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Date: 22 January 2026

### “Consumer Outcomes Call for Input” – So Energy Response

Dear Jemma,

So Energy is a leading energy supplier providing great value renewable electricity to homes across Great Britain. We supply 300,000 customers as one of the last challenger suppliers left in the market and one that is backed by ESB Group’s resources and expertise, So Energy is able to provide a unique view of competition and consumer protection in today’s energy market.

We welcome this review of how the market is regulated and we welcome the opportunity to provide comment. We would like to highlight the following key points:

Reducing prices needs to be at the forefront of this review. It’s consistently the consideration billpayers value the most. There are many opportunities to lower prices through this review; by reducing regulatory burden, by reducing regulatory risk through providing more certainty, and by opening up rules and investment to deliver innovative, lower cost, tariffs. However, there is also a risk of prices rising:

- 24 draft outcomes make for an overly complex and confusing regulatory landscape in which Ofgem’s behaviour will be difficult to predict. This increases regulatory risk, prices and has a chilling impact on innovation.
- There is a risk that, even if this review goes well, the supply licence will immediately begin to grow again, eroding any value gained from the changes. Ofgem needs a plan for ensuring the regulatory framework remains proportionate.
- Innovation is dependent on investability and investability is dependent on suppliers making a reasonable rate of return. This is not happening in today’s market. If the review prompts cuts in the price cap on the basis of what Ofgem thinks it might do to supplier costs, then the money that could be used to fund innovation will be lost.

There are a lot of different ways to regulate a market. Outcomes-based regulation is not a magical panacea, no more than principles-based regulation was when it was introduced. As Ofgem continues this review, we would advise that it keeps an open mind and tests a few different approaches to regulation – right down to drafting multiple example licence conditions. We are hopeful that a consensus could be reached on the way forward when stakeholders understand how each approach would actually work in practice. We’ve set out our suggested approach to this in our response to Question 9, below.

**Q1. In your view, what are the key factors we should consider if we are updating our regulatory framework for retail energy suppliers, keeping in mind the balance between our growth and net zero goals, and consumer interest duties?**

Price is paramount:

- Low energy prices are a key enabler of economic growth.
- Low energy prices lower inflation and reduce the cost of borrowing to the government, unlocking opportunities to support less well-off customers with their bills.
- Low energy prices reduce debt-recovery costs, which unlocks even lower prices.
- Low energy prices are a key enabler of Net Zero. For example, consumers will not adopt EVs if it is cheaper to run a petrol car.
- There is a strong correlation between energy prices and consumer satisfaction with their supplier.

More rules = more regulatory burden = higher prices. However, there are many silos within Ofgem, especially in energy retail policy development, compliance and enforcement, that pay scant regard to energy prices in their work, seeing that as someone else's problem.

Consumer groups also tend to pay little regard to the price consequences of their proposals and Ofgem tends to adopt these positions as their own. For example, suggesting that it would be a good idea to have a phoneline available to answer general queries at 3am on Christmas Day, as part of the initial Consumer Standards proposals. Ofgem needs to re-evaluate their priorities and put price at the forefront.

Looking forward, there will be opportunities for suppliers to unlock value for consumers through innovative products and services, but the sheer magnitude of the supply licence acts as a blocker. It is really quite difficult to navigate, interpret and use as a predictor of Ofgem behaviour. Ofgem needs to dramatically shorten and simplify their rulebook to unlock this value.

**Q2. Why do you think there is such a divergence of satisfaction rates across different consumer cohorts?**

There is a clear correlation between satisfaction and the proportion of household income spent on energy. The best tool Ofgem has to raise satisfaction, is to lower how much it costs suppliers to provide energy to their customers. Opportunities exist to do that within the scope of this review.

**Q3. The Consumer Outcomes have been developed based on what industry, charities, consumer groups and consumers have told us they need to cover. Do you agree that these outcomes cover the most important expectations consumers have of energy suppliers?**

There are far too many outcomes and they conflict with one and other, which raises uncertainty, risk and price. Stakeholders have suggested these without accounting for the impact so many outcomes would have on price.

We also understand from workshops that Ofgem crowdsourced these outcomes from teams within their organisation. This indicates that there are many silos within Ofgem that work across one and others' purposes and work with little regard to the price of energy.

The most important expectation among consumers is that their bill is affordable. Ofgem's role in terms of making energy *less* affordable through burdensome regulations is not acknowledged in the outcomes. The underlying assumption of these outcomes is that Ofgem can continue to pile-on regulatory burden to infinity, while suppliers will be 'incentivised' to find cost savings elsewhere. This is not the basis of an investible market. We note that investability barely gets a passing reference within the 24 outcomes, despite it being a central pillar of Ofgem's draft forward work programme.<sup>1</sup> The draft consumer outcomes are not aligned with Ofgem's broader priorities, nor the government's plan to drive economic growth in regulated markets.<sup>2</sup>

**Q4. Do you think we should streamline or consolidate the Consumer Outcomes further and, if so, which should we prioritise?**

Yes, these need to be streamlined dramatically.

Price, investability and economic growth should be prioritised. These three factors are interrelated. Investment will help suppliers unlock value for their customers as generation decarbonises and lower price. This will help unlock the benefits of Net Zero and drive economic growth.

**Q5. Do you agree with the explanations provided of the Consumer Outcomes in the appendices of this call for input? Do they help you understand the intent of the outcomes?**

It is impossible to achieve all 24 outcomes at the same time. Ofgem has not set out how it will prioritise one outcome over another. From a supplier perspective, it is a recipe for regulatory uncertainty, risk and higher prices. There is no way to predict Ofgem's behaviour under this framework. Each person in Ofgem will be free to pursue whatever outcome is flavour of the month, leading to inconsistent policy development and engagements on compliance.

**Q6. Why do you think these outcomes are not materialising consistently for all consumer groups given that they are in line with our existing rules?**

The consumer groups that are least satisfied pay a greater proportion of their household income on energy. The price is too high. Ofgem has played a role in making the price as high as it is but it also has an opportunity to reverse this trend.

**Q7. Do you think some outcomes are more important for consumers than others?**

Yes, price. Looking forward, inward investment in energy retail is needed to unlock the opportunities Net Zero presents and deliver better value to consumers. However, the sheer

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<sup>1</sup> [Proposed Forward Work Programme for 2026 to 2027 | Ofgem](#)

<sup>2</sup> [Chancellor unveils plan to turbocharge investment across the UK - GOV.UK](#)

size of the existing rulebook is a barrier to innovating and discovering that value for consumers.

24 outcomes does nothing to help address this challenge. Ofgem needs to simplify and prioritise the outcomes that matter the most.

**Q8. Do you see an opportunity for outcomes, though not necessarily the Consumer Outcomes set out in this call for input, to be applied to wider market participants? Who should they apply to and why?**

It is essential that regulation and protection be applied consistently. If some elements of the market are saddled with onerous regulation while other elements are not, investment will be directed at the unregulated sections of the market – better returns on investment will be on offer where it is less regulated. Overregulation, applied selectively, will create the perverse outcome where consumers are less protected because the dominant businesses are the unregulated ones.

**Q9. Do you have a preferred approach among those outlined below or should we retain the current framework? Do you have an alternative suggestion? Please explain your reasoning. a) What level of action/intervention do you feel would be proportionate to drive up customer service in the non-domestic sector? Does it differ from domestic?**

It is good to consider different approaches to creating rules. Having considered Ofgem's initial assessment of outcomes versus prescriptive regulation, our conclusion is that it would be best to drill down and bottom out what different types of prescriptive and outcomes-based regulation work best in a supply licence context. We recommend that Ofgem produce draft outputs of what rules would look like under each approach, then these can be tested before an overall approach is chosen for adoption.

Our recommended next steps are as follows:

- Drill down to the next level of detail beyond what is offered in this call for evidence, identifying different forms of prescriptive and outcomes-based regulation.
- Identify potential forms of prescriptive and outcomes-based regulation that could work well together.
- Draft these combinations with example licence conditions to test whether they work well.
- Through consultation, see if a consensus can be reached on an approach. If not, weigh up the pros and cons of each combination and choose.
- Redraft the entire customer facing element of the supply licence for the chosen approach. This may seem like an enormous undertaking, but:
  - Much of today's supply licence is not consumer facing or concerns schemes that have almost expired, like FIT. These can be left as is.
  - If Ofgem is doing this right, the new drafting should be dramatically shorter than what it replaces.
  - Trying to mix-and-match elements of the existing supply licence with the new approach will be tricky. Starting afresh is more work but more straightforward work.
- At this stage, consider whether to trial an element of the new drafting or adopt a big-bang approach.
- When implementing, make clear which elements of existing guidance will carry over and state that all other historic guidance no longer applies.

Our emerging preferred approach is to create uniform minimum standards that would apply to common customer journeys. These rules would need to be simple enough that they could be clearly articulated to consumers. This would provide a level of consistency in the treatment of customers in key areas. Other than that, the existing standards of conduct could be relied upon to ensure customers are treated fairly. Because the minimum standards would be articulated around what suppliers will do, it would allow them to tailor customer journeys around the uniform actions and touchpoints every supplier would undertake. We are still developing our thinking around this approach but we think it has merit.

We have tried drafting outcomes based regulations as a thought experiment but found it extremely difficult.

We have no comment on the non-domestic sector.

**Q10. Do you think a voluntary approach – where suppliers make a public commitment to deliver the Consumer Outcomes without formal regulatory change could be effective? What conditions would need to be in place for this to work?**

No. Ofgem puts less thought into voluntary rules because there is no need to do an impact assessment. Whether rules are 'voluntary' or not, a regulatory burden is placed on suppliers. Ofgem has often suggested voluntary rules in the past that would increase costs to suppliers without a corresponding increase in the price cap. These rules more often than not, do not get adopted.

Ofgem should go through a thorough and robust process for putting in place new rules with a focus on keeping prices low.

Prior to the introduction of the price cap, this approach was tried by Ofgem under Better Regulation. The incumbents signed up to voluntary commitments but, typically, new entrants did not (especially suppliers who entered the market after the voluntary commitment was introduced. This created a distortion in the market. In the end, most of these voluntary commitments were shifted to the supply licence.

**Q11. Could a more outcomes-based regulatory framework benefit the supply market? Do you think this kind of approach could unlock innovation and growth? Please provide examples.**

Potentially, but we don't think it's necessarily the only way to unlock innovation and growth. Our greatest worry with outcomes-based regulation is the need to be able to predict the behaviour of the regulator. For example, we would try something new, but the regulator would say it shouldn't happen because they believe that it could lead to bad outcomes. Or that we would try something new and the regulator would instruct us to stop on the basis of a few anecdotes, rather than robust evidence. Trying something new is an investment of time and capital – if there is a real risk that Ofgem will instruct us to abandon it, we're less likely to innovate in the first place.

**Q12. Are there specific licence conditions where less prescription could benefit the retail market without compromising consumer protection? a) For suppliers: are there any areas where you find guidance helpful or unhelpful?**

We are worried about the risk of piecemeal application of rules. We have already seen Ofgem's compliance function combine two prescriptive licence conditions with narrow principles around sales and marketing to reach an interpretation of the supply licence that directly contradicted the intent of the policy colleagues who drafted the narrow principles in the first place. Introducing further new types of licence conditions increases that risk further.

There is also the issue of the status of historic guidance with a piecemeal approach and whether it applies to a licence condition that has been retained, especially when the context in which that licence condition sits has changed dramatically. In making changes, Ofgem needs to be clear what historic guidance is carried over and that all other guidance will be discontinued.

One of the most frustrating elements of managing regulatory risk is that there is no clear picture of what guidance is still 'live' and what has been discontinued. For example, we have asked Ofgem in the past to provide a list of all live derogations in the supply licence and heard nothing back. Our conclusion is that Ofgem does not know what guidance or licence derogations are live and what has been discontinued. This situation needs to be addressed.

We would encourage Ofgem to continue to retain the option of a big bang approach to change, where the new licence conditions would be introduced as an internally consistent package of regulations. Piecemeal should only be considered when this big bang approach is concluded to be unworkable.

**Q13. Are there areas where prescriptive rules should remain in place? If so, why?**

There will likely be an enduring role for prescriptive regulation but that doesn't mean the prescriptive rules, as written, ought to be retained. The existing rules have been introduced piecemeal over 20+ years and could be better articulated in today's context. Some of the most convoluted requirements weren't introduced by Ofgem at all. If Ofgem does not have the discretion to amend, simplify and clarify rules that were introduced by DESNZ or CMA, then this review is severely hamstrung in terms of what it can deliver.

All existing rules should be subject to review, even the most clearly articulated and well understood rules. While they may have made sense in the context they were introduced, the review promises to dramatically transform that context. Therefore, it makes sense to review them.

**Q14. What factors should we consider to determine whether specific rules are best delivered through prescription, principles or outcomes?**

We recommend taking the following approach:

- Drill down to the next level of detail beyond what is offered in this call for evidence, identifying different forms of prescriptive and outcomes-based regulation.
- Identify potential forms of prescriptive and outcomes-based regulation that could work well together.
- Draft these combinations with example licence conditions to test whether they work well.
- Through consultation, see if a consensus can be reached on an approach. If not, weigh up the pros and cons of each combination and choose.

- Redraft the entire customer facing element of the supply licence for the chosen approach. This may seem like an enormous undertaking, but:
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- At this stage, consider whether to trial an element of the new drafting or adopt a big-bang approach.
- When implementing, make clear which elements of existing guidance will carry over and state that all other historic guidance no longer applies.

**Q15. Which of the monitoring approaches we outline below would be the most effective for monitoring supplier performance against the Consumer Outcomes? Are there alternative approaches? Please provide evidence.**

Ofgem's revised approach to compliance, which was shared with suppliers in recent months, represents a good starting point for monitoring compliance with the rules.

As for monitoring whether a revised set of rules is effective, this is a little trickier. There is always a tendency, once implemented, to ascribe all positive developments to the rules one has developed and to minimise any attribution of fault with regards to any negative developments – 'all the good stuff is because of me and none of the bad stuff is because of me'. It is human nature and it is something we have seen Ofgem do in the past, ascribing efficiency gains made by suppliers to the existence of the price cap, rather than a combination of competitive pressure and the availability of new software that lowers cost to serve.

There is also the issue of scope creep – if 50 or more people in Ofgem work in and around retail policy, they will have to find something to do when this review is over. Unless controls are put in place, policy teams will ferretting out problems, both real and imagined, and write more rules to solve these problems.<sup>3</sup> The supply licence will grow again, and the benefits of this review will be eroded away. This risk needs to be addressed. Our suggestion is that these Ofgem colleagues shift their focus to the various quasi regulated entities, MAPs, MOPs, DCs etc. to see whether the market arrangements around these providers deliver good outcomes for consumers. It seldom gets attention, meaning there is likely to be value in a review of these arrangements. This pivot will also allow outcomes-based regulation to bed in, so that its effectiveness may be properly considered.

We are happy to work with Ofgem on how to evaluate the effectiveness of policy changes.

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<sup>3</sup> As an aside, every policy team always believes that the rules they are introducing are justified, and taken on a case-by-case basis, they may be. However, if this exercise is repeated again and again, with more and more rules, you get an unworkable regulatory framework. Discreet interventions can be sensible in isolation but detrimental when considered as part of a whole.



**Q16. How do we best measure our success as to whether we have: a) Improved consumer outcomes and achieved our ambitions for customer service and b) Reduced regulatory burden and encouraged growth and innovation**

This is very difficult. Outcomes can be tracked but ascribing those outcomes to particular interventions is notoriously tricky. A key factor will be the ability to strip out wholesale market volatility out of assessments while at the same time capturing the value innovative products provide in reducing exposure to wholesale market volatility. We don't know how to do that.

However, we are keen to engage and work collaboratively with you on this challenge.

**Q17. Is there anything Ofgem can do to improve how we work and engage with you as a stakeholder on retail energy supply policy and regulation?**

Early engagement with suppliers when considering new policies and interventions, before Ofgem goes public. The issue with public pronouncements is that it can make subsequent engagement adversarial and puts a clock on policy development. This can compromise the quality of policy development.

Ofgem has engaged in a pattern of taking suggestions from consumer groups and presenting them to suppliers as proposals without, on the face of it, subjecting these suggestions to any scrutiny of its own. This, presumably, is where the idea to have a call centre open for general queries at 3am on Christmas Day came from. Please stop this. Ofgem needs to apply its own scrutiny to suggestions from the consumer groups, especially with regards to whether these suggestions will drive up bills for consumers.

Ofgem has traditionally been reluctant to scrutinise whether the markets and regulatory arrangements that sit behind suppliers are delivering good value for consumers. For example, whether MAPs, MOPs and DCs are efficient and making reasonable rates of return or whether there are issues with the functioning of these markets. There could be value in Ofgem scrutinising the underlying structure of the market in the future as we believe savings could be achieved.

Yours Sincerely,

Paul Fuller  
Head of Regulation