

Business, Energy and Industrial Strategy Committee

Oral evidence: Energy Price Caps, HC 470

Wednesday 1 November 2017

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Watch the meeting

Members present: Rachel Reeves (Chair); Vernon Coaker; Drew Hendry; Stephen Kerr; Peter Kyle; Rachel Maclean; Albert Owen; Mark Pawsey; and Antoinette Sandbach.

Questions 123 - 205

Witnesses

Rt Hon Greg Clark MP, Secretary of State for Business, Energy and Industrial Strategy; Margot James MP, Parliamentary Under Secretary of State, Department for Business, Energy and Industrial Strategy; and Jeremy Pocklington, Director-General, Energy and Security, Department for Business, Energy and Industrial Strategy.

Examination of witnesses

Witnesses: Rt Hon Greg Clark MP, Margot James MP and Jeremy Pocklington.

Chair: Thank you very much for coming to give evidence to our Select Committee today on the issue of energy price caps, ahead of our Select Committee doing pre-legislative scrutiny of the Bill that you have recently published. We have an hour for our session this morning, so we will kick straight off.

Q123 **Peter Kyle:** Thank you, Ministers, for coming. Greg, you said in your statement on 12 October that you wanted a fair deal for all consumers. What does a fair deal look like?

Greg Clark: Without detaining the Committee, first of all, can I say it is good to be here before you for the first of, I hope and expect, many occasions? I would like to introduce, although she needs no introduction, Margot, who is the Consumer Minister, and Jeremy Pocklington, who is the director-general responsible for these matters in my department. In answer to your question of what is a fair deal for consumers, the Competition and Markets Authority identified that consumers are being overcharged by, on average, £1.4 billion a year in the retail market. I believe that should be eradicated.

Q124 **Peter Kyle:** Within that, there are two groups. There are those who are engaged and those who are disengaged. Presumably you are saying there that you want to close that differential. Through the price cap, can you get one deal that will close the differential, still be fair to people who are engaged and not punish those who are making the market work for them, and provide fairness for those who are disengaged?

Greg Clark: The CMA was very clear. The £1.4 billion is the detriment suffered by those who are being overcharged. Its analysis established that there are two markets, in effect. There is a competitive market for people who are able and practised at switching to some very competitive deals. That is important, and the competition keeps prices there competitive. There is a large section of the market in which, at the moment, competition is not sufficiently entrenched.

Q125 **Peter Kyle:** It is a non-market. It is not a functioning market.

Greg Clark: Correct.

Q126 **Peter Kyle:** Is it not working because the market is not accessible to the consumers, or is the market not working because people are not engaged enough and proactively using the market?

Greg Clark: The CMA said that suppliers have “unilateral market power over their inactive customer base” and can “exploit such a position by pricing their SVTs materially above a level that can be justified”. That is the problem that it identified. The right thing, it seems to me, is to respond to that analysis. As you know, it was in two minds as to how to



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respond. My view is that of the minority panel report, which said that in the next few years it did not expect that there would be such a rapid change as to eradicate that deficit, so a price cap was needed.

Q127 **Peter Kyle:** Others will come on to that. Just out of interest, which camp are you in? Are you an engaged customer or a disengaged customer? Have you switched?

Greg Clark: I have not switched. I am clearly not a vulnerable consumer.

Peter Kyle: You are a lazy consumer.

Greg Clark: I am a busy consumer, and I am a typical consumer.

Q128 **Peter Kyle:** You said on TV back in May that it was quite a hassle. Should Government be changing the market because people like you find it a hassle?

Greg Clark: It is not for that reason. The reason is very clear: among the people who do not switch and find it difficult to switch are some of the most vulnerable people in society. Those are people who do not have ready access to the internet, for example, or people who, however naively, assume that they will be reasonably well looked after by their supplier.

Peter Kyle: People like you will also benefit.

Greg Clark: There is a broader point here. It ought not to be the case that every consumer every year has to go through a process of defending themselves against what the CMA has found is an excessive price. Even though you have the opportunity and the ability to do that, it is not the right form of a market. You should not have to assume that, if you do not devote some time to taking avoiding action, your supplier, whom you may have a long-term relationship with, is going to—

Q129 **Peter Kyle:** The Government has spent a lot of time and effort trying to get people to switch. Margot, you are a paragon of virtue. You must have switched.

Margot James: I have switched. I visited Citizens Advice during Big Energy Saving Week a year ago, just as I was getting familiar with my brief. I was really shocked when I was told that, on average, someone who has never switched could gain a saving of £300 per year if they are a dual fuel customer. On receipt of that information, I felt that I really ought to switch, so I did.

Q130 **Peter Kyle:** I have one final question to you, Secretary of State. Is it your belief that when you have the two major interventions here, the price cap and the completion of the rollout of the smart meters, the differential will disappear? Will these two interventions fix the market?

Greg Clark: Specifically it is the excessive charging that I want to eradicate. It is that detriment. That is the purpose of the price cap, to



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eradicate that, while maintaining the competitive market that exists and would continue to be practised, and you are right to make that point.

Q131 **Peter Kyle:** Thank you for being so bold and saying that differential will disappear. When do you expect that to happen by?

Greg Clark: I said the detriment will disappear. It is an important point, because in a competitive market people will make offers below the price cap. The Bill is designed for that. You will have different deals available, but the abusive tariffs—the detriment that has been identified—should be eradicated.

Q132 **Vernon Coaker:** Secretary of State, the Government have said that they wish to eradicate this £1.4 billion detriment. Will the price cap and the rollout of smart meters achieve that?

Greg Clark: Yes, that is the purpose. Ofgem will be given the powers to set a cap so that the excessive charging will be eliminated.

Q133 **Vernon Coaker:** The stated policy objective will be achieved by that. Let us be clear about what we are talking about here and the importance of this. Given what you were saying to my colleague, Peter Kyle, just now, “the detriment” is a polite way of saying that energy suppliers are overcharging people.

Greg Clark: Correct.

Vernon Coaker: They are overcharging, so the market as it operates at the moment—

Greg Clark: For those standard variable tariff ones, yes.

Q134 **Vernon Coaker:** That is 12 million to 14 million customers.

Greg Clark: Yes.

Q135 **Vernon Coaker:** Millions of people across this country are being overcharged for their energy, and that is what “detriment” means.

Greg Clark: Correct.

Q136 **Vernon Coaker:** We should call it overcharging.

Greg Clark: Yes.

Q137 **Vernon Coaker:** You are saying no level of detriment is tolerable at all. It is not, “If we halve it, that will be great”. It has to be eradicated. Does it have to be eradicated? Is there an acceptable level of detriment, or does it have to go completely?

Greg Clark: Let me explain, Mr Coaker. The detriment that the CMA identified was an average over the years of its study. It is not possible to have a meter running of the detriment right at the moment. It took a two-year study to do that. You have to design a policy that gives the regulator, in this case Ofgem, the ability to set what would be a



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detrimental tariff. It needs to set, in real time, a tariff that is a maximum.

Q138 **Vernon Coaker:** Does that mean there will still be a detriment or not?

Greg Clark: No. The purpose is that it should set the tariff at a level where consumers are not being overcharged.

Q139 **Vernon Coaker:** The £1.4 billion will go to nought.

Greg Clark: As I say, the £1.4 billion is a historic figure, reflecting on the period of the CMA's study

Q140 **Vernon Coaker:** It is really important, because when we are talking about detriment we are talking about overcharging. People want to know that the Government's objective is to eliminate that. The 12 million to 14 million people on the variable tariff want to know whether that means they are not, therefore, going to be overcharged. That is the outcome for them.

Greg Clark: That is the purpose of the Bill.

Q141 **Vernon Coaker:** For that purpose, the Government's objective is to eliminate that. Is it not also incredibly important that we do this because, by definition, many of those customers are the most vulnerable people?

Greg Clark: Yes, you are absolutely right. Again, the CMA report was clear about that. The people who are most likely to be on the standard variable tariffs are those whose incomes are lowest. They tend to be more elderly than the average. That is one of the motivations.

Q142 **Vernon Coaker:** How will you judge whether it has been a success or not, as the Secretary of State responsible for it?

Greg Clark: You want to see the bills come down for people compared to where they are at the moment.

Vernon Coaker: It is lower bills, whatever that means.

Greg Clark: It is right for the specialist regulator, Ofgem, to be able to and to have to make that assessment. It is a consumer regulator, as well as the industry regulator. It is an important part of its remit. It should make that assessment

Q143 **Vernon Coaker:** What will you do if it does not work?

Greg Clark: The whole purpose of the exercise is to introduce a policy that will work. It will require Ofgem to make an assessment, and Ofgem will publish the basis of that, setting a maximum that it is reasonable to charge for standard variable tariffs.

Q144 **Vernon Coaker:** Do you think the energy companies will respond? Well, they have to, because they will be forced to.



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Greg Clark: Precisely. The point of doing it through Ofgem is that the energy companies are licensed to operate and Ofgem is the licensing authority. They are obliged to.

Q145 **Vernon Coaker:** As a final comment, it is absolutely essential that we eradicate the detriment. As you said in your own words, we are talking about energy companies exploiting some of the most vulnerable and overcharging millions of people. It cannot carry on, can it? When will it happen? If I was a vulnerable person, when would I expect my bill to come down as a result of the legislation that you are proposing?

Greg Clark: I need to expand that a little. One of the things that Ofgem has agreed to do is to expand the protection to a wider group, an extra million consumers, this winter, and to go further in time for next winter. There will be an immediate impact this winter for the most vulnerable.

Vernon Coaker: A small number.

Greg Clark: It is smaller than I would wish. I have been clear in public, and I think the Committee knows this, that I want Ofgem to go further. It is exercising its powers to a certain extent. That is going to be of benefit to millions of consumers, but I want it to go further. This is the purpose of the legislation.

Q146 **Chair:** I want to explore the legislation in a moment. To finally nail down this £1.4 billion detriment issue, to Peter and Vernon you have indicated that you want to eliminate that detriment to consumers. You are asking Ofgem to set the price cap, for very sensible reasons.

They are the experts, rather than Ministers, on the level of the appropriate cap. You will also want to validate whether the Bill that you are going to take through Parliament has been successful. Will you get the CMA or the department to do an analysis on how successful it has been, and whether that £1.4 billion has come down to zero or been halved. Will you measure the extent to which it has come down?

Greg Clark: Ofgem has to be and is transparent about this. It will publish its reports on the assessment of the market. I am sure this Committee will want to scrutinise those reports, as indeed our colleagues in the House will do.

Q147 **Chair:** I am asking for a bit more than that. It was the CMA and not Ofgem that identified this £1.4 billion detriment number. If you are saying that the intention of legislation is to eliminate that detriment, presumably you will want to measure the success of the price cap against that criteria of eliminating the £1.4 billion. Will you in the department, or the CMA, come back a couple of years after the price cap has started and say, "It was £1.4 billion, and now it is zero", "Now it is £700 million", or whatever it might be?

Greg Clark: As I said to Mr Coaker, the £1.4 billion that the CMA identified was based on its assessment during a two-year investigation. I do not want to be in a position that every year we have to have a



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two-year investigation to assess the current level of detriment. It should be for Ofgem to report very clearly in justifying its cap, to demonstrate that it is set in a way that eliminates the detriment to consumers.

Q148 Chair: After two years you would expect Ofgem to do a piece of work that says, "It was £1.4 billion; now it is something else". Is that something you will commit to providing? It is not Ofgem that has done that work to date. It is very good taking through legislation, but at the end you want to know whether all this effort has been worth it. You have spoken about this £1.4 billion number quite a lot, Secretary of State. I am asking whether your department or somebody else will measure how successful this policy of yours has been, against the criteria that you have very clearly set out.

Greg Clark: It will, for one very good reason. In the Bill, as you know, the price cap can be renewed if it is still required. Ofgem will need to make an assessment of the market conditions, including the effectiveness of the cap. It will present that to me and the Committee, and we will be able to hold it to account on that.

Q149 Chair: The success of the policy is how the detriment to consumers has changed.

Greg Clark: Absolutely, yes.

Q150 Chair: In response to a letter from this Committee on 27 October, you said that the Government would legislate as soon as parliamentary time is available and if Ofgem fails to exercise its powers. Can we explore that a little more? You said that you would legislate if Ofgem fails to exercise its powers.

Ofgem was pretty clear when it came to this Committee a couple of weeks ago that it would not set a price cap for the whole market without an Act of Parliament that had received Royal Assent, because energy companies, including Centrica, which also gave evidence to this Committee, would not rule out a legal challenge. It seems to me that Ofgem is not going to exercise the powers that you say it has had for probably quite legitimate reasons. There might be a legal challenge. Does that mean that you will act? Ofgem is not going to do this unilaterally.

Greg Clark: It is exactly as I said. Even now I would prefer Ofgem to make use of its powers, because, to Mr Coaker's point, it could then get on with it immediately, as it is doing for the most vulnerable consumers.

Q151 Chair: If there is a legal challenge, it would not work, would it, if it ended up being dragged through the courts? If you take, for example, the payday loan price cap, Parliament legislated to have a cap on how much payday lenders could charge, and then the Financial Conduct Authority implemented it. It needs primary legislation; otherwise you are at risk of a legal challenge. There is a similar issue here.



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Greg Clark: Ofgem is an independent regulator by statute, so I cannot direct it in the decisions it makes. Its board has to consider it. I have been very clear that I would much prefer it to make use of the powers that it has. In terms of legal challenge, everyone on this Committee knows that public policy is often subject to legal challenge, or the possibility of legal challenge. That does not always mean to say that you do not proceed with it. You can defend a legal challenge. Given what has been reflected in debates in the House—a clear view that we should be eradicating this detriment, this overcharging, as Mr Coaker put it—I would be very disappointed if there were to be a legal challenge from the energy companies.

It is Ofgem's right to make that judgment. The reason that I described in my letter to you is that I do not resile from my view that it would be better if it made use of its powers. My contention is if, on consideration, it feels that it does not want to run the risk of a challenge, Parliament should require this.

Q152 **Chair:** This was not in your letter, but there has also been a suggestion that some sort of improvement in the market might be sufficient to make this legislation redundant. Can you see any circumstances in which changes in the market before this Bill progresses through Parliament would mean that you no longer needed to take this action?

Greg Clark: No, I cannot see it. I have been clear that we want to see the detriment removed. That is the purpose of this.

Q153 **Chair:** Do you not think that could happen through voluntary action by the big six energy suppliers?

Greg Clark: You would need to be certain that that was not a temporary move to avoid permanent improved behaviour.

Q154 **Chair:** For example, if the energy companies decided to get rid of their standard variable tariffs, in your mind that would not be sufficient reason not to go ahead with this legislation.

Greg Clark: As you know, Chair, and as I hope you will see in the scrutiny you are going to give the Bill, there is, in effect, a sort of anti-avoidance. It is no good getting rid of the standard variable tariff and replacing it with something called an orthodox variable tariff, say, which you could say is not one but is remarkably similar. The purpose of this Bill is to make sure that what the CMA has identified—about which there is no doubt: that the consumers on SVTs are being overcharged—will come to an end.

Q155 **Chair:** In the letter you said that the Government would legislate as soon as parliamentary time is available. What conversations have you had with the Leader of the House and the Whips about when that time might be available?



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Greg Clark: Everyone who is a member of this Committee is a Member of this House. We know that there is a lot of legislation going through the House. I am very keen to progress this legislation as soon as possible. I am grateful to the Committee for accepting my invitation to give it pre-legislative scrutiny. We will be able to demonstrate that there is a Bill that has had pre-legislative scrutiny, rather like the Smart Meters Bill that we had Second Reading for in recent days. Once we do that and we can show that there is a strong view, I hope, in this Committee and across the House, we can find an early opportunity to introduce it. That is what I would like to do.

Q156 **Chair:** This winter there will not be an overall price cap in the market. There will be a price cap for people on prepayment meters from February, so not for most of this winter. From February there will be an energy price cap for some customers who get the warm home discount. Do you think by next winter there will be a price cap for all 14 million customers on standard variable tariffs?

Greg Clark: First, to be fair to Ofgem, we should acknowledge the progress that it has made in at least going beyond the previous intention and providing some protection from February for vulnerable consumers. I would like to do this as soon as possible, but everyone knows that in order to do it you need to take the Bill through Parliament. It needs to achieve Royal Assent, but the sooner the better, in my view.

Q157 **Chair:** That is in Government's hands. That is why I am asking you, as a Secretary of State and as a member of the Cabinet, when the intention is to take this through Parliament. Do you think it is likely that the 14 million customers on standard variable tariffs will see an energy price cap by next winter? Do you think that is likely?

Greg Clark: Chair, you are asking me to speculate about the organisation of parliamentary business. I cannot do that. I hope it will proceed very quickly, following an endorsement. You might have some observations to make on it. Colleagues who have dealt with me before know that I take the views of Select Committees very seriously. The reason for that is so that it is in prime shape to make rapid process through the House of Commons. I will use all my powers of persuasion with the business managers and my colleagues in Government to find the earliest opportunity to proceed with it.

Q158 **Chair:** Secretary of State, you are clearly a strong advocate of this legislation. I welcome that, and I am sure the Committee does as well. Is there then some reluctance from others in Government to find the time? It was in the manifesto of your party at the general election. It was in the manifesto of my party as well. This is something that has cross-party support. We are doing pre-legislative scrutiny. We have put out the call for evidence. We will be taking evidence in December and then in January. Given that there is a clear cross-party consensus for this, I am wondering what conversations are happening in Government so that we can get it done by next winter. You have identified, Secretary



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of State, a £1.4 billion consumer detriment.

Greg Clark: The CMA has.

Q159 **Chair:** You are leaning heavily on that number, Secretary of State. That consumer detriment will continue this winter. As you have also identified, it tends to be more vulnerable customers, disabled, elderly, people with young families, people in social housing, who are more likely to be experiencing this detriment. What assurances, if any, can you give that by next winter this consumer detriment will be eliminated?

Greg Clark: The sooner we can proceed, the better. You have described very eloquently the steps that we are taking to publish a draft Bill. At this stage it enjoys broad support in this House. We have invited this Committee to get this done very quickly, and I am grateful for the timetable that you have allocated to it. To have a Bill that has undergone the pre-legislative scrutiny, and enjoys the support of all sides in the House, puts it in good shape to have early passage through the House of Commons and the House of Lords.

Q160 **Chair:** It is disappointing, Secretary of State, that you cannot give greater assurances from the Government that something that was in the manifestos of both main parties and has this cross-part support will go through next year. I do not think you are going to be able to give me that assurance.

Greg Clark: That is not a reasonable reflection on the standard processes that you have to go through. I cannot give a guarantee to the Committee when I do not have a legislative slot. I do not have a legislative slot because it has not finished its pre-legislative scrutiny. I think it is evident to the Committee that I will be in a good position to argue very strongly for one once this Committee has finished its work and advised the House that it is fit to proceed, as I hope that it will very quickly.

Q161 **Chair:** As you know, Secretary of State, you do not need pre-legislative scrutiny to get a slot in Parliament. We are very happy to provide the pre-legislative scrutiny to give you that certainty that there is that support, but you already know that that cross-party support is there. It is not the lack of pre-legislative scrutiny that means you do not have a slot. I want to be very clear about that.

Greg Clark: No. This Committee contains longstanding Members of the House. It is good practice when you have legislation to have pre-legislative scrutiny before it goes into the parliamentary process on the Floor of the House. That is good practice. We have done that for the Smart Meters Bill, for example. It was evident from the Second Reading debate that that has been very beneficial. The timetable that I am grateful to the Committee for having set allows that to be done quickly.

Q162 **Chair:** We are doing it as quickly as we possibly can, because this Committee and Members of the House are keen that this Bill gets taken



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through Parliament. Perhaps this is something that we could come back to in January, once that pre-legislative scrutiny has been completed. Perhaps at that stage you will be able to talk to business managers and get an assurance that, by next winter, customers will not be experiencing the detriment that they are experiencing today.

Greg Clark: Chair, we have a common view on this.

Chair: We do, Secretary of State.

Greg Clark: I am as keen as you are to proceed with this so that consumers get the earliest possible protection. This is why I made the repeated case that Ofgem should make use of its powers, and the fact that it is not using them fully has resulted in bringing this Bill forward.

Chair: Yes, I do not doubt your commitment to this. What I am doubting is whether there is the full commitment of Government to find time on the Floor of the House to take this legislation through. Until we have a slot, that scepticism is reasonably valid.

Q163 **Albert Owen:** I will take up the same theme, because this is a political decision at the end of the day. It was the Prime Minister on the steps of No. 10 who said that energy customers were being ripped off and she was going to do something about it. I have been saying that for years. I am pleased that the Prime Minister has joined me in saying that the energy market is broken.

I am sure you will join us as well in that select group of Marxists who believe in freezes, caps and safeguards. We were ridiculed a few years ago for suggesting that there should be a cap. It was in your manifesto, and it was a political decision to put that in the manifesto. I would put it to you that you could avoid all this parliamentary timetabling by using your powers as the Secretary of State. I was on the Energy Bill 2010, which became the Act, when we gave the powers to the Secretary of State to intervene. Why are you not intervening?

Greg Clark: First, responding to improve markets is not anti-market. It is certainly not a step that is any way inconsistent with the traditions of my party, which introduced consumer protection at the time in which the utilities were privatised. We have led the world in making sure that consumers are protected. It is entirely in keeping with that, when problems and deficiencies have been identified, as they clearly have been by the CMA, that we are acting on this. That report was commissioned by this Government and was not done by the previous Government.

Q164 **Albert Owen:** It was not conclusive on a cap. It did not recommend a cap be introduced.

Greg Clark: The CMA was in two minds on that. The majority of the panel thought that the remedies that were proposed to encourage more switching would be sufficient. A minority opinion—

Q165 **Albert Owen:** You cannot hide behind the CMA.



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Greg Clark: I am not trying to do that.

Albert Owen: You cannot hide behind Ofgem, because it argues that it did not have the powers. You have the powers, under the Energy Act 2010, to introduce one relatively quickly, which could avoid the parliamentary timetabling and could help people this winter. That is true, is it not?

Greg Clark: No, not to introduce the absolute cap that we are proposing.

Q166 **Albert Owen:** You could put forward legislation. Through the House, you could make a change very quickly that would alleviate the pressures, the rip-off that the Prime Minister identified with SVTs. You could give powers to Ofgem any time you wanted.

Greg Clark: The Bill requires—

Q167 **Albert Owen:** There is a new Bill now, but I am arguing with you that you have the powers under the Energy Act of 2010. I sat on that, and we had arguments that we were giving too much power to the Secretary of State. The coalition Government at the time wanted those powers. You have those powers. Can you explain to us why you were advised not to bring in that yourself and to go down the parliamentary route? That might be helpful.

Greg Clark: Perhaps you could explain, Mr Owen, which powers you are referring to.

Q168 **Albert Owen:** Under the Act you have the power to set a cap yourself.

Greg Clark: Are you referring to Section 26 of the Energy Act?

Q169 **Albert Owen:** Do you have the powers or not? It is the section, yes.

Greg Clark: No, not to set an absolute cap.

Q170 **Albert Owen:** Okay, not to set an absolute cap, but you could have set it in train, could you not?

Greg Clark: No.

Q171 **Albert Owen:** Explain what advice you had. You have argued that you had advice that it would have a consequence of increasing other prices, rather than capping the overall price. Can you explain what that advice was and where the other prices are? Where are you concerned that there would be a knock on effect?

Greg Clark: Section 26 of the Energy Act 2010 has provisions that, where there is a difference between one group of customers and another, that difference can be closed. Crucially, it can be closed by increasing the prices that the lower group of customers are paying. I do not believe that would be in the public interest.

Q172 **Albert Owen:** That already happens. This is why it is broken, Secretary of State. I am having a discussion here, not an argument. There are



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people not on dual fuel who pay more because of the circumstances. They do not get the discounts that people on dual fuel do. People living in rural areas, for instance, who have oil heating and electricity, pay more. They are vulnerable people. You said in response to Mr Coaker and others that Ofgem is already moving to help those type of customers on prepaid meters, for example, so that is now available under law, under statutes.

The regulator and you could sit down together and say, "How can we avoid people suffering this winter? Can we use your powers and our powers to help them?" That would avoid what the Chair has described as possibly a prolonged period within this House of Commons of getting this Bill through. I agree with pre-legislative scrutiny. I think I argued with you many years ago that we should have it, but not in every case, not when you have the ability and consensus in the House of Commons to put this through.

Greg Clark: We are in danger of disagreeing about something that we agree about. In my view, and I have been clear with the Committee this morning, I would like Ofgem to make use of the powers that it has.

Albert Owen: It is doing.

Greg Clark: It is doing so for a limited section of the consumers. I would prefer it to go further, but I do not have the power to compel it to do so. As we talked about in my exchange with the Chair, it gave evidence to this Committee about what it sees as the risk of legal challenge from some of the suppliers if it did so. I agree with you: I would prefer that the powers that it has were used, but it is an independent regulator. I do not have the right to override that view, other than by legislating, which is what I am introducing.

Q173 **Albert Owen:** The reason I am getting frustrated, Secretary of State, is that I have mentioned this to your predecessors and to Ofgem in the past. Ofgem is saying, "We do not have the powers. We need them". The Secretaries of State say, "It already has the powers existing". The 2010 Act, in my opinion, would help break this deadlock. If the advice you have received about the knock-on of other prices is in question, what makes you think that this legislation can avoid that?

Greg Clark: Just to finish the point we have been discussing, I would like Ofgem to make use of its powers. Since it has indicated to this Committee and in public that it is not going to use them to the full extent, it is the right and responsible thing, and the active role of Government, to compel and require it to do so. That is what we are doing. We are acting on the fact that those powers are not being used.

Q174 **Albert Owen:** You have had advice to say that there could be a knock-on effect.

Greg Clark: No. Some colleagues in the House asked whether Section 26 of the Energy Act would allow what has been proposed and



recommended to be introduced. It would not, which is why we have to take the legislative step.

Q175 Mark Pawsey: Secretary of State, can I come at this from a slightly different perspective? You have told us that you have already taken action on vulnerable customers and there will be a cap through Ofgem coming in in February. You have also told us that the need for the cap arises because of a market failure. The market is not working as well as it should. You said that there is insufficiently rapid change in people using their powers to switch.

Switching is increasing. It is at the highest level since 2011. Something like 4 million customers changed in the past 12 months, so, while it is not going as fast as we would like, there is a trend in that way. Price comparison websites did not exist a few years ago. There are now plenty of places where people can get that from. If we introduce the cap, is that not going to give people a disincentive to switch? Why would you bother to switch if there is a cap and all the prices are the same? Are we not going to undo the work that we have been doing in recent years in encouraging switching?

Greg Clark: No, I do not believe that is the case. The design of the cap is to reduce the overcharging, but the cap will be required to be set at a level where you have continued competition below it. As you and the Committee know, there is vigorous competition from a lot of new suppliers to offer competitive deals for those who are able and willing to take them.

Q176 Mark Pawsey: Do you believe that the rate of switching will continue to accelerate in the way that we have seen over the past four or five years?

Greg Clark: Yes. One of the benefits of the introduction of smart meters is that the savings will be even greater, especially when we get to the smart meter standard called SMETS 2, which makes much more accurate data available to potential suppliers. You will be able to have time of use tariffs, for example, that reward consumers and the energy system for having alternative tariffs. That is why the tariff that is proposed, in line with the Martin Cave opinion, should be temporary while these measures take effect.

Q177 Mark Pawsey: Is the cap necessary, in a sense, because we have not rolled out smart meters fast enough?

Greg Clark: I think most people would concede that the rollout of smart meters is ambitious, and appropriately so. We are getting on with that. It is a very important step. Professor Cave, in his dissenting opinion to the majority, said that it is going to be a few more years for that to have its full beneficial effects. Faced with this £1.4 billion a year, it is right to have some measures to protect consumers in the meantime.

Q178 Mark Pawsey: Coming to that £1.4 billion a year, Secretary of State, where is it going to come from? Are energy companies making excessive



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profits? Are their profits going to reduce? Is investment going to be reduced? Where is the money going to come from? How are we going to hand that from the energy companies to the consumers?

Greg Clark: One needs to look to the evidence on this and to the research that has been conducted during the CMA inquiry. It said it was a combination of the excessive profits being made by some of the energy companies in serving those consumers, but also pointed out that there was greater inefficiency in the service that is provided to those SVT consumers.

Q179 **Mark Pawsey:** Will the cap make the energy providers more efficient?

Greg Clark: Competition provides an incentive for people to be more efficient. The analysis was that this is not sufficiently competitive. If you do not have competition, the competitive pressures on costs will decrease.

Q180 **Mark Pawsey:** Is it not normally the case that where prices are fixed there is less competition, because there is no incentive for different suppliers to innovate? Is there not a danger that the reverse will happen?

Greg Clark: There is the requirement under the proposal, which the Committee will give its views on, that there should be ample opportunity for new entrants and existing players to offer very keenly priced deals to people who take them up. In the view of the investigating authorities, there was inadequate protection. It goes back to this point of the unilateral market power over their inactive customer base and the opportunity to exploit that position by charging above a level that can be justified. When you have that conclusion, you need to act on it.

Q181 **Antoinette Sandbach:** Your view is, despite divided opinion on this, that an absolute price cap will still incentivise the market to act competitively.

Greg Clark: Yes, correct.

Q182 **Antoinette Sandbach:** What is your evidence of that, given the divided opinion?

Greg Clark: I might ask Mr Pocklington to comment on that, but let me give you a couple of pieces myself. Ofgem published a state of the market report yesterday, for example.

Q183 **Antoinette Sandbach:** With the greatest of respect, your decision was made before yesterday, so that cannot be the evidence on which you based your decision.

Greg Clark: The Bill is drafted in such a way that it will be possible to have competition below that. A piece of very recent evidence justifies that. In the prepayment meter market, notwithstanding the fact that there is a price cap, there are still good discounts available to people who choose other suppliers within that.



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Q184 Antoinette Sandbach: That is largely because of competition from other suppliers. Those suppliers, for example, have argued that data, and greater information and transparency in relation to the energy market, would be much more useful in helping them to compete. I do not know whether Mr Pocklington can deal with that. Have you looked at broadening out the information, particularly in relation to vulnerable customers, which are the people who suffer the most? Although you have put a cap on a certain number of vulnerable customers, that does not cover the complete category of vulnerable customers that there is in the UK.

Greg Clark: That is one of the reasons that we want to extend it.

Jeremy Pocklington: Can I come back to the original question? You asked whether there will still be room for competition as the cap is introduced. There is evidence that that will be the case. First of all, as the Secretary of State has said, that is explicitly something we are asking Ofgem to take into account in setting the cap. That is the draft legislation for comment.

Q185 Antoinette Sandbach: Sorry, can I interrupt you on that? Are you giving Ofgem flexibility and choice? In the legislation, will you be setting in stone that it is an absolute cap, or will you give it the option, should it choose to, to introduce a relative price cap?

Jeremy Pocklington: The cap in the legislation would be an absolute cap. It sets out a number of criteria that Ofgem needs to take into account and have regard to when it is setting the level of that cap. Those include the need to protect consumers but retain incentives to switch, enable effective competition, create incentives for suppliers to improve their efficiency and enable efficient suppliers to continue to finance their business.

There is also some useful evidence, which is relevant, from the recently introduced cap for PPM customers. Ofgem introduced that earlier this year. It is still evident in the prepayment meter market that there are tariffs available well below the cap. The cheapest SVT in the PPM market is currently £70 below the cap. There is evidence of competition. You have to be slightly wary looking at international examples, but energy is devolved in Northern Ireland. Northern Ireland has a cap on retail consumers, but there has still been a lot of active consumer switching in recent years.

Q186 Antoinette Sandbach: Mr Pocklington, the Competition and Markets Authority did the investigation and found this detriment. Its conclusion was that a market-wide cap would be detrimental to competition. I do not know whether you have any views on that from a consumer angle, Margot.

Margot James: Yes, I do. It is a balance that we have to get right. The best approach is a combination of an absolute price cap with other stimulus to competition. That is what this Bill will endeavour to set out.



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The Ofgem responsibilities in setting the cap will have to have regard to maintaining incentives to switch. Mr Pocklington mentioned Northern Ireland. It might be of interest to the Committee to look at the situation in Northern Ireland.

Q187 Antoinette Sandbach: Can I specifically ask you to address the concerns of both the consumer organisation, Which?, and Citizens Advice? The Citizens Advice evidence was that mandatory targets to move customers off the most expensive tariffs might be more effective than an overall cap.

Which?, the consumer group, has expressed concern not only about an absolute cap, but even about a targeted cap, if that makes sense. Bearing in mind those consumer organisations and the fact that the CMA has also said that an absolute cap may not be the best way of achieving that, what is your view, from the consumer perspective, of their evidence?

Margot James: My view would be that, if the cap was set at such a level that disincentivised competition, their concerns would be very real, and I would share them. Our guidance to Ofgem will be to set that cap at a level that allows for competition in addition to the capped element of the market. I would also respond to those concerns by saying that, for many years, very many methods of trying to engage consumers and encouraging switching have been tried. They have worked for only a relatively small minority of consumers.

Q188 Antoinette Sandbach: They have. One of the issues that Ofgem has repeatedly raised is this inability, for example, to access data held by Government around vulnerable customers: those who are claiming certain benefits, single parents, those who may be in receipt of support that would automatically identify them as vulnerable customers. How is this Bill going to address the data issues, or are they being addressed in other legislation? If that is not addressed, however temporary the cap is, you will still return to the fundamental flaws in the market, where the data that could be used to assist and drive support towards the most vulnerable is not available in the marketplace.

Margot James: I will ask Mr Pocklington to come in on where we are exactly with the CMA recommendation on data sharing. With Ofgem's support, we are introducing quite a number of measures to assist vulnerable groups. We have the winter fuel payments. We have the prepayment meter protection and the cap there.

Q189 Antoinette Sandbach: In Ofgem's evidence to us around vulnerable customers, it accepts there is an issue there and it is unable to adequately identify vulnerable customers to target the support.

Jeremy Pocklington: We are very actively working with Ofgem and the Department for Work and Pensions to tackle this issue. The issue you have identified is the reason why Ofgem has announced that it is extending the PPM cap to a further 1 million customers this winter. It will



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be ready to extend that cap to a further 2 million customers, depending on the progress of legislation and parliamentary time, the following winter. It is that further extension that we need to have improved data matching. That is what we are actively working on with Ofgem and the Department for Work and Pensions.

Q190 Rachel Maclean: I share my colleagues' concerns about the impact of a price cap, given the public scepticism about price caps generally. If we look at university tuition fees, for example, we saw that being set. Then we saw all the universities immediately raise their prices. That is a very salient example that we all have to be mindful of when we are presenting this legislation so that it addresses that genuine concern. There is a real scepticism that we have to get over. We have to demonstrate that this Bill will do what the Government say, and we will be scrutinising that quite closely. I do not know whether you want to comment on that.

Margot James: The markets are very different. In the university market, certainly for a lot of courses, they were under pressure. Without foreign students paying more than the capped amount, they were struggling with the costs of providing decent quality education.

In this market it is very different, in that it has been quite clearly identified by the CMA investigation that there is fat in the market. It is the very opposite. It is far more likely that a large proportion of the 60 companies that are now active in the energy market will be seeking to undercut the cap in order to attract custom. The two markets are very different.

Q191 Rachel Maclean: The day that this legislation was announced in Parliament, we saw a plunge in energy shares. What confidence do you have that, when this Bill is brought forward, it will not damage investment, which will ultimately damage the ability of those new challenger suppliers to come in and offer competitive deals?

Margot James: Quite a number of the challenger suppliers welcome the concept of a cap. That is a cause for comfort. Shareholders, mindful of the amount of fat in the market, are going to be disappointed if the Government are successful in reducing the amount of detriment that was under discussion earlier.

The other thing that gives me comfort is that, in the CMA report, it attempted to assess the level of the detriment figure of £1.4 billion that was caused by what it would consider as less than efficient practices on the part of the big six suppliers. It identified approximately £750 million of that £1.4 billion as falling into that category. I would hope that some of those big six would be looking at providing a more efficient service, which would enable them to continue both to make a profit and to invest.

Q192 Stephen Kerr: You repeatedly bracket smart meters with the price cap as the means to stimulate a competitive marketplace. In fact, the Government have earmarked, I think, £11 billion for smart meters.



Dieter Helm, in his energy costs review, says, "Smart meters will provide important data", but they "will not in themselves add much to the incentives to switch". What evidence do you have that they will?

Greg Clark: First of all, you are absolutely right that smart meters are not the only thing that will improve the operation of the market. The remedies the CMA has proposed more generally and greater transparency are all going to help. Smart meters are important, because at the moment there is, if I can put it this way, an information imbalance between suppliers and consumers. At the moment, for many, if not most, consumers, their supplier knows their behaviour in detail, in terms of when they consume energy or what energy they consume, but also their propensity to pay higher prices.

They are able to know which customers will continue with them out of a sense of loyalty no matter what they charged, and which consumers they would lose if they charged elsewhere. That information is not available to the consumer in the same way. Smart meters will give consumers access to much more detailed information, which they can then share with those that can give them better deals.

Q193 **Stephen Kerr:** What evidence is there that these meters are leading people to switch? Can you quantify what has already happened or what you expect to happen in terms of switching due to smart meters?

Greg Clark: The information that is available and will be available to other companies comes through the next generation of smart meters, which are about to be introduced. The existing ones will be upgraded to reflect that. That is something that is in the pipeline. It is why the introduction of this cap on a temporary basis is being made before those benefits are available. Jeremy, you might recall what the predictions were in the modelling of the smart meters.

Jeremy Pocklington: I do not have the precise details to hand.

Q194 **Stephen Kerr:** It would be useful if you would share that.

Jeremy Pocklington: I am very happy to share this with the Committee. The overarching cost-benefit analysis for smart meters is very strong and positive. It shows that the programme will have a net benefit to consumers: £5.7 billion is our overarching estimate for smart meters.

Q195 **Stephen Kerr:** Do you have any data or evidence to suggest that the 7 million that have already been installed have led people to switch?

Jeremy Pocklington: I do not have that information to hand. I am very happy to see what data we have.

Stephen Kerr: It would be useful data.



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Jeremy Pocklington: The move from the initial generation of smart meters to the next generation, the so-called SMETS 2 meters, will enable even easier switching.

Q196 **Stephen Kerr:** Exactly. I declare an interest: I had a smart meter installed from Centrica. As soon as I used the data to switch my energy supplier, my smart meter was no longer smart. How on earth can we have a competitive marketplace with the SMETS 1 meters?

Jeremy Pocklington: Something we are taking forward is, as the rollout of SMETS 2 meters gets underway, we will be looking to improve the software in the SMETS 1 meters to enable that switching to occur. We have had to prioritise important decisions within a very large, complex programme that delivers substantial benefits to consumers.

Q197 **Stephen Kerr:** You do not know how many of the 7 million SMETS 1 smart meters are no longer smart because consumers have switched.

Jeremy Pocklington: I do not have that information to hand.

Stephen Kerr: Okay, but you do have it.

Jeremy Pocklington: I would have to go back to the department.

Stephen Kerr: It would be fascinating if you would share that.

Jeremy Pocklington: Yes, by all means.

Chair: It would be good if you could follow up with that. We might also follow up with some issues about vulnerable customers and data sharing, but we are expecting some information from Ofgem on that. We may come back to you on that.

Q198 **Drew Hendry:** Secretary of State, you have heard earlier that there are concerns about the unintended consequences of the price cap. Could you tell us what other options were considered? For example, were mandatory targets for energy suppliers to switch people from standard variable tariffs considered? What was considered by your department in terms of the options for the price cap?

Greg Clark: In looking at the responses that the CMA made, it had a number of different proposals. The essence of them was that they seemed, in my view, agreeing with the minority view of the CMA, not to take effect in sufficient time. When the CMA proposed the solution, which was the price cap for prepayment meters, the analysis seemed to me to be compelling. It has been successful, so expanding that seems to be the right approach.

Q199 **Drew Hendry:** Were any other mechanisms considered seriously?

Greg Clark: Yes, all the proposals that were in the CMA report.

Q200 **Drew Hendry:** What analysis is available on how those came out?



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Greg Clark: Our assessment was that they would not have the impact in time. Over time, smart meters, as Mr Kerr said, would make a big contribution, but there is a time aspect of this. One of the conclusions of the minority report was that the remedies proposed will take some time to come into effect, and that a wider, non-renewable price cap for a short period, in the view of the minority report, would give reliable and speedy relief from the very high levels of charging that consumers are currently facing.

Q201 **Drew Hendry:** Could you tell us if there were any estimates made, or what estimates were made, of whether or not the mandatory targets would have been less harmful to competition?

Greg Clark: I do not believe that the proposal will be harmful to competition.

Q202 **Drew Hendry:** With respect, that is not what I am asking you. Was there any estimate on whether or not mandatory targets would be less harmful to competition?

Greg Clark: I do not accept that there is any harm to competition. A scenario of harm to competition does not arise.

Drew Hendry: We have heard earlier that other players in the market, such as consumer groups and Which?, consider that there may be unintended consequences from the price cap. I am interested to know what estimate was made of other mechanisms to see whether or not they would be less harmful or potentially less harmful.

Greg Clark: They will not be harmful to competition. It is a requirement of the setting of the cap that competition is maintained. Just to think about it, you have taken evidence from some of the smaller suppliers. If you think of a supplier that is offering competitive deals in the market now, it is doing them below the current level of SVT charges. There is no reason why it would migrate to a higher level when its business model is about attracting consumers on the basis of price discounts.

Q203 **Chair:** Just to clarify one thing in the Bill, you have annual reviews built in about whether you need to continue with the cap. Then there is a sunset clause in 2023. If you were worried that the consumer detriment would return if you got rid of the price caps, is there any reason why it has to finish in 2023? Everything you have said today suggests that you do not think that the energy companies will sort this out themselves. You need intervention because the market is not functioning, particularly for one group of customers, but you want to go further and have an overall price cap. Is there a reason why you have that sunset clause in 2023?

Greg Clark: It is a good question, Chair. There are two answers to it. One is that the unanimous view of the Competition and Markets Authority, both the majority and the minority reports, was confident that over time, between three and four years, the impact of these measures would increase. No one was recommending that there should be a



permanent infinite price regulation. My view to this Committee is that we are addressing a temporary problem and we should have the means to do that. We have given the flexibility to renew it during the next few years so that that can be kept under review. We have talked about how Ofgem will need to be transparent about the assessment of that.

The second reason relates to the Second Reading debate we had on smart meters. It is the right thing, when you are introducing legislation and regulations, to have a defined period that expires, so that it does not become a permanent feature of the landscape. It will be for future decision-makers to determine whether the situation has been resolved. The right expectation is that this should be a time-limited cap that is in line with the recommendations that have been made.

Q204 Chair: Finally, to clarify that, what do you expect to happen in those three or four years while you have a price cap, in terms of either how the market functions or how consumers behave? What do you expect to happen in that period of the temporary price cap to ensure that, at the end, it is no longer needed?

Greg Clark: What I hope and expect to happen is that the level of detriment will be eradicated. You will have increasing levels of competition. The absence of available information will be corrected. As smart meters are upgraded to the next level, they will correct this imbalance between consumers and suppliers, so we will have a vigorous consumer energy market.

Q205 Chair: You expect both the energy companies to change their behaviour, but also customers to become more engaged and more likely to switch. Do you think you will be switching in 2023?

Greg Clark: There is a recognition on the part of the energy companies now that this old model, in which you can rely on people simply putting up with very high and excessive prices and take advantage of that group of people, is not consistent with good business practice. The reputation of companies is important. Most of our constituents do not go through the process of looking for different deals every year, for a variety of different mechanisms. It is perfectly reasonable to expect companies not to require their customers to do that time and time again simply to avoid overcharging. There is a dawning recognition of that among the companies, as I think and I hope that we will find across the House of Commons.

Chair: Thank you very much, Secretary of State, Minister and Mr Pocklington, for coming to give evidence to the Committee today.