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13 September 2023

Dear Louise,

Non-Domestic Market Review – Findings and Policy Consultation

Thank you for the opportunity to respond to Ofgem's policy consultation on its review of the non-domestic market which forms part of its programme of work across a range of areas of the non-domestic market.

Our answers to the consultation questions are provided in Annex 1, and we have provided comments on the draft licence conditions and updated guidance in Annex 2. We would highlight the following points in particular.

The need to target protections to a sub-set rather than all non-domestic customers

Ofgem is proposing to extend protections currently offered only to micro-business customers to all non-domestic customers, or a larger sub-set of non-domestic customers. As explained in our responses to the relevant questions, we think there is a strong argument in most cases to limit protections to only a sub-set of non-domestic customers. In particular, we have concerns that extending protections to all non-domestic customers could:

- Create increased costs for the market, including third parties such as the Ombudsman, and ultimately consumers with little benefit; and
- Potentially create unintended consequences via poorer experiences for large customers who already benefit from bespoke account management from their supplier.

Whilst we agree that there may be no perfect option for identifying the appropriate threshold to limit protections, we have provided views on how this sub-set could be defined to ensure the majority of customers that need additional protection receive it, whilst avoiding the unintended consequences and risks of applying protections to all. We are keen to work with Ofgem and other stakeholders to define the target customer group.

Ofgem's deemed contract guidance should not create new policy

We are concerned that Ofgem's draft guidance on deemed contracts creates new policy without due consultation and could lead to constraints in suppliers recovering costs incurred in supplying deemed customers. In particular, Ofgem's proposed definition for "significantly exceeds" appears to be:

- introducing new constraints on the customer groups that should be included in any comparison; and
- limiting the measurement of 'significantly exceeds' to those additional costs incurred in supplying deemed customers instead of measuring the difference from the costs incurred to the price.

Each of the above points appears to us to be a new interpretation of existing licence conditions and as such should not be within guidance but instead should be subject to full consultation.

As we note in this consultation response, and in a number of recent Ofgem consultation responses, we continue to be concerned about an increasing use of guidance by Ofgem which suppliers must "at all times have regard to". We consider this approach could create a number of risks for suppliers, particularly in relation to the process for review and updating of guidance with due scrutiny from stakeholders, and the process for suppliers to formally challenge regulatory provisions. As a general principle, Ofgem should place such enforceable regulatory obligations, and other key elements of the relevant provisions, in the licence not in guidance.

Inclusion of domestic policy proposals in a non-domestic programme of work

Although Ofgem's consultation is focused on non-domestic customers, it is consulting on guidance for deemed contracts which covers both domestic and non-domestic customers. It is not normal process for matters that impact on domestic customers and suppliers to be covered within a consultation for a programme of work centred on non-domestic customers. As a result, we have some concerns that the feedback received by Ofgem on the application of the guidance to domestic customers may not be as robust as it should be or that some domestic only suppliers may not be aware of the updated guidance. We think Ofgem should have undertaken its review of deemed prices in a separate workstream to ensure all aspects of the proposals were shared with all relevant domestic stakeholders to allow for robust challenge ahead of formalisation.

Ofgem's ongoing work relating to non-domestic customers

We note several references within the consultation document to other elements of Ofgem's programme of work for non-domestic customers. This includes review of a proposed cooling off period, and implementation of regular requests for information. We are keen to work with Ofgem in all policy areas as it continues its work to assess the non-domestic market.

With respect to the proposed increased regular reporting, while Ofgem notes that this will support suppliers receiving fewer ad-hoc RFIs and allow better planning for the reports which will have consistent metrics and definitions, we continue to be concerned about the burden of reporting being placed on suppliers which has continued to increase over the last few years. We note Ofgem's intention to engage with suppliers on the revised and increased reporting over the summer and we welcome this engagement and urge

Ofgem to ensure that any request for additional reporting is proportionate to avoid placing an unnecessary burden on suppliers.

We also note Ofgem's reference to a continued focus on monitoring supplier compliance with existing regulatory obligations. We continue to view this as an important part of this programme of work, as we would be concerned if Ofgem were to propose implementation of new obligations on suppliers to address problems created by suppliers not complying with existing requirements.

Yours sincerely,

A handwritten signature in blue ink that reads "Richard Sweet". The signature is written in a cursive, flowing style.

Richard Sweet
Director of Regulatory Policy

**NON-DOMESTIC MARKET REVIEW – FINDINGS AND POLICY CONSULTATION
SCOTTISHPOWER RESPONSE**

Section 2 – Pricing and contract behaviour

Q1. Do you agree with our proposal to agree voluntary improved pricing transparency and if so, please include comments on the particular areas you would like to see made more transparent?

Ofgem's justification of a need for improving pricing transparency relates to evidence submitted to the Call for Input around customers struggling to understand the reasons for price changes. The main example used relates to the changes in standing charges as a result of the Targeted Charging Review (TCR) which created a significant change in how network charges were recovered across fixed and variable charges.

Ofgem sets out in paragraph 2.24 its proposals that:

- Suppliers and customers “voluntarily agree where and what additional transparency can be given more consistently”; and
- Ofgem will look at the role it can play in providing better information, particularly when “mandated charges elements take effect”.

We are supportive of providing greater transparency to non-domestic customers of the reasons for price changes. We agree with Ofgem that there are roles for both suppliers and Ofgem in this area, particularly with respect to our experience around the TCR which presented a number of challenges to explain the reasons for the changes between fixed and variable prices. We therefore welcome Ofgem's second proposal to review the role it can take to support future similar regulatory changes being communicated to customers.

As Ofgem is aware, non-domestic contracts vary significantly in structure across the market, and therefore the associated communications with customers also vary significantly (including but not limited to bills). For example, the information shared with a large industrial and commercial customer may be very different to that shared with a small sole trader, as the larger customer will have a much more detailed understanding of the energy market and the pricing trends. We therefore understand and agree with Ofgem's view that it would not be appropriate to mandate what information suppliers provide to customers in this context, and where it is provided.

We are therefore keen to work with Ofgem, consumers and other relevant stakeholders to agree an appropriate approach to support better understanding of changes in pricing. Our initial thoughts would be that:

- An outcomes-based approach is more likely to deliver Ofgem's aims for these proposals, as this will allow suppliers to take different approaches for different customer groups to reflect differences in contractual arrangements and understanding of the market.
- There must be recognition that billing is not the only route to communicating with customers with other channels offering good routes to providing information to customers around changes to pricing.
- There will likely be roles for other stakeholders to support price transparency, including Ofgem and Government.

Finally, the existing rules around price transparency in SLC 7D were introduced in 2017 following the CMA market investigation and focus on ensuring micro-business customers have access to pricing information. Ofgem's proposals in this programme of work focus on transparency of pricing changes, and we consider it important that Ofgem continues to monitor that suppliers are meeting the existing obligations within SLC 7D around price transparency.

Q2. Do you agree with our proposed definition of 'significantly exceeds'? Please provide your reasons.

Ofgem provides its proposed definition of 'significantly exceeds' in paragraphs A1.27 to A1.31 of the Draft Guidance on Deemed Contracts provided in Appendix 1 of the consultation document. Within this section Ofgem includes that:

- The reference point for the "significantly exceeds" test is an "equivalent contracted rate".
- A deemed rate could fail this test if it were "much higher" than the "equivalent contracted rate" and that differential were "not otherwise justified".
- An example of an equivalent contracted rate for Small and Medium Enterprises (SMEs) is "a one-year, fixed-rate contract where there may be similar energy usage/consumption for this SME on deemed and the equivalent contracted".

We have several comments and concerns around Ofgem's approach to introducing guidance for deemed contracts and in particular around the proposed definition of "significantly exceeds". We think there is a real risk that the guidance creates new policy rather than clarifying existing licence conditions, and we are concerned that the guidance could create circumstances where suppliers may be unable to meet the test in a manner that allows deemed contract costs to be recovered sustainably by suppliers. In particular:

- While the guidance allows for the supplier to justify the difference between the comparator fixed rate contract and the deemed contract pricing, we do not agree that a fixed rate contract is a reasonable comparator due to the inherent differences between the contract types and the associated risks, and think this example is much more limited than is intended by the text of the licence conditions.
- SLC 7.4 has two tests, one which compares the deemed prices with the costs for the individual premises, with the second element being the comparison in relation to the costs of supplying energy to the "generality" of customers of a similar class. We do not think it is appropriate to introduce guidance that restricts the comparator for the "generality" to only fixed term contracts and consider that by doing so there is a real risk that Ofgem could constrain suppliers from recovering costs incurred in supplying deemed customers.
- In paragraph 2.49 of the consultation document, Ofgem references the additional risks that suppliers face in supplying deemed customers, in particular including bad debt risk and volume risk. We agree that these elements represent some of the additional risk exposure that creates higher deemed prices with these being particularly evident in comparison to fixed term contracts. However, fixed term contracts can also be influenced by other business strategies that may make a direct comparison between the fixed term contract and the deemed equivalent more difficult for a supplier to justify but where the deemed equivalent is not unduly onerous in comparison to the costs of supplying the energy to the customer.
- In addition, we are concerned that the draft guidance could be read as implying that the deemed tariff pricing can be no higher than the costs incurred by the supplier in providing energy to the customer. We would argue strongly that this is not the intent of the licence drafting which is that the revenue does not "significantly exceed" the costs of supplying energy to the premises. We do not agree that that this measure of

“exceed” should include the bad debt and volume risk costs that suppliers are exposed to as is suggested by Ofgem.

We think that variable contracts are likely to be a more relevant comparator for deemed contracts, and if Ofgem considers there to be a need for more prescription on the definition of the comparator of the “generality” of customers, then a variable rate contract may be more appropriate given its similarity in terms of costing, management and customer behaviour.

However, if Ofgem considers there to be a need to be more prescriptive, then it should undertake further consultation, and consider whether changes should be made to the licence conditions rather than through guidance. This appears to us to be a significant change in position from Ofgem which requires further review.

We are also concerned that the guidance introduces a reference to “much higher” in the definition of “significantly exceeds”. We are not convinced that stating that “significantly exceeds” means “much higher” provides customers or suppliers with greater clarity.

Q3. Do you agree with our proposal that suppliers should review deemed contract rates quarterly? Please provide your reasons.

Ofgem provides its proposal on reviewing deemed contracts rates in paragraphs A1.40 to A1.45 of the Draft Guidance on Deemed Contracts provided in Appendix 1 of the consultation document. Within this section Ofgem sets out its intention that:

- The regular review should be of the deemed rate, and not of the methodology for setting the deemed rate which while it should be reviewed would not be required to be reviewed on such a regular basis.
- The review should be regular enough to ensure that prices are appropriate and consistent with supplier obligations with respect to the revenue for deemed contract pricing.
- Ofgem considers that the frequency of review should be at least once a quarter “in most cases”.
- Ofgem may request evidence from suppliers that they have reviewed deemed rates and the decision on whether to change their deemed rates as a result.

We support the principle of suppliers carrying out regular reviews of deemed rates for domestic and non-domestic customers and agree with Ofgem that the regular review referenced in the guidance should relate to the rate, rather than the methodology. We also welcome the distinction made in the guidance between reviewing deemed rates and changing them, as some reviews could conclude that existing rates should be maintained.

We have some concerns regarding the references to frequency of review within the draft guidance, which we think could be interpreted as creating a prescriptive quarterly frequency. In our experience, where a review process exists, external events and operational process constraints could create circumstances where a review could be delayed for a period for good reasons including for example, implementing other support mechanisms for customers as we have recently experienced with the Government support schemes, or where there is a known future event which would require a further review in very short timescales. In each case, there could be a clear justification from a customer and/or operational perspective to delay a planned review. However, we think the updated guidance as drafted could create circumstances where Ofgem would not view a delay as meeting the requirements of the guidance which requires “at least once a quarter....in most cases”.

Ofgem should instead leave the frequency of reviews to be determined by suppliers, or could add in additional text to mitigate circumstances such as we note above. We have proposed some alternative drafting in Annex 2.

Q4. Are there any potential implications for domestic customers that the proposed guidance on deemed contract rates may impact on?

It is not normal process for matters that impact on domestic customers and suppliers to be covered within a consultation for a programme of work centred on non-domestic customers and note that there are some places in the guidance where it does seem apparent that the guidance has been drafted by non-domestic policy teams, for example, providing examples of an “equivalent contracted rate” for only non-domestic customers. As a result we have some concerns that the feedback received by Ofgem on the application of the guidance to domestic customers may not be as robust as it should be or that some domestic only suppliers may not be aware of the updated guidance.

We think Ofgem should have undertaken its review of deemed prices in a separate workstream to ensure all aspects of the proposals were shared with all relevant domestic stakeholders to allow for robust challenge ahead of formalisation.

Q5. Do you have any further comments on our proposals for the deemed contract guidance?

Relevant classes of customers

Within paragraphs A1.38 and A1.39 of the draft guidance Ofgem sets out its views that suppliers must ensure that they have deemed rates “which are applicable to relevant classes of customers”. It then goes on to explain that “relevant classes” may refer to groups of customers with “similar contract pricing based on consumption rates, meter classifications and/or location, as appropriate”.

We understand the intent of this drafting, which is to ensure that suppliers do not take approaches to deemed tariff pricing for classes of customers that would for example apply a highest rate across all customers rather than an average rate, and lead to over-recovery of revenue. We would however note that in practice it may not be possible in some cases for suppliers to differentiate classes of customers into the sub-groups suggested by Ofgem, and therefore in monitoring compliance with the guidance, Ofgem must take this constraint into account.

Use of guidance rather than licence conditions

While we agree that guidance can be a helpful tool in clarifying Ofgem’s expectations with regards to certain licence conditions, we remain concerned about an increasing use of guidance by Ofgem which suppliers must “at all times have regard to” and consider this approach could create a number of risks for suppliers. In particular we would highlight the following points.

- There are no specific timescales set out in SLC 7 or the guidance document itself around the process of consultation under which changes to the guidance would be made. However recent experience of Ofgem’s approach to other licence conditions with accompanying guidance suggests a period of 10 working days could be proposed.

We do not consider 10 working days to be a sufficient period for stakeholders to review, understand and comment on changes. It will also be important that Ofgem considers suitable implementation timescales for changes. While minor changes may have little

impact, many of the topics within the guidance may take longer for suppliers to prepare for and implement. We consider that Ofgem should allow a minimum of four weeks for consultation to allow full scrutiny of any proposed changes, unless it has justification that its guidance is causing significant consumer or supplier harm which requires urgent action.

- We would note that changes to licence conditions are generally subject to much greater scrutiny through the statutory consultation process, and importantly, give rise to a right of appeal to the CMA. This framework provides an important level of protection for licensees (and their investors). As a general principle, Ofgem should place such enforceable regulatory obligations, and other key elements of the relevant provisions, in the licence not in guidance.

Practical value of guidance

We note that the intention is for the guidance in Appendix 1 to “provide further clarity” which will in turn “drive more consistency in how the rules are being interpreted”. However, we also note that the draft guidance includes regular references to the fact that any assessments by Ofgem will be undertaken on a “case-by-case basis”. In turn, our view is that the practical value of the guidance provisions (in terms of providing additional clarity and consistency) as currently drafted is somewhat limited.

Q6. Do you have any other comments on the other proposals in this Pricing and contract behaviour section?

We welcome the recognition by Ofgem in paragraph 2.20 of the consultation document that “blend and extend” tariff offers may not suit all customers and suppliers and that there are other options that suppliers offer to support customers struggling with their energy bills. We are aware of ongoing industry discussions which risk creating a perception that blend and extend is the only option for supporting customers and ignores the commercial risks it creates for both suppliers and customers over longer timescales.

Section 3 – Competition in the market and customer service

Q7. Which documents, or combination of documents do you believe would provide a robust evidence base to demonstrate a genuine CoT/CoO?

Ofgem is proposing that an approved consistent set of documents or a consistent set of document options is in place that would be accepted by suppliers to demonstrate a genuine CoT/CoO. Ofgem’s view is that these documents would be used in a similar way as individuals would demonstrate their identity when applying for a passport or bank account.

We are generally in agreement with this proposal but would note the following points:

- The new process should not prevent suppliers in processing a CoT/CoO without requesting documentation where it is clear to the supplier that the change in customer is genuine
- The agreed list of documents should not prevent suppliers accepting alternative documents from customers, but we agree that industry should be able to reach agreement on a core set of documents that should be acceptable in most cases
- There may be cases where suppliers may need to request further information from customers and the agreed list of “acceptable documents” should not prevent this from happening where suppliers can demonstrate a need. We expect this to be limited to small numbers of more complex or unusual cases.

Ofgem is proposing that the agreed set of documents is developed and agreed within the Retail Energy Code (REC) processes with documents identified this year and a change proposal given effect through REC by the end of the “financial year”. We assume Ofgem is referencing a financial year ending March 2024, but it would be good if Ofgem could clarify this.

We look forward to engaging with RECco on its consultation to incorporate guidelines on documents for CoTs/CoOs into the Retail Energy Code.

Q8. Are Micro Business Consumers aware they can contact Citizens Advice for support? Do we need to introduce a rule requiring suppliers to signpost them more specifically?

We consider that other non-supplier respondents will be better placed to comment on the level of awareness of Citizens Advice support options by microbusinesses across the sector.

Requiring suppliers to signpost micro business customers to Citizens Advice may encourage more of those customer groups to use the service offered, if Ofgem identifies a lack of awareness from those customers groups through this programme of work. We already signpost our own microbusiness customers to Citizens Advice as a good practice action, and it may be useful for Ofgem and Citizens Advice to consider whether alternative routes to signposting may support increased uptake, for example via Citizens Advice themselves, and Government and Ofgem communication routes.

We also note that, while this question focuses on Citizens Advice, paragraph 3.25 of Ofgem’s consultation also suggests extending other existing domestic protections in SLC 31G to micro business customers. Whilst we note that some of these would naturally extend from any decision to extend protections in relation to dispute settlement and the Ombudsman services, it may not be appropriate to extend obligations in relation to other elements, notably social and energy efficiency programmes. If Ofgem is suggesting extending those elements, then we consider further consultation should be undertaken to ensure any changes are targeted at customers who can access and benefit from the specific “advice and guidance”.

Q9. Is an obligation requiring efficient and timely complaints handling needed? If so what are the costs and benefits associated with introducing this?

See answer to Question 11 below.

Q10. Is an obligation requiring recording, handling and processing of complaints in accordance with consistent rules needed? If so, what are the costs and benefits associated with introducing this?

See answer to Question 11 below.

Q11. Do you have any views on what (if any) threshold should apply on business size for complaints handling requirements, or views on which requirements set out in the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 should not be expanded to apply to all non-domestic customers?

We are responding to Questions 9, 10 and 11 together.

Ofgem is considering expanding the complaints handling requirements that currently apply to only domestic and micro-business customers, to all, or a greater proportion of non-domestic customers than are currently covered by the requirements. Any new obligation would be

implemented via either licence conditions or changes to legislation working with Government. Ofgem notes that the intent behind the proposals is to achieve the following outcomes:

- Handling of complaints from all non-domestic customers in an efficient and timely manner; and
- Recording, handling and processing of non-domestic complaints according to consistent rules to support Ofgem's monitoring.

Ofgem notes the benefits as supporting suppliers by having clear requirements to follow and also providing a route for Ofgem to better monitor issues within the non-domestic sector.

Overarching view

Ofgem notes it is still seeking information from suppliers on how complaints data is captured to inform any decision to apply the complaints handling regulations more broadly. We think this is important to ensure that there are no unintended consequences for non-domestic consumers or suppliers by extending the current rules to certain non-domestic segments. In particular, while we are broadly supportive of extending the complaints handling regulations to some segments of non-domestic customers who currently fall outside of the micro-business definition, we have concerns about the potential impacts of extending it to all non-domestic customers.

In particular, as Ofgem itself recognises in the consultation document, larger customers tend to be managed through dedicated account managers with much more complex contractual agreements, which can often include agreed SLAs for complaint handling timescales and processes. In addition, we have some concerns about the potential for general ongoing discussions between larger non-domestic customers and their supplier to potentially fall under the definition of "complaint"¹ within the Complaints Handling Regulations, leading to an obligation for the supplier to record the discussion as a complaint, and trigger associated communications and processes, when the customer themselves does not consider the discussion to represent an issue they are "complaining" about.

Finally, as we have shared in other contexts within this programme of work, we also consider that Ofgem must be careful in creating imbalances in the relationship between large non-domestic customers and suppliers through the regulatory framework. As Ofgem notes, large non-domestic customers are generally well placed to access legal support to manage complaints, and therefore the benefits of providing greater protections to those customers are likely to be significantly outweighed by the costs and potential impacts of implementation.

We note Ofgem's observation in the consultation document that while it has received feedback from non-domestic customers regarding challenges in getting issues resolved, it does not have information on the size of business experiencing the problems. We think it is important that Ofgem undertakes further work with customers to understand this before moving forward with any proposals in this space to ensure it is targeting intervention at addressing a specific problem to avoid creating costs for the market with no clear benefit.

Considerations on eligible customer groups

Any further segmentation of customer groups naturally leads to costs for suppliers to implement new processes, both in relation to providing the new protections to the extended

¹ "complaint" means any expression of dissatisfaction made to an organisation, related to any one or more of its products, its services or the manner in which it has dealt with any such expression of dissatisfaction, where a response is either provided by or on behalf of that organisation at the point at which contact is made or a response is explicitly or implicitly required or expected to be provided thereafter - The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008

set of customers, but also in identification of those broader customer groups. However, as we note above, if through its evidence set for this programme of work, Ofgem identifies there to be a group of customers who are currently not being provided with appropriate servicing through the complaints process, as we note above, we think it is important to ensure the extension of existing protections is targeted at those who need them, rather than applied much more broadly.

It is however difficult to offer a clear direction to Ofgem at this stage, and we consider that Ofgem will be better placed to assess an appropriate threshold based on feedback from all parties, and as we note above, evidence from customers themselves. We would however make the following points to support Ofgem's assessment:

- There will be no "perfect" solution given the diversity in non-domestic customer characteristics and therefore there needs to be a balance found between the risks of leaving some customers at the edge of a threshold without the additional protections and creating costs and impacts by providing the protections to customers who do not need them.
- An obvious route would be to exclude those customers managed via bespoke account manager processes, however this would need to be implemented in a manner that avoids gaming via suppliers creating pseudo account management processes which don't provide the same benefits as currently received via those processes.
- Alternatively an exclusion based on FTSE listed companies may avoid the potential for gaming.
- It will likely be more efficient to use thresholds based on the same characteristics as currently included within the definition of microbusiness, notably energy consumption, employee numbers and turnover.

Potential costs and benefits

We note Ofgem's request for costs and benefits of extending the complaints handling regulations to a greater proportion of non-domestic customers. In the absence of specific proposals at this point, it is much more challenging for suppliers to provide the costs, and while we are keen to provide as much information as we can to support Ofgem's processes, we consider this may be more appropriate at the next stage of consultation.

We would also ask that Ofgem requests feedback from suppliers and customers on other impacts that may not fall under the heading of "costs". For example, a poorer customer experience for larger non-domestic customers.

Q12. We are seeking stakeholder views on our suggested proposals to government around increasing access to the Energy Ombudsman. Should there be a threshold on who can access the Energy Ombudsman? If so, where should this be set?

Ofgem is proposing working with Government to explore amending the Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 to extend the scope of non-domestic customers who can access support from the Energy Ombudsman if a complaint is not resolved within eight weeks.

Similar to our response above to Questions 9 to 11, we have some nervousness about the potential impacts of extending access to the Ombudsman to greater numbers of non-domestic customers. The potential for adding costs with little or no benefit seems much greater for this proposal given the costs incurred by suppliers and the Ombudsman for every complaint referred in the process, and the other likely better options larger customers have access to for complaint resolution.

Therefore, while we are not against the extension of the Ombudsman service to customers above the current micro-business threshold, significant care must be taken to avoid unnecessary costs to be created in the market. In particular, we would flag the following points:

- We agree with Ofgem's assessment that larger businesses are unlikely to need access to redress from the Ombudsman. However, we do not agree with the suggestion that those customers will simply not make use of the scheme and consider there to be a real risk that customers will pursue other options at the same time as the Ombudsman scheme, creating costs for the market with no benefit
- We also think there is a real risk that the Ombudsman may not have appropriately trained and skilled staff to manage complaints from larger non-domestic customers given the potential diversity in characteristics of these customers and potential complexity in issues being faced, and this could divert time and resource from helping domestic and smaller non-domestic customers with their issues
- We therefore would support limiting the extension to a subset of customers, focused on targeting those customers who evidence suggests require it but where they fall outside the current micro-business threshold
- We think further research may be needed to identify those customer groups, and think the considerations we have made in our response to Questions 9 to 11 are likely to be relevant in this context as well. In particular:
 - o Exclusions for large customers managed via account managers or FTSE listed, or similar
 - o Using similar characteristics to the existing micro-business definition, focusing on consumption in particular.
- We believe that any threshold to determine the extension of provisions currently applicable to microbusinesses, whether for complaints handling, Ombudsman access, the TPI ADR scheme requirement or TPI commission disclosure, should be the same for all of those provisions to promote consistency of application and to facilitate effective implementation.

Q13. We are seeking stakeholder views on the proposed changes to the rules requiring suppliers work with TPIs who are members of a redress scheme. Additionally, what are your views on the costs and benefits associated with the different proposals?

See answer to Question 14 below.

Q14. What are views from stakeholders on how long it would take to set up and register for a wider TPI ADR scheme, one that goes beyond Micro Business Consumers?

We are responding to Questions 13 and 14 together.

We remain of the view that direct regulation of TPIs is the appropriate method to protect customers from harm from the action of those parties, with this being particularly evident in the non-domestic market from our experience. We therefore welcome Ofgem's continued actions to prompt Government to take necessary action to implement more formal regulation in the TPI market which would remove the need to continue to assess options to regulate TPI actions via energy suppliers. We remain concerned regarding the speed of action in this space as this topic has been under review for a number of years now.

In the absence of such direct TPI regulation, we understand the reasoning behind Ofgem's proposals within this programme of work to extend the obligation on suppliers to work only with TPIs who are members of a redress scheme to greater numbers of non-domestic customers.

For reasons similar to our approach on extending complaints handling and Ombudsman access, we do not believe that the TPI ADR scheme requirement should be extended to all non-domestic customers. As with Ombudsman access, larger customers, given their size and resource, are unlikely to need the protections offered by this proposal. We agree with Ofgem's views that the expansion of access to redress schemes should be consistent with the expansion of access to the Ombudsman to avoid confusion.

With regard costs of implementation, we think others in the sector, and most notably TPIs may be better placed to comment on this. However, we agree with Ofgem that there is likely to be a need for longer implementation timescales to ensure suppliers and TPIs have adequate time to ensure compliance.

Finally, we note that Ofgem considers this is likely to be a temporary measure in advance of direct regulation of TPIs through additional legislation. If this is the case, we think Ofgem should also be considering its approach to removing these obligations on suppliers at the same time the new framework for TPIs is introduced to avoid costs to stakeholders of multiple schemes that deliver the same protections to customers and any potential for conflict between different requirements.

Q15. What are your views on our proposal to expand SLC 0A (non-domestic Standards of Conduct)? Do you have any views on which consumers they should or should not apply to? Please provide any views on costs and benefits of making this change.

We have limited comments on Ofgem's proposal to extend the existing Standards of Conduct for micro-businesses in SLC 0A to all non-domestic customers as we generally agree with Ofgem's assessment that suppliers undertaking good business practices are likely to already be meeting the obligations. We would note that in assessing compliance, Ofgem will need to take account of the likely more complex contractual arrangements in place for, in particular large non-domestic customers, who will also have experts in their business who manage their energy contract as part of their role. This will naturally lead to the need for communications to be more technical in language and presentation than may be the case for smaller non-domestic customers, while still being in language that is plain and intelligible to the reader.

Q16. Do you have any further comments on the proposals in this section on Competition in the market and customer complaints?

Market Monitoring

We note Ofgem's intention to continue to request information from suppliers via increased regular reporting which is set out in paragraphs 3.63 to 3.67. The intention is that the reporting would cover complaints handling and processing, change of tenancy, contract offer information, security deposits and debt and disconnection.

While Ofgem notes that this will support suppliers receiving fewer ad-hoc RFIs, and allow better planning for the reports which will have consistent metrics and definitions, we continue to be concerned around the burden of reporting being placed on suppliers which has continued to increase over the last few years. We note Ofgem's intention to engage with suppliers on the revised and increased reporting over the summer and we welcome this engagement and urge Ofgem to ensure that any request for additional reporting is proportionate to avoid unnecessary burden on suppliers.

CoTs/CoOs

While we naturally support the efficient processing of genuine non-domestic CoTs/CoOs, we have legitimate concerns related to fraudulent cases. In our experience, fraud attempts related

to CoT/CoOs are regular and ongoing. Given this context, we believe that Ofgem's approach to CoT/CoOs should take due account of the fraud challenges experienced by suppliers. We would encourage Ofgem to keep this fraud risk under review as part of the balancing of objectives for CoT/CoOs.

Section 4 – Some customer groups need focused support

Q17. What are the views of Distribution Network Operators (DNOs), Independent Distribution Network Operators (IDNOs), Gas Distribution Networks (GDNs), and Independent Gas Transporters (IGTs) on the potential issues of targeting support to vulnerable end users supplied through non-domestic contracts?

We welcome efforts to identify and support vulnerable domestic customers served through non-domestic contracts and recognise that features of the net zero transition, including on-site renewable generation, could ultimately result in more domestic customers having an indirect non-domestic supply arrangement. As a DNO we are committed to our PSR and other obligations in relation to vulnerable customers. Following Storm Arwen, we recently reviewed our processes to identify if there were ways in which we could improve our support to customers in a power cut. However, we look forward to Ofgem's proposed engagement with DNOs to identify if there are additional practical ways in which vulnerable people can be better supported in the event of a power cut or emergency situation.

Q18. What changes to the Maximum Resale Price direction would improve its effectiveness and what are the potential downsides to any changes?

We have no comment to make on this question at this stage other than to support Ofgem's aims to ensure consumers remain protected via the Maximum Resale Price direction. Others will be better placed to comment on the detail.

Q19 What are the costs and benefits associated with the proposal to expand TPI commissions disclosures to all non-domestic customers? How long would it take suppliers to implement this policy?

See answer to Question 21 below.

Q20. Are there views on how commissions disclosure is best presented to be understood by consumers?

See answer to Question 21 below.

Q21. Should we expand commissions disclosure to all non-domestic customers or a sub-set of customers, and if a sub-set do you have views on how to define this?

We are responding to Questions 19, 20 and 21 together.

Ofgem is proposing to extend the existing licence conditions around TPI commission disclosure to all non-domestic customers. This involves updating and extending the following existing elements of the licence conditions to all non-domestic customers.

- Extending the reference of Third Party Costs within the definition of Principal Terms in SLC 1; and
- Moving the requirements on TPI Commission disclosure from SLC 7A.10C to SLC 20, and extending from Micro Business Consumers to all non-domestic customers

Our overarching view is that the disclosure of commissions should be something that is a matter directly between the TPI and the non-domestic customer, however we understand that until there is direct regulation of TPIs in place, Ofgem's approach to improving transparency of commission is to place obligations on suppliers. As we have noted in other parts of this response, we continue to support actions to directly regulate TPIs.

Presentation of commissions

In paragraph 4.47, Ofgem also asks for feedback on how commissions disclosure is best presented in order to be understood by business, with a reference to one stakeholder suggesting that it would be better to present it as a cost per unit of energy rather than a lump sum on an annual basis. This second element suggests that Ofgem may be considering a broader change to the existing rules for micro businesses, rather than just a change to extend existing obligations to all non-domestic customers. On this point, we would guard against Ofgem making changes to the existing obligations which as it references in the consultation document have been beneficial to those customers covered by the proposals.

Any change to the presentation of commissions would be timely and costly for suppliers to implement, and therefore Ofgem must ensure it has a strong evidence base for the need to change. At this point, we are not convinced that Ofgem has evidence that would merit any change, and therefore we strongly suggest Ofgem does not make any changes to how commissions are disclosed to customers. This approach was considered and implemented after various rounds of consultation in the Strategic Review of Micro Businesses only a couple of years ago, and we see no justification to change this.

Extension to all non-domestic customers

Ofgem's draft licence conditions set out a position that would extend the relevant licence drafting to all non-domestic customers which we consider suggests that its preferred option is to take this approach rather than extend only to a sub-set of non-domestic customers not currently covered by the micro business definition.

While we support the principle of TPI commission disclosure for non-domestic customers, we think there is a real risk that for larger non-domestic customers, the potential costs and complexity would outweigh any benefits. As we have noted in our responses to other questions in this consultation, larger non-domestic customers can have particularly complex contractual arrangements and this would extend to the associated TPI commissions. In this case, we think the costs (and timescales) of implementation could be significant with little benefit for these customers groups given their expertise and relative power in negotiations with both TPIs and their supplier.

We consider therefore that Ofgem should limit the extension of this provision in a similar manner to the approach suggested for the extension of complaints handling discussed in earlier sections of the consultation to ensure the larger non-domestic customers are excluded. We think by doing this, the costs would be significantly reduced and allow for suppliers to extend existing processes far more easily to a greater group of customers.

Another complexity for customers not currently covered by the existing obligation in SLC 7A.10C is that it allows for customers to request information on Third Party Costs relating to historic periods, and therefore if Ofgem decides after consultation to extend the existing obligations to a greater proportion of non-domestic customers, to limit costs and timescale for implementation we would ask that Ofgem limit the requirement to contracts agreed after the date the new requirements take effect.

Q22. Do you have any further comments on the proposals in this section on focussed consumer support?

Definition of a Micro Business Consumer

We agree with Ofgem's position in the consultation not to amend the definition of a micro business consumer. In our view, maintaining consistency in the definition of a microbusiness across sectors is valuable and promotes awareness, both for those customers themselves and the wider industry, of the microbusiness category. As we have indicated previously, we believe that, if some provisions currently applicable to microbusinesses were to be extended to further non-domestic customers, we believe that the threshold for that new group should be the same for all those provisions. In our view, this approach to an expansion threshold would promote consistency of application of the provisions, facilitate their effective implementation and ensure that customers, suppliers and other parties understand clearly the codified categories of non-domestic customers.

Cooling-off period

We note in the consultation Ofgem's reference to further review of the potential to introduce a cooling-off period for micro business customers, similar to that currently in place for domestic customers. We engaged constructively with Ofgem within the Strategic Micro Business Review on this topic, to ensure that any introduction of a cooling off period took account of the key differences between domestic and microbusiness contracting processes. We think there is a real risk of unintended consequences including impacts to customers in this process and therefore any further review must allow sufficient time to ensure all necessary elements are fully reviewed.

NON-DOMESTIC MARKET REVIEW – FINDINGS AND POLICY CONSULTATION – COMMENTS ON DRAFT LICENCE CONDITIONS AND GUIDANCE

We have set out in the table below comments on the draft licence conditions and guidance which is provided by Ofgem in Appendices 1 to 3 of the findings and policy consultation document.

| Appendix | Area | Comment | Proposed Amendment |
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| 1 | A1.28 | As we have noted in our response to Question 2, we do not believe that the comparator for an “equivalent contracted rate” should be a fixed-term contract, for either domestic or non-domestic customers. Where such a comparator must be defined, we believe that it should be a variable contract. In any event, we believe that the guidance should reflect the reference in SLC 7.4 to the generality of customers of a similar class as part of the “significantly exceeds” test, and we have proposed alternative drafting to that effect. | A1.28 In the context of SLC 7.4(a), we consider that ‘significantly exceeds’ ¹ for the purpose of determining if deemed rates are unduly onerous, means that the deemed rate is much higher than an equivalent contracted rate, and that this difference between the deemed rate and the equivalent contracted rate is not otherwise justified. An equivalent contract ed ^{ed} rate in this context <u>could</u> mean s a <u>contracted variable</u> rate that is comparable to the deemed rate, <u>but in any case is viewed by reference to the generality of the supplier’s customers. For example, a contract rate for Small to Medium enterprises (SME)s and a deemed rate for SMEs, across a broadly equivalent time period (for example, comparing a contract rate taken out on 1 Jan 2022 for a year with the deemed rates throughout 2022), where there may be similar energy usage/consumption for this SME on deemed and the equivalent contracted.</u> |
| 1 | A1.38 | As we have noted in our response to Question 5, there may be in practice it may not be possible in some cases for suppliers to differentiate classes of customers into the sub-groups suggested by Ofgem, and therefore in monitoring compliance with the guidance, Ofgem must take this constraint into account. We also think that the guidance | A1.38 Suppliers should ensure that they have deemed rates which are applicable to relevant classes of customers. We consider that this does not refer to simply domestic or non-domestic customers, but instead refers to sub-categories of customers such as Micro Business, SME and I&C, |

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| | | could be clearer on this point and have suggested an amendment. | or HH and non-HH, for example. Given that there is significant range in the pricing across customers, it would not be suitable to assume one price for, for example, all non-domestic customers where a suppliers contracted prices ranges across their non-domestic customers. As such, relevant classes of customers in this context may refer to the groups of customers that have similar contract pricing based on consumption rates, meter classifications and/or location, as appropriate <u>and where reasonably practicable for the supplier to apply different rates.</u> |
| 1 | A1.41 | As we have indicated in our response to Question 3, we are concerned that the draft guidance as written could be interpreted as creating a prescriptive quarterly review frequency with no flexibility to take account of external or internal influences which could create reasonable need to deviate from an exact quarterly frequency. We believe the drafting should not create prescriptive timescales and have proposed alternative drafting to remove the risk we have identified. | A1.41 Deemed rates must be reviewed regularly enough to ensure that prices are appropriate and that the revenue suppliers are receiving from their deemed contract customers is not unduly onerous, and at the least in line with SLC 7.4. While circumstances may differ across suppliers, we consider that a review <u>during each at least once a</u> quarter of the rate is likely to be appropriate in most cases. |
| 2 | SLC 1.2 Definition of Principal Terms | As we have noted in our response to Questions 19 to 21, we do not consider that Ofgem should extend the TPI commission obligations to all customers and instead should extend to a new subset of customers yet to be agreed as part of this process. The draft licence conditions however have been drafted on the basis of the requirement extending to all non-domestic customers, which is not our preference, and which we consider could create significant costs with little benefit. We therefore think the draft licence conditions need amended to allow for a subset of non-domestic customers, by reference to a new definition within SLC 1. | Principal Terms means, in respect of any form of Contract or Deemed Contract, the terms that relate to: ... and any other term that may reasonably be considered to significantly affect the evaluation by the Customer of the Contract under which gas may be supplied to his premises including for the avoidance of doubt, in relation to <u>Micro-Business [New subset of non-domestic]</u> Consumers any Third Party Costs, required to be paid or due to be paid in respect of the full duration of a |

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| | | <p>Regardless of this point, we note inconsistency between the amendments to the gas and electricity definitions which has amended only one reference to Micro Business in each case when both references will need fixed.</p> <p>Rather than provide updated drafted for each of gas and electricity SLCs, we have provided one with all suggested amendments marked up.</p> | <p>Microbusiness <u>[New subset of non-domestic]</u> Consumer Contract and to be presented as (whether actual or where that is not possible, estimated amounts).</p> |
| 2 | SLC 20 | <p>As we have noted in our response to Questions 19-21, we do not consider that Ofgem should extend the TPI commission obligations to all customers and instead should extend to a new subset of customers yet to be agreed as part of this process. The draft licence conditions however have been drafted on the basis of the requirement extending to all non-domestic customers which is not our preference and consider could create significant costs with little benefit.</p> | <p>Similar to our amendments to SLC 1 above, we think the draft licence conditions need amended to allow for a subset of non-domestic customers, by reference to a new definition within SLC 1.</p> |
| 2 | <p>SLC 20.5C (Electricity)</p> <p>SLC 20.6C (Gas)</p> | <p>As we have indicated in our response to Questions 13 and 14, we do not consider that Ofgem should extend the TPI ADR scheme requirement to all customers and instead should extend to a new subset of customers yet to be agreed. We have noted some typos in the draft licence conditions which we have provided suggested amendments to address.</p> | <p>Suggested drafting for electricity which should be replicated for the same condition for gas:</p> <p>20.5C The provisions in this Condition 20.5 insofar as they relate to dispute settlement between a Microbusiness Consumer and a Third Party shall take effect on and from 1 December 2022 for a date specified by the Authority. The provisions in this Condition 20.5 insofar as they relate to dispute settlement between a <u>[New subset of non-domestic]</u> Non-Domestic Consumer and a Third Party shall take effect on and <u>from [a date to be confirmed]</u> for a date specified by the Authority.</p> |
| 2 | <p>SLC 20.6A (Electricity)</p> <p>SLC 20.7A (Gas)</p> | <p>As we have indicated in our response to Questions 19 to 21, we do not consider that Ofgem should extend the TPI commissions obligations to all customers and instead should extend to a new subset of customers yet to be agreed. From reviewing the existing and proposed license</p> | <p>Suggested drafting for electricity which should be replicated for the same condition for gas:</p> |

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| | | conditions, we believe that this draft licence condition contains an error in its reference to SLC 20.6B for electricity and 20.7B for gas (each of which does not exist). Based on our understanding, we believe that the reference should instead be to SLC 20.6 for electricity and 20.7 for gas, On both points, we have proposed alternative drafting. | <p>20.6A The licensee must ensure that the information that the licensee is required to disclose by virtue of condition 20.6B<u>20.6</u>:</p> <p>(a) is disclosed as monies, whether actual amounts or (if that is not possible) estimated amounts;</p> <p>(b) enables a Non-Domestic<u>[New subset of non-domestic]</u> Consumer to understand the amount of those sums that it is due to pay which are, or are attributable to Third Party Costs due to the Third Party, as well as any Charges (so far as they are different) or other sums; and</p> <p>(c) is drafted in plain and intelligible language.</p> |
| 3 | A3.2 | Whilst we note that this is not a particularly material change, we would highlight that Ofgem's guidance drafting here is slightly different from the 2015 guidance in relation to point (b) with no comment on this to bring it to supplier's attention. Whilst we agree with the intent of the additional wording, we do not see it as good regulatory practice to make amendments to guidance drafting in this way. | <p>We would suggest Ofgem retains the existing drafting of the guidance or sets out why it has chosen to amend this element.</p> <p>(b) the supply of gas or electricity to the relevant premises is for wholly or mainly domestic use on the proviso it is not resold;</p> |