

Modernising Regulated Consumer Markets

Taking Stock and Looking Ahead

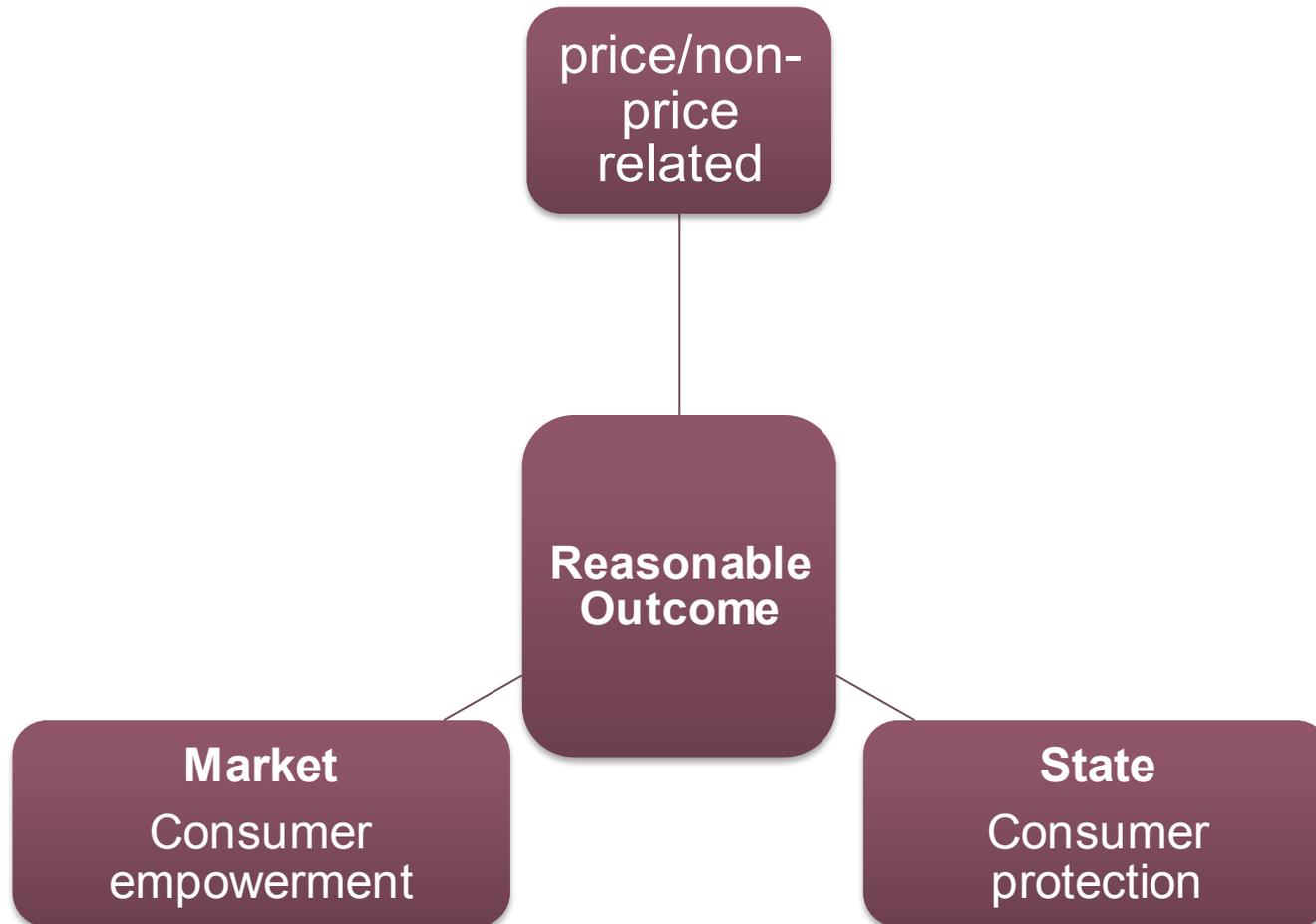
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*Consumers that are well-informed and shop around get the best deals, but **all** consumers should expect to get **reasonable outcomes**, even if they do not actively search for the best deal.*

(Modernising Consumer Markets: Consumer Green Paper, para. 38)



Competition in liberalised markets creates 'winners' and 'losers'



CMA Energy Market Investigation

- *[t]here is in effect a **two-tier** market in operation whereby **active** customers save money by switching suppliers, but those **who can't or don't switch** remain on poor value tariffs. It is of particular concern that customers who don't switch typically **tend to be more vulnerable** than those who are getting the best deals. The difference between the cheapest available tariff and the average Standard Variable Tariff of a Big 6 supplier is around £300.*

BEIS, Energy: Written Statement (26 February 2018)

Identifying the 'losers'

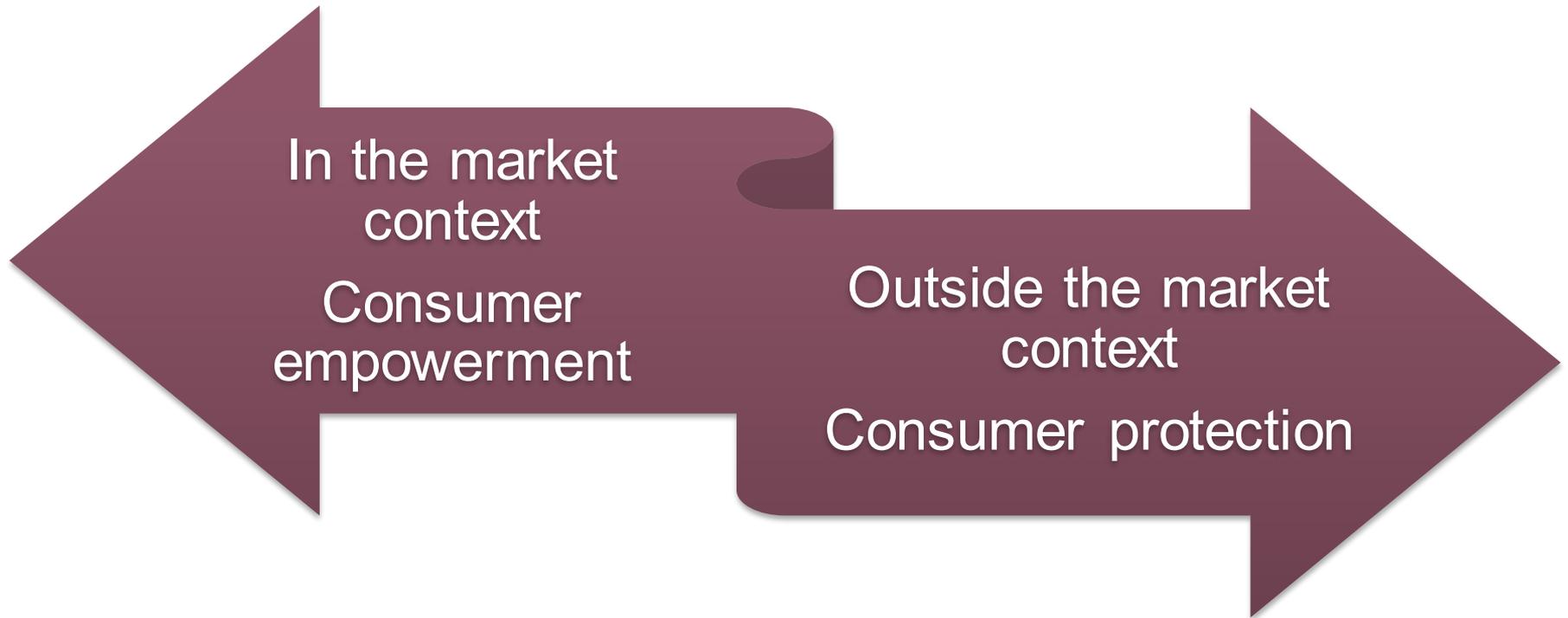
A large, dark red arrow pointing to the right, containing the text 'Behavioural consumers' in white. The arrow has a rectangular tail on the left and a triangular head on the right.

Behavioural
consumers

A large, dark red arrow pointing to the left, containing the text 'Vulnerable consumers' in white. The arrow has a rectangular tail on the right and a triangular head on the left.

Vulnerable
consumers

Addressing the 'losers'



In the market
context

Consumer
empowerment

Outside the market
context

Consumer protection

CMA Energy Market Investigation: Findings

- “... attempting to control **outcomes** for the substantial majority of customers would – even during a transitional period – **undermine the competitive process**, potentially resulting in worse outcomes for customers in the long run. This risk might occur through a combination of reducing the incentives of customers to engage, reducing the incentives of suppliers to compete, and an increase in regulatory risk.” (p. 656) – CMA majority opinion
- **BUT in a dissenting minority report**, Professor Martin Cave took a different view:
- “The harm which is presently inflicted on households in this market (**£2 billion in 2015, or an average of £75 for every British household**) is very **severe** But the remedies proposed for the large majority of households will take some time to come into effect, and are in any case untried and untested.” (p. 1415)

Energy price cap comes into force

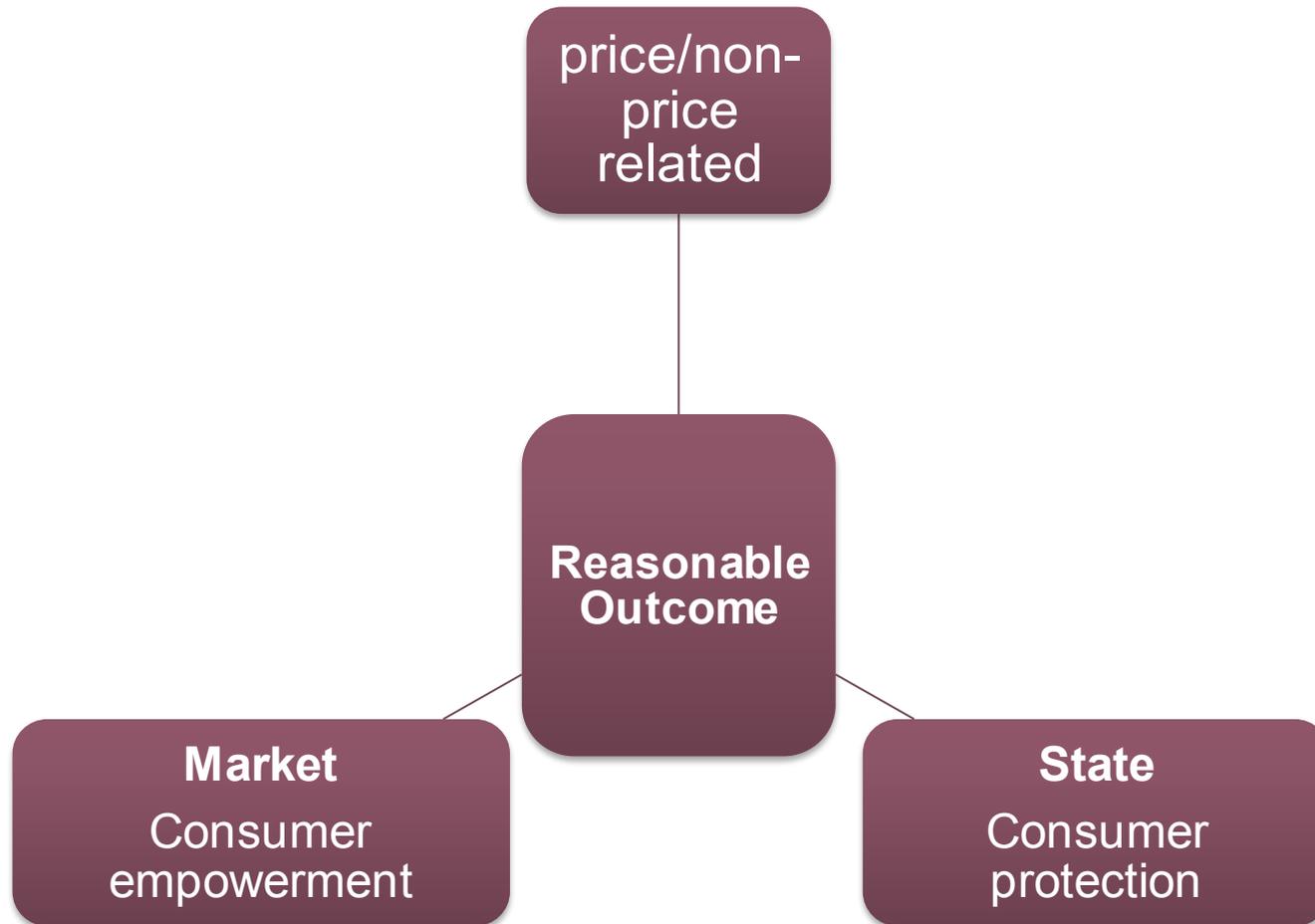
By Kevin Peachey
Personal finance reporter

🕒 1 January 2019

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GETTY IMAGES



Price cap as a consumer protection measure

- The energy price cap = a consumer protection measure implemented through state intervention in retail price setting and informed by affordability considerations.
 - One of the defining elements of services of general economic interest, such as energy supply.
 - ‘High levels of affordability’ feature in the new Protocol No 26 on Services of General Interest (inserted by the Treaty of Lisbon) among the ‘shared values of the Union’ in respect of services of general interest.
 - Though affordability can be achieved via various instruments, not necessarily lying within the market context (such as tax exemptions or subsidies) the common denominator is that they all involve a departure from the purely economic rationales for public intervention in markets so as to achieve a socially, rather than economically desirable outcome. Such an outcome is reflected in the concept of an ‘affordable price’. Affordability necessitates, in principle, a departure from cost-reflective prices set by the market mechanism.

Is the Road to Hell Paved with Good Intentions?

THE MODERN LAW REVIEW

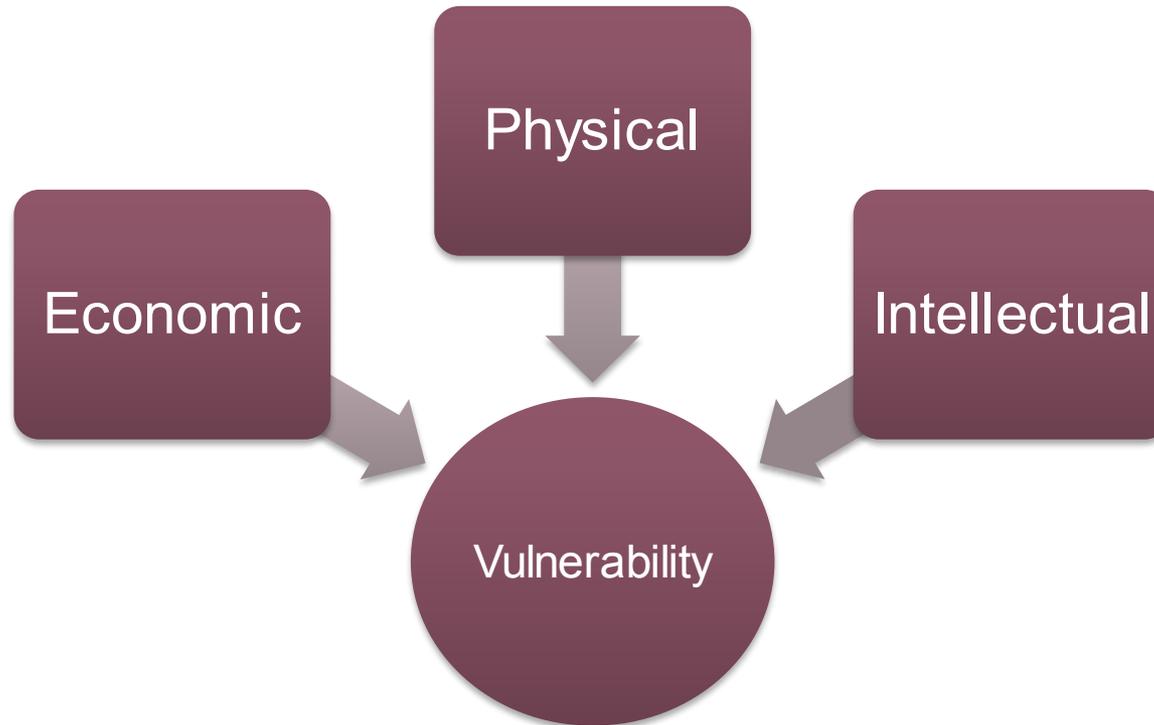
Modern Law Review
DOI: 10.1111/1468-2230.12400

The UK Domestic Gas Electricity (Tariff Cap) Act: Re-regulating the Retail Energy Market

Maria Ioannidou* and Despoina Mantzari†

The UK retail energy market has witnessed multiple regulatory interventions since its liberalisation almost two decades ago. Such interventions reached their peak with the enactment of the UK Domestic Gas Electricity (Tariff Cap) Act in July 2018. The Act puts in place a requirement on the independent regulator, the Office of Gas and Electricity Markets (Ofgem), to set an absolute price cap on poor value tariffs. As such, it signals a repudiation of the overarching paradigm of consumer empowerment that has informed regulatory remedies to date. Rather than advocating for a different paradigm, this article highlights the difficulties inherent in reconciling price caps – both practically and conceptually – with the competitive process and consumer empowerment. It also discusses other instruments, not necessarily exhausted in retail price regulation, that can render affordable energy prices, without sacrificing consumer empowerment.

The multifaceted nature of consumer vulnerability

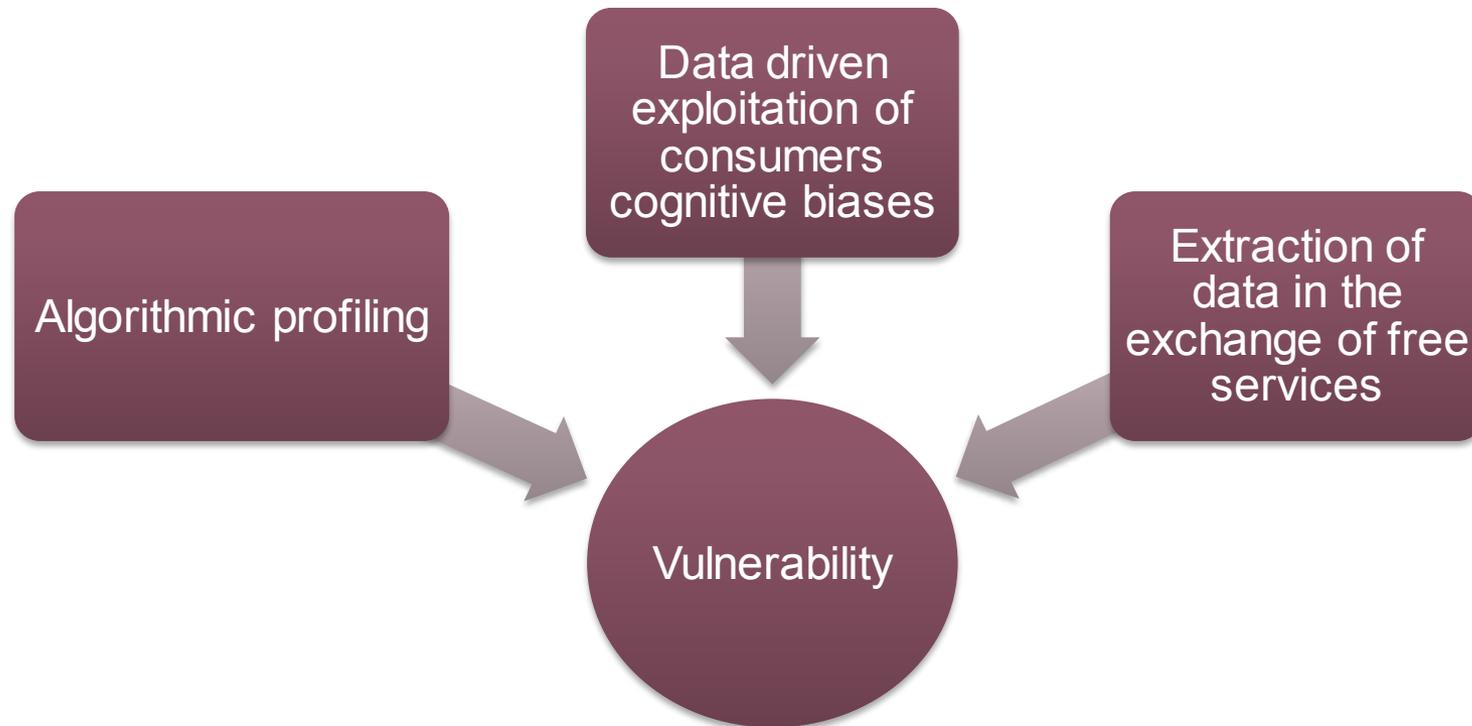


Multiple consumer images

- Active
- Passive
- Empowered
 - Active engaged
 - Passive engaged
- Average
- Vulnerable
 - Personal vulnerabilities
 - Market vulnerabilities
- Poor

An understanding of the underlying causes of consumer disengagement is at the heart of delineating the **relevance** and **scope** of interventionist measures.

New types of vulnerability, new challenges for remedy design



Thank you!

- M. Ioannidou and D Mantzari, 'The UK Domestic Gas Electricity (Tariff Cap) Act: Re-Regulating the Retail Energy Market' (Modern Law Review, February 2019)
- D Mantzari, 'The Quest for Reasonable Retail Energy Prices in Europe: Positive and Normative Dimensions (2017) 36 (1) *Yearbook of European Law*, pp.599-627

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