

31 May 2023

By email: RetailStakeholderTeam@ofgem.gov.uk; Jemma Baker

Response to consultation on a framework for consumer standards and policy options to address priority customer service issues

Dear Jemma

Thank you for the chance to respond to this important consultation. We particularly welcome your work to review the Consumer Standards Framework. We think the main driver of Ofgem's work should be on ensuring that the Framework is fit for the future and not limited to correcting perceived issues over the last few years. A refresh now is appropriate - and wise - given the pace at which technology is changing and the expected radical change in the services suppliers will be offering customers in the transition to net zero.

In general, we acknowledge it is appropriate for Ofgem to protect customers through setting out expected consumer outcomes. Given the cost of living crisis, we also support and understand the relevance of the priority focus on the standards around ease of customer contact and support for customers struggling to pay. However, we would like to see this work evolve significantly before implementation. In particular, Ofgem needs to do much more to:

1. Design an overall approach which embraces and does not inhibit competition and innovation as a vehicle for driving up customer standards and evolving customer service offerings, increasingly crucial on the path to net zero. We would like Ofgem's overall approach to retail regulation to focus more on enabling competition and supporting a diversity of business models and approaches in the market.
2. Ensure its enforcement of regulation does not inadvertently limit supplier risk-taking and make the market less attractive to investors. The way in which Ofgem enforces standards can have a chilling effect on innovation. Public pronouncements and press releases about technical licence breaches - where the issue has already been fixed for those customers by the suppliers - will only drive less innovation and risk taking from suppliers, and serve to undermine trust in suppliers generally.
3. Rapidly evolve how it monitors compliance, particularly in the light of feedback from suppliers following the first year of MCRs. How Ofgem monitors the market and implements the standards is as important - if not more - than those standards. The market conditions right now do mean that Ofgem should enhance and improve its monitoring, compliance and enforcement, making it more proportionate and risk based. Spending time on this could be more valuable than designing new standards.

4. Develop its approach to regulating around customer ease of contact to clarify the specific challenge/s that Ofgem is trying to address and make its intervention more outcome focused, rather than prescriptive. We consider the decline in ease of contact over recent years is substantially caused by the significant upturn in customer interactions due to the pandemic and now the energy crisis. We urge Ofgem to do more to analyse the trends it is seeing in customer service and to ensure that its interventions are proportionate and justified.

More generally, we urge Ofgem to exercise extreme caution before translating any new standards into increased price cap opex allowances. An unprecedented number of customers are now struggling to pay their energy bills and there is no reason why increased customer service has to be accompanied by higher prices. Better service standards are currently achieved in the market by those suppliers with the lowest cost to serve. We will cover this in more detail in our response to the call for input on the price cap opex allowance.

Each of the 4 areas above is explored in our [General Remarks](#) and in [Responses to the Questions](#).

We stand ready to work further with you on this - but we politely ask that in future the timescales for stakeholders to respond to such important topics are adequate. This has been a very short consultation period, coinciding with three bank holidays and a period when Ofgem had three other major retail market consultations due. This results in limited time to properly consider and scrutinise proposals.

In terms of next steps, we would welcome a workshop to discuss your proposals further, especially the specific policy options on customer ease of contact.

Yours faithfully

Alexandra Meagher
Group Head of Regulation

General remarks in response to the consultation

1. Ofgem must ensure it sets a framework that enables competition, foster innovation and is fit for the future

As we emerge from the energy crisis and are at a tipping point in the electrification of consumer technology, this is a good time for Ofgem to be looking at its Consumer Standards Framework. We urge you to be joined up with DESNZ and connect it with their upcoming retail market review.

Energy is an essential service and we support a mixed model of competition and consumer regulation in the market. Clear regulatory standards are an important foundation and crucial for setting general principles to protect consumers and minimum expectations. **However, it is crucial that Ofgem sets standards, and enforces its standards in a way that enables competition and fosters innovation.** We estimate that competition has brought £1-2bn in benefits to the market so far.

A regulatory framework which enables competition is more important than ever before because consumers need to be active participants in the energy market to reach Net Zero. This will require suppliers to offer different products and services, meaning they need the financing and risk culture to enable innovation. Octopus is just one scale challenger that is an example of this. Octopus Energy customers accounted for ~50% of the demand shifting required by the grid in the recent Demand Flexibility Trial, and Intelligent Octopus, our smart tariff, now has over 42,000 EVs - enough energy to power almost 2% of GB households. We have done this whilst consistently delivering great customer service - having been awarded the Which? Recommended Energy Supplier six years in a row - and being there for customers during the crisis..

As a matter of principle, Ofgem should take care when designing regulation to make sure it does not skew competition by being designed around certain business models or approaches. Although we expect Ofgem would agree with this in principle, from looking at recent decisions and proposals we are not confident this is being carried through in practice. For example, in developing the financial resilience framework, Ofgem decided to allow legacy suppliers to sidestep the RO ringfencing rules through the use of parent company guarantees, whilst simultaneously being compensated via the price cap. Ofgem's draft financial resilience proposals would compound this unlevel playing field. Similarly, the idea of a levy/reconciliation for suppliers with high customer bad debt - entertained by Ofgem in recent consultations - would skew competition and remove market incentives on suppliers to manage debt.

More specifically, Ofgem needs to think more carefully how its refresh of consumer standards regulation could impede innovation and seek to avoid this. In practice this means favouring principles-based standards and avoiding prescription that impedes the use of new technology and other types of innovation. We have set out some further suggestions on how this might work for ease of customer contact in part 3 of these General Remarks.

In its review of consumer standards, we would also like to see Ofgem developing a framework that can adapt in the light of technology change and other innovation. In particular the regulatory framework and consumer protections might need to change and evolve with tech/AI and the introduction of more smart products. We would like to see Ofgem thinking about how consumer regulations will keep up with these changes, properly

protecting consumers while not impeding the pace of innovation that can bring positive benefits to customers.

Finally, the impact of the approach Ofgem takes to market enforcement on innovation is as important as the regulations themselves. Taking a highly intrusive, process focused approach to monitoring where there is no evidence of behaviours which risk consumers creates an unnecessary regulatory burden and will at best distract from the relentless innovation and improvement in service that will benefit customers. Similarly, public pronouncements and press releases about technical licence breaches - where the supplier has already fixed the issue - changes the culture within suppliers to a compliance-based, minimum standard, “play it safe” culture. This will only drive less innovation and risk taking from suppliers. It also serves to undermine risk in suppliers generally, at a time when trust in suppliers is crucial. This is a real instance of short-term gain (e.g. press releases that say Ofgem is taking action for consumers) for long-term pain. As our record shows, we strongly support suppliers delivering great service and having a robust and transparent relationship with the regulator. This is part of what makes it a healthy market. But focusing on long-running, low value compliance activity converted into press impressions is a distraction from many of the things Ofgem could be doing to drive lower costs and better services for consumers.

2. Ofgem must improve its supplier monitoring (including by prioritising intelligent, real-time data collection) and reform the MCR process (to make it thematic, risk-based and outcomes-focused)

We support Ofgem's goal of enhancing supplier monitoring for proactive issue resolution. However this goal needs to be met with action - we would like to see **Ofgem commit to actions this year to streamline and improve its supplier monitoring**. Ofgem should:

- prioritise intelligent real-time data collection to enable outcomes-based assurance (e.g. by automating data collection from suppliers through an API instead of relying on manual spreadsheets).
- expand the supplier relationship manager model to facilitate resolving data queries by having knowledgeable individuals familiar with the suppliers and their practices.
- start trialling a more data and relationship-led approach in high-risk compliance areas, like the new financial responsibility framework, without waiting for a perfect automated data collection system.
- increase the use of “mystery shopping” of suppliers, and collating information from the Ombudsman and consumer bodies, followed by targeted supervisory discussions for those whose service standards are at risk of falling below the prescribed minimums.
- commit to monitoring social media and take fast, targeted compliance activity where there are material customer concerns.

In addition, **Ofgem must improve the Market Compliance Review process.** We have already fed back in detail on this process (attached at Annex A) and are surprised that none of this feedback is reflected in the Consultation.

In particular, we would like to see Ofgem move to a risk-based compliance approach focused on customer outcomes and only doing deep dives into high risk suppliers, rather than market-wide approaches. This would look like exempting suppliers with a consistently high outcome performance in the area of investigation from the full MCR. **This is the kind of “regulatory incentive” that Ofgem could introduce as soon as winter 2023 - we see no reason for delay in this area.**

3. Ofgem’s proposals - especially on customer ease of contact - are overly prescriptive, insufficiently defined and not yet ready for implementation

We support Ofgem’s overall objectives of setting out expected consumer outcomes and addressing “priority customer service issues”. However, **we think the proposals on ease of customer contact need further development, because as written they are too prescriptive and likely to be counterproductive. We are more comfortable with Ofgem’s proposals on support for the financially vulnerable,** largely because the requirements are technology and communication-approach agnostic.

First, Ofgem must be clearer on particular customer outcomes it is seeking and/or the consumer harms it is seeking to avoid. We have found it difficult to understand Ofgem’s specific concerns around ease of customer contact. In some parts of the consultation Ofgem refers to challenges around the ability for consumers to contact suppliers, elsewhere it refers more specifically to “consumers in vulnerable situations” having a dedicated contact method and in others it refers to a “freephone for vulnerable customers”. These are all different outcomes. We are not quite clear whether the concern is for fuel poor customers to be able to contact their supplier quickly, or is to address vulnerable customers being off supply whose health is suffering and need quick action and possibly a meter job. Some of these situations (such as prepay metering issues) already have specific rules around them in the GSOP and these could apply within the context of a broader principle. Greater clarity from Ofgem on outcomes will help shape appropriate regulation.

Secondly, Ofgem should provide more evidence to support the outcomes it is seeking. We endorse the views set out in the EnergyUK response to this consultation that the context provide for the challenges faced by suppliers - and therefore customers - over the last three years is incomplete. Given the risk that new regulatory standards could drive up costs and distract suppliers from innovating to serve their customers while they make changes to comply with what the regulator has imposed, it is important that Ofgem has a strong evidence base before introducing new standards". In addition, as a general rule, Ofgem

should be doing more to evidence where it is imposing new regulations - because these cost money and can constrain innovation.

Thirdly, in the area of customer contact, we urge Ofgem to follow its own Framework on Consumer Standards and prefer outcomes-based standards over prescription. In the Framework on Consumer Standards, Ofgem suggests that rules-based standards are not appropriate “*if we expect significant change in the future, innovation is needed or it is clear that a ‘one size fits all’ approach would not be appropriate for consumers*”.¹ This is the case for consumer contact which must vary depending on the specific consumer, and will certainly be influenced by future technology.

As an alternative, we urge **Ofgem to take a much more outcomes-led approach to setting standards in this area**. We can see an argument for an outcome that looks more like “*suppliers must be set up to provide customers in high-risk situations with the help they need in a timely manner. At a minimum, customers in [specified situations] should be able to get support [in specified time periods]*”. This kind of approach encompasses the needs of all customers, but implies a level of judgement from suppliers about what is “high-risk” which will depend on the specific situation and the specific customer. For example, an off-supply issue would be high-risk for all customers, but a high bill issue may only be high-risk for certain vulnerable customers.

This approach improves on Ofgem’s current proposal because:

- It is **technology-agnostic**: a dedicated phone line (as Ofgem proposes) may not be the best option for customers. In particular, customers may not know that their needs should be prioritised and that they are eligible to use the emergency phone line. Equally, customers in emergency situations might not know what the priority number is, even if it has been well publicised. In contrast, at Octopus we use keyword analytics in emails to route all customer contact through to an emergency team where appropriate. A technology-agnostic approach is likely to drive down operational costs across industry as it allows and incentivises suppliers to find the best approach for their customers.
- It allows **suppliers to be responsive to customer needs**. Ofgem’s proposals, focused on specific technology tools and communications methods are not well-designed to allow suppliers to respond quickly to customer needs and to test and learn. The last year showed that the ability for suppliers to quickly assess new situations and determine whether - and for whom - they are high risk and respond appropriately is crucial. It is also this agility that has actually helped energy suppliers through the crisis. For example, whilst many energy suppliers’ websites went down in response to the first “meter read day” in March 2022, none went down after the

¹ Ofgem, [Consultation on framework for consumer standards and policy options to address priority customer service issues](#), Annex 3, para 3.11.

second meter read day that year - they were prepared. At Octopus, we use a combination of smart technology and highly autonomous but trained teams to flex our operational demand to where there is need. For example, we have a dedicated team to manage smart prepay customers, especially when they are new on supply as we have identified that is a scenario that requires hyper-care. We also can stand up teams quickly to respond to challenging issues. Last winter, we retrained our team of door to door sales agents to be door to door “energy helpers” attending the homes of customers who needed support to make their homes more efficient. In May, we restaffed our Octopus for Business team with individuals who had particular expertise in debt advice and support when we expected to have a large number of business customers contacting us after experiencing bill shock as government bill support dropped off. We think it’s this kind of agility that Ofgem wants and should be encouraging, not a “fit and forget” static solution as proposed currently.

- It focuses on the **support customers in specific situations need, rather than the transient nature of vulnerability**. As Ofgem is well aware, it is difficult and not helpful to draw bright lines around who is and who is not “vulnerable”. Customer vulnerability can be driven by circumstances as much as by a permanent state. In the course of the energy crisis over the last year, we have seen a larger number of people across the population struggle with extraordinarily high energy prices - many of whom would not have previously been considered vulnerable. Suppliers should, and through SLC 0 are already expected to, support the vulnerable, and should already have arrangements in place that will allow people with, for example, visual or hearing impairments, to contact them easily. If there are specific scenarios that Ofgem is concerned about (e.g. customers off supply out of normal working hours), these should be explored in detail to understand the actual support suppliers can provide, and the existing rules.
- It is **not open to gaming**. As described above vulnerability is transient. A dedicated phone line for consumers who identify as vulnerable is likely to lead to some consumers claiming vulnerabilities in order to “skip the queue”. This is not fair to other customers.
- It **focuses on outcomes, not outputs**. The options proposed by Ofgem are focused on outputs (phone line, website, opening hours etc). These may meet the need of ease of contact, but will not necessarily ensure that customers get the help they need when they do contact their supplier. It may lead to perverse outcomes such as supplier setting up tickbox dedicated lines, but not investing in training of all agents to give customers the help they need - or having a phone line that is answered quickly but the customer still being passed from pillar to post before they get the support they need.

Responses to questions in the Consultation

Question 1: Do you agree with our assessment on what good looks like for the issues consumers are facing relating to the priority issues of contact ease and identification and support/advice for consumers struggling with their bills. Are there any issues missing?

We broadly agree with the outcomes set out to support consumers struggling with their bills, but have concerns about Ofgem's research and plans around "ease of contact".

Ofgem's assessment of the "ease of contact" problem focuses on correcting perceived issues over the last few years, rather than creating a framework that sets us up well for the opportunities in the next few years. The evidence base Ofgem relies on fails to recognise the specific challenges the energy sector has experienced over the last three years including Covid, the energy crisis and unprecedentedly high bills and government intervention and mass supplier failure. This context must be taken into account when assessing what good looks like.

In addition, as set out above, we have found it difficult to understand Ofgem's specific concerns around ease of customer contact. We are not quite clear whether the concern is for any vulnerable customers to be able to contact their supplier without having to wait on the line, or is it to address any customers in an emergency situation who might need emergency credit or other support arranged out of hours? It is important for Ofgem to be clearer on the specific harms it is seeking to address.

Ofgem's proposals about universal service for vulnerable customers (or universal service for those in vulnerable circumstances - Ofgem's proposals are inconsistent) fail to recognise the transient nature of vulnerability in the energy sector.

Question 2: Do you have any views on potential options to address priority issues and do you agree with the extra requirements we are proposing?

Ofgem's proposals on ease of contact are not ready for implementation - their intended outcome needs to be clearer, and the approach should be more principles-based. We disagree with these extra requirements as drafted. Instead, as set out in the General Remarks, we suggest that Ofgem should adopt an outcome-led approach on ease of customer contact.

We are more comfortable with Ofgem's proposals on support for the financially vulnerable, because the requirements are largely technology and communication-approach agnostic, and the desired outcome is clear. These proposals therefore allow the supplier to work hard to use the latest technology to engage customers and keep operational costs down.

Question 3: Do you have any evidence that suggests that we should be considering additional and/or different rules beyond what we have proposed?

See response to question 2 where we set out why we consider Ofgem should take an outcome-focused approach.

Question 4: Do you agree with our proposed approach of introducing reputational incentives in our priority areas?

Overall, we support reputational incentives as a driver of better outcomes, so long as this is based on objective assessment of supplier outcomes for customers. We do not think that the “scoring” of supplier performance which Ofgem has published following the MCRs meets this outcome focused test. Reputational incentives (such as league tables of verified supplier performance or publicising supplier awards) focus on results and have an ability to represent a balance of outcomes. For example, Trustpilot scores represent customer satisfaction for all customers rather than compelling suppliers to focus solely on a specific metrics or the experience of a specific customer or set of customers. These kind of holistic approaches such as net promoter scores, Customer Satisfaction (CSAT) or Customer Happiness Index (CHI) drive better outcomes from suppliers than individual, narrow metrics (complaints, speed of call answer etc) which are not helpful on their own and can drive perverse behaviour focused on outputs, not outcomes.

We encourage Ofgem to do further work on how reputational outcomes like league tables might actually drive better outcomes, for example:

- **Avoiding prescriptive rules like “put on website”:** listings on a marketing/join website are geared towards new and prospective customers - existing and loyal customers also need to be looked after, so Ofgem could instead consider requiring suppliers to show a rating in a way that helps all their customers understand how they perform compared to peers.
- **Ensuring that this is not open to gaming:** From a quick review, four of the six largest energy suppliers already display some form of external customer satisfaction metric or feedback on their website, however this is not consistently displayed. For example, some suppliers only display positive reviews from an external site, whereas others display a more objective ranking.
- **Ensure reputational incentives based on impartial data which has not been manipulated.** There are concerns that some inputs into league tables can be easily miscounted or manipulated by suppliers.
- **Ensuring that whatever metrics/league tables are used truly reflect customer experience:** The annual Which? Survey on energy suppliers, for example - similar to Eurovision - collates both expert reviews and a survey of 10,000 customers.

Question 5: Do you agree with what we have set out in the assessment chapter? Please provide supporting evidence with your views. For evidence regarding additional costs, please provide quantitative data.

We think Ofgem's assessment work is premature as the consultation is not yet clear enough on the outcomes Ofgem is seeking, or the specific proposals. We have not done any detailed work the costs of the proposals as we are not convinced they are the right approach.

We are also concerned that Ofgem has not fully assessed the impact on competition of Ofgem's specific immediate options, or of its overall approach to monitoring and enforcement. We think Ofgem needs to do more thinking in this area. See further in our General Remarks above.

Question 6: Using the list of prospective data items we present in the monitoring chapter as a guide, what other additional data items could we aim to collect and from what data sources? Do you consider there are any challenges you may face when collecting/providing these? If so, please provide any supporting evidence you have.

We support Ofgem's goal of enhancing monitoring for early issue identification and proactive resolution and have commentary on the specific new metrics provided below. However, Ofgem must think about the implementation of data monitoring as well as the specific metrics. Ofgem could:

- prioritise smart data collection to enable outcomes-based assurance by automating data collection through an API instead of relying on manual spreadsheets.
- expand the supplier relationship manager model to facilitate resolving data queries by having knowledgeable individuals familiar with the suppliers and their practices.
- look to the financial sector, such as the PRA, as a model for data automation journeys and developing supervisors with a deep understanding of specific firms.
- start trialling a more data and relationship-led approach in high-risk compliance areas, like financial responsibility, without waiting for a perfect automated data collection system.

In terms of collecting new data points, we would urge Ofgem to keep in mind the following principles:

- Ensure that the metrics used can be universally understood by all suppliers and cannot be manipulated to gain an unfair advantage.
- Ensure metrics for regular reporting are consistent and not constantly changing - this facilitates more efficient reporting for suppliers and regulation for Ofgem.
- Ensure that any new data metrics do not indirectly impose additional requirements. It is important to avoid imposing new obligations through hidden means.

Ofgem proposed metric	OEL commentary
Average call wait times for longest 10% of waits (<i>aim: to capture longer wait times that may otherwise be hidden in overall average</i>)	Insofar as Ofgem is interested in the experience of the “worse served” customers, we can see the value of looking at outliers, but median would be a more sensible metric here, or should sit alongside an outlier metric.
Call wait times between 8pm and 8am (<i>aim: additional information on demand for out of hours contact</i>) (Ofgem notes it is aware that suppliers have different opening hours and says it will take this into account)	If Ofgem wants to collect this data, we would expect Ofgem to be confident that it is helpful for customers to contact their energy supplier overnight and the suppliers can take an action which is helpful. Ofgem should sharpen its thinking on the specific ease of contact scenarios it is trying to address and then design a metric.
Customers satisfaction rating of priority phone line (<i>aim: to get more specific data on to to support people in a vulnerable situation</i>)	Unclear whether this metric would measure satisfaction with speed of response or quality of issue resolution. Results would need to be assessed carefully. This will also need to be calibrated to reflect that customers contacting in a vulnerable/high-risk situation (such as being off supply or in debt) are likely to have lower CSAT overall
Confirmation of availability of freephone contact number (<i>aim: used to identify suppliers who have chosen to provide a priority line and where it is located</i>)	This does not seem like a metric and is basic compliance activity that Ofgem could address through mystery shopping
Number of rejected payment arrangements before a repayment arrangement is agreed (<i>aim: to gain more insights into the debt journey of customers</i>)	This metric could be clearer - is it reflected payments or rejected payment arrangements? Regardless, this is a blunt metric that will give little insight on its own. It could be argued either way whether less or more payments is better. Mystery shopping again may be a better way to assess the debt journey of customers.
Training regularity on debt management/vulnerable customers (<i>aim: to monitor the level of targeted training and</i>	Ofgem should focus on how good the outcomes are and not the outputs. This is effectively creating a new obligation on suppliers via a metric.

<i>frequency. This may help is develop best practice)</i>	
Customer satisfaction of customers in vulnerable circumstances that have received support (<i>aim: to gather more specific data on vulnerable customers</i>)	This is likely to be defined differently by different suppliers and so is not a good fit for a market monitoring metric which needs to be consistent across suppliers so that Ofgem is comparing apples with apples.
Number of customers who have used supplier's grant funds (<i>aim: to measure how widely used this option is</i>)	This is also creating a licence condition through the backdoor. Grant funds are, by their nature, voluntary. Ofgem should not prescribe the way that suppliers meet the needs of their customers, but set out the outcomes it wants suppliers to achieve

Question 7: Do you have any comments on the factors that should be considered in determining whether to use principle-based or rule-based approach to setting standards?

We welcome Ofgem's attempt to refresh the framework for consumer standards and the progress made in this area. We are at a tipping point in the energy market where consumers are becoming an increasingly active part of the energy system, and where technology is playing an increasing role in shaping the customer experience. In the next iteration of this work, we would like to see Ofgem setting out how this framework could evolve especially with more smart and time of use tariffs. As a general rule, and in order to avoid holding up innovation, the evolution of the framework and development of new standards should be addressed collaboratively and with principles and outcomes - not detailed prescriptive regulation developed before the market has matured.

Below are our initial thoughts on the overall framework for consumer standards, which touch on factors beyond the specific question of principles vs rule based approach.

1. Preference for a principle-based approach

We prefer an outcome-focused, principles-based approach. The principle-based approach focuses on defining broad outcomes rather than specifying detailed input requirements. This allows for suppliers to use flexibility and adaptability in achieving the desired results meaning they can work to delight customers and use technology to find cost efficiencies.

We agree with Ofgem that a prescriptive, rules-based approach is most appropriate only where: (i) there is clear consensus that only one correct way of achieving the desired

outcome or where consistency is very important for whatever reason; (ii) a defined minimum standard is helpful or necessary for industry/system operations (e.g. must have a meter reading done at least once every two years); and (iii) when the potential harm from getting it wrong outweighs the harm from restricting innovation. In such cases, a rule-based approach provides clear guidelines and minimises ambiguity.

2. Need to improve supplier monitoring to make it smarter, more real-time and more reactive

Alongside deciding on a framework for setting standards, Ofgem must think carefully about supplier monitoring. The consultation includes some promising rhetoric about the importance of rapid response monitoring, but this needs to be met with action - there are no actions in this anywhere in the consultation. This is something that Ofgem can and must prioritise introducing by winter 2023. Specifically, we think Ofgem's monitoring could improve by:

- Moving to a model of smart/live data collection and enhanced supplier relationships, this could be piloted with the new financial resilience framework - see further in response to question 6.
- Increasing the use of "mystery shopping" of suppliers followed by targeted discussions with higher risk suppliers.
- Committing to monitoring social media and take fast, targeted compliance activity where there are material customer concerns.
- Working more consistently with consumer bodies to share data on - and agree to address - customer concerns.

3. Ofgem must reform its approach to market compliance reviews

We support Ofgem's attempts to move from a reactive to a proactive supervisory role in light of the energy crisis, however it has much more to do to evolve an appropriate approach. Drastic reforms to the market compliance review (MCR) process are needed if Ofgem is to become a more forward-looking, risk-based regulator. As seen in recent issues on prepay warrants, the MCRs have not been effective in spotting bad performance and fixing it early.

We have already fed back in detail on this process (attached at Annex A) and are surprised that none of this feedback is reflected in the Consultation or in any of Ofgem's current approaches to MCRs.

We would like to see Ofgem move to a risk-based approach focused on customer outcomes and only doing deep dives into high risk suppliers, rather than market-wide approaches. This would look like exempting suppliers with a consistently high outcome performance in the area of investigation from the full MCR. **This is the kind of "regulatory incentive" that Ofgem could introduce as soon as winter 2023 - we see no reason for delay in this area.** We would also like Ofgem to enhance the role of the supplier relationship

manager so that they truly know and understand the supplier and their business model and business risks and do not assume that all operating models are the same. This is important to avoid the need for the supplier to repeat explanations provided already about how risks etc are managed within their structure. In general we'd like MCR questions about governance etc to avoid presuming a particular supplier structure and approach.

In practice, a risk-based approach to market compliance reviews might look like:

- Ofgem undertaking a time series data trawl of customer outcomes across all suppliers (perhaps based on the outcomes and areas of focus in this last round of MCRs)
- A RAG ranking of suppliers, e.g. green means you've consistently had good outcomes over the last x years; amber is where the picture has been mixed but seems to be improving/stable; red is where the picture is bad and or amber and getting worse
- Further steps determined by the RAG rating
 - suppliers with green all the way would exit the exercise at that point until the next round - no further action or requests for information
 - any amber areas would have a deeper dive so Ofgem could assess if the supplier is on track to improve
 - suppliers with red areas would go through a more intensive MCR type exercise
- In the case of amber or red reviews, the audit aspect needs to shift from a burdensome, simplistic and box ticking review of paperwork, policies and processes to an audit of technology, people, culture and conduct. This might look like interviews with senior leaders within the business - an approach Ofgem has used previously when initially assessing compliance with SLC0.

4. Accelerate the use of regulatory incentives

We set out our view on the use of incentives in response to question 8. Ofgem should accelerate the introduction of regulatory incentives to winter 2023 in time for the anticipated next round of MCRs - which are largely repeats of previous MCRs. To be clear, this looks like a much lighter touch approach to MCR type activity for consistently performing suppliers.

Question 8: Do you agree with our early view of reputational based incentive options for winter 2023 and the potential incentive options for development over the longer-term? Please provide explanations to support your responses.

Ofgem should accelerate the introduction of regulatory incentives to winter 2023 in time for the anticipated next round of MCRs - which are largely repeats of previous MCRs - we see no reason for delay in this area. This would look like exempting suppliers with a consistently high performance in the area of investigation from the full MCR. This approach will reduce regulatory costs overall.

We support the early view of reputational incentive options for winter 2023. As set out in question 4, we think Ofgem could be smarter in how it delivers any new rules related to league tables. We would like Ofgem to think more carefully about supplier and whole sector reputation when it does everyday compliance.

It's clear that Ofgem's thinking on financial penalties is at a very early stage and needs more work- this is an important topic that could be part of a deep-dive workshop with suppliers and other stakeholders. We encourage Ofgem to prioritise enabling competition in the market, rather than developing a suite of financial incentives. In general, Ofgem should not rush into introducing automatic financial incentives/penalties, bearing in mind the damage this could do to innovation and the perverse behaviours this could drive. We are particularly concerned (as noted above) about the current practice of Ofgem press releasing voluntary redress payments and technical breaches. We urge Ofgem to separate out the idea of publicising penalties from the idea of levying them.

Our initial steers are that Ofgem should:

- **Avoid actively publicising automatic penalties** given the impact this will have on risk appetite within suppliers and trust in the market.
- **Build on existing practice:** The GSOP framework already has a number of automatic penalties for individual customer service experience. Ofgem should fully explore this regime and its shortcomings (if any) before moving to further financial incentives.
- **Be aware of unintended consequences:** automatic penalties for very specific failures (like timely complaint handling) can often create perverse incentives (like failing to flag up complaints)
- **Be cautious of just adding costs to bills:** one challenge with financial incentives is that they can very quickly become regarded as a “cost of doing business”, becoming costs baked into tariffs, not necessarily improving outcomes for customers but just increasing costs overall.
- **Ensure that incentives target activity that is achievable and in the supplier's control:** much of the lesson with the development of the most recent suite of GSOPs was that the outcomes were not in suppliers' control and therefore financial incentives were an inappropriate mechanism to drive changes.