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## Consultation Response

### Which? response to Ofgem's Consultation on the Future of the Ban on Acquisition-only Tariffs (BAT) beyond March 2025

Submission date: 05/11/2024

## Summary

Which? welcomes this opportunity to respond to Ofgem's call for input on the future of the BAT. We support the proposals to extend the BAT until at least March 2026, and are pleased that Ofgem has taken account of the substantial concerns raised by Which? and others in response to the May 2024 Statutory Consultation.<sup>1</sup>

- **Consumer fairness.** Retaining the BAT is in the best interests of consumers. As set out in our response to the statutory consultation,<sup>2</sup> removing the BAT would have risked increasing loyalty penalties and undermining consumer trust. Which? and others submitted to Ofgem a body of evidence showing that consumers find acquisition-only pricing unfair and prefer for the BAT to be maintained.<sup>3</sup> We are pleased Ofgem is now taking greater account of these findings and the broader risk to market trust and competition.
- **Impact assessment and broader price protection work.** Ofgem's analysis at the statutory consultation phase was flawed and did not adequately demonstrate that removal would have led to net customer benefits. We continue to believe that under better assumptions, a finding of net detriment would have been more likely. Extension to at least March 2026 is appropriate so that Ofgem can take a fuller examination of the impacts on competition and fairness. We also agree that extension is appropriate so that Ofgem can consider the future of the BAT in Ofgem's broader work on the future of retail price protection.

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<sup>1</sup> [Letter to the Ofgem Chair regarding the ban on acquisition-only tariffs](#), June 2024

<sup>2</sup> Which?, [Response to Ofgem's statutory consultation on the future of the BAT](#), June 2024

<sup>3</sup> Which?, [How do consumers feel about acquisition-only tariffs](#), June 2024

## Full response

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

Yes. As set out in our response to the statutory consultation, we have considerable concerns that removing the BAT would lead to harmful loyalty penalties returning to the market, undermining consumer trust.

We support Ofgem extending the BAT for a further 12 months to March 2026, and particularly welcome the intention set out in paragraph 2.26 of the consultation that “the BAT will remain in place as a feature of the market until decisions are made on its permanent status.” We believe this is the right approach, rather than an ongoing assumption that the BAT should lapse, particularly given the ongoing work on the future of price protection.<sup>4</sup>

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

We agree with Ofgem on all of the main reasons for extension set out in the consultation.

Not taking into account strong consumer views was a major deficiency in Ofgem’s analysis underpinning the previous minded-to position of removing the BAT. We are pleased to see this now taking a more prominent role in the decision. We also agree that retaining the BAT would lead to more positive outcomes for customers in debt that may be prevented from switching.

We raised concerns about consumer trust and fairness in our response to the statutory consultation. In a survey of 1,912 consumers responsible for their energy bills, we found around 8 in 10 think acquisition-only pricing is unfair, even in circumstances where they are likely to benefit. This was also consistent with polling from others showing that the overwhelming majority of consumers think that acquisition-only pricing should not be allowed.

We are also glad Ofgem has recognised that extension would allow for a more thorough analysis of the impacts of retention or removal of the BAT. The BAT was introduced in a time of substantial market stress and at the same time as other market interventions like the Market Stabilisation Charge, which was only recently removed. This meant Ofgem’s previous impact analysis relied on assumptions and/or data based on a period in the energy market that is not likely to continue. Extension until March 2026 will be necessary to observe the impacts of the BAT in a more stable market.

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<sup>4</sup> Ofgem, “[Future Price Protection Discussion Paper](#)”, March 2024

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

While we agree with Ofgem’s decision and the weight it has now placed on consumer trust, we still have some concerns that Ofgem is setting these ‘qualitative’ benefits as a trade-off against mis-diagnosed harms from retaining the BAT. In our response to the statutory consultation we set out in detail why we thought that Ofgem’s impact assessment was flawed and did not provide evidence that removing the BAT would lead to net financial benefits for consumers. Those concerns remain.

We believe that retention of the BAT will have positive financial impacts on consumers by reducing the loyalty penalty between those who switch supplier and those who move to their supplier’s best tariff. In our view this is the key benefit of the BAT, and Ofgem must take this into account in any future analyses of its impact. The CRA report submitted to Ofgem by So Energy shows that under different (and in our view more realistic) assumptions to Ofgem, there is a strong case that removing the BAT would have led to net consumer detriment rather than overall benefits.<sup>5</sup> That detriment would be paid for by consumers not switching supplier.

We support Ofgem looking at these issues more holistically through its work on the future of price protection.

**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?**

We do not have any major concerns about the market-wide derogation. Retention-only deals would be most concerning where they are not available to all of a suppliers’ current customers. For example, retention deals which are only offered to customers that threaten to switch or who call their supplier would clearly not be in the spirit of the BAT and would likely be seen as unfair by customers. Ofgem should consider whether this is happening, and whether the derogation would allow it.

**Q5.Do you believe that the Market-wide Derogation has (or is likely to have) a significantly positive or negative impact on consumer interests, or on competition within the retail market? Please provide supporting evidence wherever possible.**

No comment

**Q6.Are there any other factors which should be considered when looking at the impact of the Market-wide Derogation on the market?**

No comment

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<sup>5</sup> Submitted in response to the [statutory consultation](#)

**Q7. Do you agree with our proposal to retain the Market-wide Derogation until March 2026, and our reasons therein supporting this proposal?**

No comment

**Q8. Would you recommend any changes to the operation of the Market-wide Derogation (assuming that it was being retained for the longer term)?**

No comment

**Q9. Are there practical and/or operational difficulties with how the BAT functions at present? Where possible, we would also welcome any perspectives on how these may be resolved in any future enduring BAT.**

No comment

## About Which?

Which? is the UK's consumer champion, here to make life simpler, fairer and safer for everyone. Our research gets to the heart of consumer issues, our advice is impartial, and our rigorous product tests lead to expert recommendations. We're the independent consumer voice that works with politicians and lawmakers, investigates, holds businesses to account and makes change happen. As an organisation we're not for profit and all for making consumers more powerful.

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