

Derek Breslin  
Retail Policy Interventions  
Ofgem  
10 South Colonnade  
London, E14 4PU

6th November 2024

Dear Derek,

***Nous response to the Future of the Ban on Acquisition only Tariffs (BAT) after 2025***

**Introduction to Nous**

Founded in 2021, Nous is a consumer subscription service that cuts bills for UK households by many hundreds of pounds a year. A pioneering example of agentic AI, Nous saves money and time for its customers by intelligently managing their services including energy, broadband and mobile, finding fair deals with new and existing suppliers, monitoring service levels and pro-actively switching its users as required. Nous works on behalf of its customers to secure long-term, low pricing on bills, based on their preferences and needs.

Nous is uniquely positioned to do this as it does not profit from supplier commissions, which allows it to make independent decisions in the best interests of its customers. This allows us to work in the best interests of our members (households) in preferring suppliers who offer everyday low prices and good service, rather than being reliant on commissions for switching.

Nous actively works with suppliers to promote 'everyday low prices' (instead of very low initial offers funded by high prices to loyal customers). This reduces the need for periodic switching, lowering the efforts and costs imposed on consumers who are currently forced to switch periodically to avoid a loyalty penalty. A more loyal and highly satisfied customer base also works well for suppliers, with lower acquisition costs and better long-term planning.

Nous generates important, quantifiable benefits for our customers:

- Nous's pro-consumer stance is encoded in its B Corp status and reflected in the exceptionally high level of customer satisfaction, as can be seen by its 2024 Net Promoter Score (NPS) of +72 (a number that greatly exceeds even the highest score of +25 if any energy supplier, and the industry average NPS of -14).
- Average savings identified per household upon sign-up to Nous is in the region of £500, a number that grows over the time the customer has an account with us.
- We are particularly focused on helping low-engagement consumers, who often get the worst deals on their energy bills.
- We help our customers identify support available to vulnerable groups as demonstrated by e.g. our broadband social tariffs campaign in partnership with The Sun newspaper.

## Summary of our detailed responses to this consultation

We welcome the opportunity to respond to this consultation. We have expressed our concerns with the BAT in our response to previous consultations (December 2022, November 2023 and June 2024).

We continue to have serious reservations with the BAT, and new evidence (based on recently commissioned research<sup>1</sup> which is detailed below in our response to **question 1**) reinforces our concerns that the BAT effectively penalises those who are more likely to engage in the market without providing sufficient countervailing benefits to the disengaged or vulnerable.

- In the current market context, the BAT is contributing to lower switching rates among more engaged consumers. Average savings currently achievable with the BAT in place are only around £86 for an average household. We found 82% of consumers who are engaged (which is to say active in the market) would not switch to another supplier for a saving of less than £99, whereas 40% of the same group would take a new deal from their current supplier for the same level of saving.
- Consumers who are disengaged from the market (less prone to switching) would be significantly more likely to take action to switch to another supplier if the savings realisable by doing so were higher (46% would switch for a saving of £150+, whereas only 14% would do so for a saving of under £99;

By significantly lowering the rates at which consumers would switch the BAT has the negative long-term effect of attenuating retail competition. This is leading to worse consumer outcomes in several distinct respects:

- It results in higher prices as suppliers have less incentive to reduce prices to win new customers when they can secure their existing customers for less, as our research indicates.
- Less competition is spurring less innovation – in particular innovation which might otherwise emerge to help meet the needs of less engaged customers and more vulnerable customers.

We believe that arguments advanced for extending (or permanently retaining) the BAT are not adequately grounded in evidence.

- We share the desire of consumer groups to protect loyal consumers, but believe that they have insufficiently considered the negative consumer consequences of the BAT in equilibrium on incumbent supplier behaviour.
- The BAT is the wrong instrument to maintain market stability; Ofgem's other interventions suffice. In particular, financial responsibility rules due in March 2025 are adequate to give Ofgem the stability assurance it needs.

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<sup>1</sup> Using an online surveying platform that allowed us to apply very specific criteria to respondents in terms of current energy provision (i.e. Scotland, England and Wales only, paying Direct Debit or on receipt of bill, and a further group with very low household incomes (i.e. less than £16,000 a year)

- Recent increased market activity is not an indicator of the BAT's effectiveness. A recent spike in switching is a function of acute fear that prices will rise in winter, and not evidence of increased competition or lower prices.
- Large suppliers' strong support for the BAT should be regarded with circumspection: the BAT has the effect of increasing customer retention and thereby improving supplier profitability other things being equal.

For these reasons, we advocate that the BAT should be removed as soon as practicable.

Notwithstanding our concerns, we recognise Ofgem may be minded to consider an extension past 31 March 2025 pending the holistic review of retail protections due to occur over the next year or so.

Should Ofgem not opt to remove the BAT at this stage, we urge it to use any extension to gather more evidence on the impact of the BAT on customers in more stable market conditions so that it can take a more informed view on the long term role and shape of the BAT. Steps that Ofgem might consider taking during any extension period include:

- Allow acquisition-only tariffs with limited price differentials
- Ofgem could run a trial where acquisition only tariffs were made available in limited geographic areas, while the rest of the UK continues with BAT to act as control group.
- A conditional exemption from the BAT provided the supplier materially lowers its SVT below the level underpinning the price cap modelling. This would aim to leverage competition for engaged consumers to also benefit the disengaged.
- Peg the savings on the acquisition tariff to a multiple of the savings available on the retention tariff vis a vis the SVT (i.e. to avoid cross-subsidies).

We would be happy to work with Ofgem and suggest a few ways to test a post-BAT future.

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## Q1. Do you agree that the BAT should be extended for another 12 months post 31 March 2025, i.e. until 31 March 2026?

The current market is in an uncompetitive equilibrium which is not benefiting customers. The BAT is helping to create rigidities and barriers to competition in a market that is now highly concentrated<sup>2</sup>. This serves to make a non-competitive equilibrium stable and thus sustainable. This lack of competitive pressure that characterises the equilibrium means it is unlikely to be in consumers' overall interests for the BAT to persist beyond 2025.

The BAT has had and is having a very significant impact on pricing behaviour. To give an indicative sense of how equilibrium pricing has changed, the typical realisable saving a consumer could achieve by switching or accepting a retention deal in October 2024 was £86 below the price cap of £1,717 – a saving equivalent to 5% for a household with average

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<sup>2</sup> A new Big 6 of energy suppliers once again dominates the market, holding 91.4% electricity market share in H1 2024. <https://www.Ofgem.gov.uk/energy-data-and-research/data-portal/retail-market-indicators>

usage. Before the crisis, by contrast, the typical saving for switching to a fixed tariff from an SVT was around 25%.

While market activity must be sustainable and trust in suppliers is important to encourage consumers to transition to Net Zero products, we believe the current market equilibrium is not delivering on the most important outcome for struggling households: cheaper bills.

## A. The BAT is not resulting in better consumer outcomes: it is penalising those who would previously have switched without providing sufficient benefits to less engaged or vulnerable consumers

To underscore the problems which the BAT causes, we commissioned research<sup>3</sup> in October 2024 into how it is affecting consumer behaviour. Our research indicates the BAT does not create better consumer outcomes. Much of the debate around the BAT centres on the assumption that it delivers more equitable outcomes for all consumers. We've found little evidence to support this theory.

### **We conducted research to understand the effect of BAT upon consumers**

Nous surveyed two cohorts of consumers in October 2024.

1. **General group:** 818 people representative by gender, age, income and region but otherwise skewing towards those who are online and active participants on survey platforms. The cohort is for post pay customers only, either paying Direct Debit or on receipt of a bill.
2. **Low income group:** 587 people with a household income of under £16,000. Scotland and Wales. Representative by gender, age and region but otherwise skewing towards those who are online and active participants on survey platforms. 74% were in receipt of benefits. The cohort is for post pay customers only, either paying Direct Debit or on receipt of a bill. (We chose to exclude prepay customers so that we could reach households who were more likely to be receiving regular communications from their supplier, however this will have had the effect of excluding some of the most vulnerable households.)

Among the **General group**, we distinguished two distinct customer groups:

- An **engaged subgroup** who may have previously been a regular switcher and may now search for better deals with either their existing supplier or a new one
- A **disengaged subgroup** who do not currently seek out savings. This group also includes many vulnerable groups for whom access to the market is more difficult

To categorise respondents into appropriate subgroups, we asked the 818 General group respondents which of these actions they'd taken in the last 2 years.

- 17% said they had switched supplier
- 33% said they had signed up to a new deal with their current supplier
- 50% said they had done nothing

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<sup>3</sup> We are happy to share further details of our research findings with Ofgem upon request.

We classified the 412 people from the General group who'd taken some action in the last two years into the **engaged subgroup**.

We classified the 50% from the General group who had not switched or taken a new deal from their supplier in the last 2 years into the **disengaged subgroup**.

### **We found that Engaged subgroup customers would settle for a lower saving to stay with their current supplier**

Looking at the 50% of customers who we classified as **engaged** in our General group:

- 56% had checked for a better deal in the last 12 months and 77% said they would switch suppliers now for a saving.
- However only 18% said they'd do it for less than £99.

This suggests that *the vast majority (82%) of engaged customers are highly unlikely to switch given the low levels of savings currently achievable<sup>4</sup> given the BAT*. Yet 40% of the same group said they would take a new deal with their current supplier for a saving of less than £99 over 12 months.

This indicates that *engaged customers would settle for a lower saving by staying with their current supplier*.

The lack of price competition in the market means that few engaged customers are motivated to move for currently realisable levels of savings. Yet they would compromise for a lesser saving with their current supplier.

Further to this, only 35% could remember their supplier contacting them about new offers.

### **We found that Disengaged subgroup customers' propensity to take action to save money is low when savings are at current levels**

Of the 50% surveyed who we classified as **disengaged** within our General group:

- 31% had looked for a better deal in the last 12 months and 30% said they would switch suppliers now for a saving.
- When it came to thresholds for action, only 14% say they would switch suppliers for a saving of less than £99, whereas 46% said they would switch for average savings of £150+.
- 31% said they would, if offered, take a new deal with their current supplier even if savings were less than £99.

These data suggest that those customers currently disengaged in the market, could be encouraged to take action *if achievable savings were higher*, although they are also likely to compromise on a lesser saving from their current supplier -- presumably due to perceived convenience costs of switching.

It is also worth noting that suppliers are seemingly doing little to ensure that disengaged consumers are aware of potential savings. We found that only 36% could remember their supplier contacting them with a better offer at any time in the previous 12 months.

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<sup>4</sup>We benchmarked our savings comparisons to the average saving a consumer would get if they switched or took a retention deal in October 2024 where the average saving was 5% under the price cap of £1,717, the equivalent of £86 for an average household.

## **We found that outcomes for vulnerable customers and those at risk of fuel poverty are no better**

74% of our **low income group** receive benefits and are at higher risk of fuel poverty and debt. In respect of this group, we found that:

- 36% had looked for a better deal in the last 12 months and 66% said they would switch suppliers now for a saving.
- Only 21% would have switched for a saving of £99 or less, vs 54% who said they'd switch if the saving was £150+.
- Yet 40% would have taken a deal from their existing supplier for a saving of £99 or less.

That is to say, almost twice as many within the **low income group** would settle for a lower average saving to stay with their current supplier over moving suppliers for the same saving.

These data imply that despite the availability of existing customer deals which could help this group who could most benefit, there is no evidence that any additional effort is being made by suppliers to improve awareness.

## **There is no evidence that suppliers are reaching vulnerable customers more effectively than other groups**

Comparing our **low income group** with the **general group**:

- Only 35% within the low income group could remember being contacted by their supplier in the previous 12 months with an offer of a money-saving deal.
- Within the general group the number was also 35%.

There is no regulatory requirement for suppliers to make special efforts to support lower income households. However, given that only around a third of customers who may be vulnerable are aware of better deals, it does not appear that the BAT is helping lower income groups to access better prices.

Poor results for lower income customers is not a surprise: suppliers have no obvious incentive to improve their awareness.

In passing, we note an analogous issue in the telecoms sector in respect of social tariffs where despite regulatory and departmental efforts there has been persistently low awareness (half of eligible customers) and even lower take up (8.3% of eligible customers) of social tariffs for fixed broadband and mobile ([here](#)), despite huge available savings.

We conclude from our research summarised above that the BAT penalises those who are more likely to engage in the market without providing sufficient benefits to the disengaged or vulnerable.

## B. The BAT is not promoting innovation that would help disengaged and vulnerable customers

The Government and Ofgem have<sup>5</sup> signalled their focus is on promoting innovation. This is an effective admission that the current market structure and regulatory framework does not provide the right incentives to encourage the socially desirable level of innovation from the private sector.

Continuing to have such a tight regulatory framework in the domestic energy market risks slowing the pace, or at worse, eliminating innovation that could evolve to deliver better, low cost solutions for disengaged customers.

There has been very little innovation over the last 2 years, in particular in areas that could help the disengaged and vulnerable customers.

Market innovations such as collective switching and first generation auto switchers were helping to meet the needs of disengaged consumers before the energy crisis put them out of business or severely subdued their activity.

On this point, we particularly refer you to our previous submission dated November 2023 where we made a specific evidence-based counterfactual case that had the energy crisis not occurred, market-led innovations would have continued to develop rapidly to meet the needs of a very significant proportion of disengaged consumers..

The underlying market conditions which led to unsustainable pricing practises amongst the suppliers using these models no longer exist on account of the introduction of fit & proper tests and forthcoming capital adequacy rules. Yet the BAT is serving to inhibit market-led innovation of new distribution models, with the biggest losers likely to be the least engaged customer groups.

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## Q2. Do you agree with the reasons set out in this section supporting our proposal to extend the BAT until 31 March 2026?

Ofgem's rationale for extending the BAT is based on key points which we don't believe have been proven.

### **1. Vulnerable customers and those in debt can still save money by moving to an existing customer deal which they wouldn't have access to if the BAT was lifted.**

As we have highlighted from our consumer research, disengaged and vulnerable customers are not taking advantage of these deals as the majority are not looking for them or being alerted by their supplier to their existence. We also disagree that without the BAT these deals would not be available to these customers. Our proposals earlier in the response for testing options to move away from the BAT would be a way to understand the impact on customers and the availability of these offers.

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<sup>5</sup> <https://www.Ofgem.gov.uk/consultation/innovation-energy-retail-market>  
<https://www.gov.uk/government/calls-for-evidence/towards-a-more-innovative-energy-retail-market-a-call-for-evidence>



Increasing awareness on its own is also unlikely to solve the problem. Ofgem knows from years of experience that it is extremely difficult to reach disengaged consumers to encourage them to take action regarding their energy supply. Simply making these offers available is not enough to make a difference, meaning *a substantial part of the market is currently being penalised without a corresponding benefit accruing to those who most need it.*

## **2. The BAT means consumers have more trust in a fairer energy market.**

We agree consumer trust in the market is vital, but we disagree about how you create that trust. Consumers mistrust suppliers who charge high prices and make large profits whilst having poor customer service. These factors are all present in the current market, as regular vitriolic press reporting about supplier profits and the high salaries of energy company CEOs attest.

If polled, consumers will of course say that a supplier's new customers should not get access to better deals than their existing customers. But the framing of this wrongly implies that the absence of price incentives for new customers does not have significant adverse consequences for absolute levels of switching, and by implication result in a less competitive and dynamic market, which is not ultimately to consumers' advantage.

## **3. The BAT brings continued Market stability**

The BAT is the wrong instrument to maintain market stability; Ofgem's other interventions suffice. Ofgem has done a lot to promote stability. Having introduced financial resilience regulation, the regulator should not address concerns around protecting disengaged consumers via a market stability tool. Outside a time of crisis, the BAT is too blunt and disproportionate a tool to help maintain stability.

One purpose of the BAT was to stop "tease and squeeze" behaviour seen before the crisis, where prices for new customers were set at unsustainable levels by newer and smaller suppliers. Capital adequacy rules coming in March 2025 make this type of pricing activity all but impossible.

If there is no incentive for suppliers excessively to undercut market pricing there is no requirement for the BAT to stabilise the market. The remaining purpose of the BAT is to promote equitable outcomes for customers by not allowing discrimination of one group in favour of the other and, as we have identified, it does not fulfil this purpose.

## **4. Ofgem believes the impact to competition and pricing may be resolved in the long term**

There was (arguably) too much unsustainable price competition prior to the crisis. Consumers are now exposed to an equally serious problem: insufficient price competition.

The market has experienced dramatic consolidation, and very limited new entry: small supplier market share is now just 1.8% vs a collective 42.8% for British Gas and Octopus in H1 2024. This market concentration combines with residual price controls (of which BAT is one example) to result in a stable market in an equilibrium which does not lead to good consumer outcomes.



Now that the market is stable, Ofgem should be seeking a happy medium—which means more price discipline for incumbents. There is not enough evidence to show consumers will benefit if this situation continues, whereas increased competition now within Ofgem’s guard rails (i.e. financial resilience regulation) would be immediately helpful to consumers.

**Other arguments raised by third-parties fail to recognise the detrimental impact of the BAT:**

- Suppliers greatly benefit from the consumer inertia that the BAT helps to ensure. Better customer retention enabled by the reduced likelihood of a customer having the incentive to shop around enhances supplier profitability.
- Some may argue that recent increased switching activity is a sign that the BAT is not impeding competition. Domestic electricity switching numbers for September 2024 were up to 290k according to Energy UK<sup>6</sup> and it is our expectation that October switching volumes will increase again.

Our practical experience of the current market is that this spike is driven not by the availability of more deals and competitive pricing, but rather an unusually high anxiety level from consumers about winter price increases. Over recent weeks, consumers have been exposed to messages in the press and from suppliers to the effect that, “bills going up by 10%, fix now.”

- As a business that works directly in and for the interests of consumers, we strongly share the desire of consumer groups to protect loyal consumers. However we believe they are mistaken in thinking that retaining the BAT will lead to better outcomes in equilibrium. We believe fairer and more equitable outcomes would be achieved if the BAT was lifted to allow more competition in the market to bring prices down for those who do shop around, while also creating more incentive for innovative distribution models that support the needs of less engaged consumer segments. There should then be a focused regulatory effort to help support vulnerable and in debt customers.

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### Q3. Are there any other factors which Ofgem should consider, when determining whether or not the BAT should be extended post March 2025?

We believe there are other approaches Ofgem could consider to learn about BAT effectiveness which would prove less distortive.

At present, decisions are being made to retain a regulatory measure without any understanding of what the alternative could look like in today’s energy market. As argued above, we believe that the BAT should be removed. Notwithstanding this, if Ofgem is not minded to remove the BAT, we would encourage it to use the 2025/26 period to test whether removing the BAT could improve market effectiveness with its other guard rails in place and without removing it entirely.

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<sup>6</sup><https://www.energy-uk.org.uk/wp-content/uploads/2024/10/Electricity-Switching-Report-September-2024.pdf>

We have several recommendations for how to do this:

- Our preferred route is for Ofgem to allow acquisition-only tariffs with limited price differentials e.g. a maximum percentage saving compared to SVT. The maximum allowed % differential would be set at a level that in Ofgem's view avoids excessive cross-subsidies between engaged and disengaged consumers.
- Ofgem could run a trial where acquisition only tariffs were made available in limited geographic areas, while the rest of the UK continues with BAT to act as control group. We recognise that this would have to be implemented carefully to ensure consumers in these regions felt fairly treated but it would be a good way of providing conclusive data on its effectiveness.
- Ofgem could permit a conditional exemption from the BAT provided the supplier materially lowers its SVT below the level underpinning the price cap modelling. This would aim to leverage competition for engaged consumers which also benefits the disengaged segment.
- A further option would be to peg the savings on the acquisition tariff to a multiple of the savings available on the retention tariff vis a vis the SVT (i.e. to avoid cross-subsidies).

We would be happy to work with Ofgem to discuss how these options could work. We have put forward a number of options to show that there are ways in which the consumer impact of removing the BAT could be tested to give confidence to support its removal from 2026, should Ofgem not be persuaded of the merits of its earlier removal.

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#### Q4. Do you believe that the existence of the Market-wide Derogation, and the ability of suppliers to offer bespoke retention-only deals, is consistent with the principle of consumer fairness within the retail market?

The requirement for a market wide derogation is linked to the existence of the BAT. It should be possible for suppliers to offer bespoke retention-only deals to their customer base as part of their overall competitive strategy. However, if the BAT was to be removed we believe there would be limited need for continued market wide derogation.

Yours faithfully



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