fixed discount to the SVT), tariffs with no standing charge, cashbacks, and capped and 'tracker' products, as well as experimenting with time-of-use tariffs when a critical mass of smart meters had been rolled out.[54]

25. We note that EDF Energy and SSE said that they had previously had offers that were not compatible with the current bundling rules and Utility Warehouse said it was forced by RMR to materially change its retail proposition. However, E.ON and RWE said they had not previously had offers that were not compatible with the bundling rules. Centrica said it had changed the way it bundled products and services with its tariffs in order to comply with the bundling rules.

26. The SLEFs said that there were technical constraints which meant suppliers were limited in the number of tariffs that they could offer prepayment

[52] E.ON response to provisional findings and Remedies Notice, p20, paragraph 93.
[53] RWE response to Remedies Notice, p34, paragraph 2.1.
[54] Scottish Power response to Remedies Notice, p9, paragraph 3.6.

customers,[55] and that this proposed remedy should facilitate greater choice for prepayment customers by enabling suppliers to offer a greater variety of discounts. In particular:

(a) RWE said that the more limited choice of tariffs available to prepayment customers was exacerbated by simpler choices rules. Previously cashback and non-cash incentives were an effective means of offering discounts to prepayment customers. Relaxing simpler choices might result in more options for prepayment customers, notwithstanding the technical constraints on increasing the number of tariffs.[56]

(b) Scottish Power said that cashback was an important way to incentivise some customers to switch, particularly prepayment customers, where it was not possible to offer products in the same way as with other payment methods (around [✄]% of Scottish Power's sales in 2013 included cashback incentives).[57]

Derogations to the 'simpler choices' component of the RMR rules

27. There have been 25 derogation requests,[58] of which:

(a) Sixteen requests have been granted: ten of which included a derogation from the four-tariff rule, eight included a derogation from the restriction on discounts, two included a derogation from the rule requiring that tariffs are available to new and existing customers and one included a derogation from the bundling rules.

(b) Three requests have been rejected:

(i) British Gas requested a derogation from the four-tariff rule to offer a fifth tariff with a zero or low standing charge. Ofgem indicated it was not open to grant a derogation for a market wide fifth tariff.

(ii) Utilita requested a derogation to continue offering its multi-tier tariffs. Ofgem did not consider that there was sufficient reason to grant Utilita a unique exemption from the multi-tier rule while other suppliers were required to comply.

[55] SSE said that there were technical constraints with legacy PPM systems (exacerbated by the need to create up to 14 regional variants of each tariff) which meant that suppliers were limited in the number of tariffs that they could offer.
[56] RWE response to provisional findings, p44, paragraph 215.
[57] Scottish Power response to Remedies Notice, Table 1.
[58] One derogation request for a specific tariff or scheme may require derogation from more than one SLC.

(iii) [✄] requested a derogation for an additional tariff slot to offer a green tariff as a fifth core tariff. Ofgem did not grant a derogation. A number of other suppliers in the market were offering green tariffs as part of their four core tariffs.

(iv) SSE applied for two derogations, one of which was to exempt its White Label (Ebico) from displaying SSE's tariffs in its cheapest tariff; which Ofgem has rejected. [✄].

(c) Four requests are ongoing with Ofgem yet to issue a decision.

(d) One request Ofgem decided that a derogation wasn't required.

(e) One request was withdrawn (E.On's Warm Assist Fixed request was withdrawn on commercial ground).

28. We note that neither the SLEFs nor Utility Warehouse have officially [✄].

(a) Centrica and Scottish Power said that this was because Ofgem guidance said derogations would only be granted in exceptional circumstances and the derogation process was lengthy.

(b) SSE and Utility Warehouse said this was because of the low probability of success.

(c) Utility Warehouse said that it was not commercially attractive to constantly be making changes to propositions, so derogations for a short period in specific circumstances were unattractive. It was considering seeking derogations in the future to add insurance to its range of core services.

(d) [✄].

(e) EDF Energy said it had chosen not to offer bundled products since RMR.

(f) Centrica and RWE said [✄], including over whether specific derogations would meet Ofgem's assessment criteria if raised.

29. The two derogations from the rule requiring that tariffs are available to new and existing customers were for:

(a) British Gas – for a standing charge rebate for gas SVT customers. Being a customer for 12 months was one of the three eligibility criteria, along with being a low consumption customer and financial vulnerable (January 2015).

(b) Green Energy – for a share scheme whereby the first 50,000 customers who enter into a supply contract with the licensee are each offered 400

free shares in the supplier and a further 5,000,000 shares may also be allocated at Green Energy’s discretion (September 2015).