

Jemma Baker  
Deputy Director, Future Retail Markets  
Ofgem  
10 South Colonnade  
London  
E14 4PU

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Dear Jemma

## **CALL FOR INPUT: CONSUMER OUTCOMES**

We welcome the opportunity to respond to Ofgem's call for input (Cfi) on its Consumer Outcomes programme of work. We agree with Ofgem that reviewing the regulatory framework is necessary to ensure it evolves as the market and consumer needs change. This programme of work is therefore timely given the significant changes emerging through technical evolution and as energy prices continue to present affordability challenges to many more consumers.

A Cfi is normally the first stage of a programme of work. However, this document has been published some time after the programme commenced, and after Ofgem has developed a set of desired Consumer Outcomes-based on engagement with internal Ofgem stakeholders and also external market stakeholders in workshops.

It is welcome that Ofgem is seeking views on the proposed Outcomes at this point before proceeding with any further activity. It is important that Ofgem's decision making and interventions are underpinned by robust consultation, as any process that does not allow for such challenge risks decisions being taken without sufficient supporting evidence.

This Cfi poses a number of questions which seek feedback on the following broad themes, with Ofgem encouraging views to shape the next steps in the process. These are:

- Are the Consumer Outcomes that Ofgem has developed the right ones to deliver consumer expectations from energy suppliers; and
- What should Ofgem do with these Outcomes if and when they are agreed and finalised.

We have set out in Annex 1 our responses to the questions posed by Ofgem and in Annex 2 we have provided detailed feedback on the draft Consumer Outcomes and accompanying explanatory text.

We would make the following high level comments on Ofgem's overall programme of work, its intended use of the Consumer Outcomes and the draft Outcomes themselves.

- **The Consumer Outcomes include areas for other industry stakeholders:** We think the draft Consumer Outcomes provide a useful framework for the industry as a whole, rather than just suppliers, and think they provide a good overview of what consumers should expect from their experience in the market. However, Ofgem's Cfl is inviting views on the use of the outcomes for the purposes only of assessing customer experience from their energy supplier. Depending on how Ofgem intends using the outcomes, it will likely need to refine them to ensure accountability is directed to the most appropriate party, rather than all falling to suppliers.
- **Use of the Consumer Outcomes:** We think Ofgem should use the Consumer Outcomes to identify gaps in the current regulatory framework and to support an assessment of the appropriate route to regulation in each area. We would not support an approach that removed the existing licence conditions and replaced them with a principles-based obligation to deliver the final Consumer Outcomes. We can see significant risk to consumers of such an approach without robust assessment.
- **We consider it likely that there are areas that would deliver better outcomes with more prescription rather than less:** While asking for views on prescription vs outcomes-based regulation, we think there is a risk of assuming that less prescription rather than more is the right option. Our recent experience suggests that there may be areas where consumers would benefit from a consistent process regardless of supplier, and therefore Ofgem's Consumer Outcomes programme of work should include this assessment. Some of these areas may also be appropriate topics for assessment under Ofgem's review of the Guaranteed Standards of Performance.
- **A trial could be a good option as a first step:** We think Ofgem's approach to assessing one area of the regulatory framework as a trial could be a good first step to testing the use of the Consumer Outcomes. However, any trial must include an assessment of whether prescription or outcomes is the right approach to regulation rather than moving straight to assuming the trial is to test an outcomes-based approach.
- **Monitoring should cover every customer interaction:** Ofgem should consider how suppliers could measure customer satisfaction across every part of the customer journey. We think this approach could deliver a much more robust assessment of consumer experience, than the current approach to monitoring.

Yours sincerely,



**Richard Sweet**  
Director of Regulatory Policy

**CALL FOR INPUT: CONSUMER OUTCOMES  
– SCOTTISHPOWER RESPONSE**

**Section 2. Rationale for consulting**

**Question 1. 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?**

We agree with Ofgem's assessment that the regulatory framework is difficult to navigate and that the market has evolved significantly since many of the rules were developed and implemented. In this context we agree that it is appropriate to review the framework to ensure it is fit for purpose and supports suppliers and Ofgem in delivering good outcomes for consumers.

We think Ofgem should allow itself sufficient time to undertake over a longer period of time with a full assessment of the relative merits of different approaches to regulation within each area of the retail space. We would be concerned if a quick decision were to be taken to move to an outcomes-based regulatory framework, with little or no underlying prescription, which has been suggested to a greater or lesser extent in industry engagement. While this CfI is asking stakeholders for views on the relative merits of prescription versus principles-based regulation, the questions posed of the reader, could be argued to place a much greater focus on introducing more principles and removing or retaining existing prescriptive rules, than assessing whether there are additional areas where prescription rather than principles is the appropriate regulatory approach. We think Ofgem should be open to evidence of areas where the introduction of new prescriptive rules and removal of existing principles-based rules is the appropriate approach to protecting consumers. While we agree that some prescriptive rules can limit supplier flexibility and could lead to poorer consumer outcomes, our experience in certain areas in recent periods, suggests there are areas where more prescription rather than less would lead to better consumer outcomes.

In undertaking its assessment of the regulatory framework, we would encourage Ofgem to ensure that any decisions taken within this programme of work are made with robust evidence, and after full consultation. This will include:

- Using the output from its assessment of the current framework against the final set of consumer outcomes as this will support Ofgem in understanding where there are gaps or issues that need addressed and where the current framework remains appropriate.
- Assessing each specific area through consultation to understand whether the desired consumer outcome is best delivered through prescription or principles. We comment elsewhere on the factors that are relevant in undertaking this assessment.
- Assessing any proposed interventions against Ofgem's principal duty to protect the interests of current and future consumers, alongside the Growth Duty and the UK's Net Zero objectives. That means enabling innovation and investment, avoiding unnecessary regulatory drag, and ensuring interventions are proportionate.
- Understanding the role of other parties in the market in delivering the desired outcomes and ensuring that, where Ofgem is able, required changes to the regulatory framework are also progressed to ensure accountability is appropriately set.
- Assessing the most efficient and proportionate route to implementation of any changes including risk assessment. We note that Ofgem has referenced the potential for trials and this could be a reasonable approach in certain areas, but we think in any case,

Ofgem must take its time to ensure there are no unintended consequences for consumers of moving to a trial without full consideration of how the impacts to consumers will be managed.

**Question 2. Why do you think there is such a divergence of satisfaction rates across different consumer cohorts?**

We are pleased that consumer experience and satisfaction has risen in recent periods across a range of metrics and believe this is a positive reflection of the actions taken by suppliers to deliver good outcomes to their customers in very difficult situations. We also recognise that these surveys show the energy sector scores remaining below some other sectors, with suggestions that the significant rise in energy prices over recent years could be a key contributor to this.

Ofgem has set out a number of areas where its research has concluded that different consumer groups are having different experiences across the market, with those highlighted as having a poorer experience including:

- highly financially vulnerable consumers
- customers in rented property
- carers
- consumers living with a disability
- non-domestic consumers

It is important that Ofgem's research distinguishes factors within and outside of a suppliers' control as arguably some of the above noted categories cover groups of customers where evidence suggests consumer satisfaction may be lower regardless of supplier processes. For example, Ofgem itself has recognised that affordability concerns can be a key factor in dissatisfaction with the energy market. Our experience showed a significant increase in complaints being registered during the cost of living crisis that related only to affordability and not to any action or omission by ScottishPower. Without broader affordability support and consistent cross-utility approaches to vulnerability, experience gaps will persist even when suppliers improve service. High-level perception surveys can be materially influenced by customer base mix (payment types, deprivation indices), potentially overstating differences that are not solely under supplier control. Ofgem's assessments should distinguish supplier-controllable performance from system and affordability effects.

ScottishPower is absolutely committed to continuing to take action to deliver improvements in customer experience and we have continued to engage with Ofgem to show how we are measuring customer experience and identifying the changes we need to make to improve. Our approach to measuring customer satisfaction is through seeking feedback at every touchpoint rather than relying on surveys which by design can only engage with quite limited numbers of customers. We would encourage Ofgem to assess how this approach could be replicated across the whole sector to ensure satisfaction metrics are based on as many data points as possible to ensure their robustness.

**Section 3. The Consumer Outcomes**

**Question 3. 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?**

We are in general agreement that, at a high level, the Consumer Outcomes presented in Appendix 3 of the Cfl set out a reasonable picture of the outcomes that a consumer would expect to receive in the GB energy market with respect to their energy supply. However, in responding to this Cfl, and this question, there are a number of important considerations as to why we cannot confirm that we agree completely with Ofgem at this point. These are set out below:

- Ofgem asks whether these Outcomes cover the most important expectations consumers have of “suppliers”. However, in reviewing the 24 outcomes, there are a number that, as currently drafted, go beyond what suppliers can deliver on their own and require involvement of other parties. This includes outcomes relating to disruption to supply, where network companies play a key role, and also outcomes that relate to tariff prices and investability in the market, where at least some of the responsibility falls to Ofgem and or Government given that the market is partly price regulated and policy costs are largely determined by Government. Where outcomes are system-level, expectations should be allocated across the relevant parties, not to suppliers alone.
- Without understanding more fully how Ofgem intends to use the Outcomes, it is difficult to confirm our agreement, as their intended use will have a bearing on how they are drafted. For example, if Ofgem intends to place an explicit obligation on suppliers to deliver the outcomes, we would note that some of the outcomes place obligations on suppliers that cannot be delivered, as these outcomes will be dependent on consumers’ engagement. For clarity, we would note here that we do not think this is an appropriate use of the Outcomes, as explained elsewhere in this response.

We have provided further commentary on each outcome in Annex 2, while our response to Question 4, sets out our views on the potential uses of the Outcomes.

**Question 4. Do you think we should streamline or consolidate the Consumer Outcomes further and, if so, which should we prioritise?**

It is difficult to answer this question without knowing how Ofgem intends to use the Consumer Outcomes. We can see three potential uses of the Outcomes:

1. As a framework to identify regulatory gaps;
2. As a framework to test potential policy proposals; or
3. Placing new obligations on suppliers to deliver the Outcomes.

For the reasons set out below, we would support the first two uses above but not the third.

**1. Using the Consumer Outcomes framework to identify regulatory gaps**

When Ofgem previously discussed its Consumer Confidence and Consumer Outcomes work we had assumed that it would use the Outcomes as a means to test or assess the current regulatory framework and identify:

- gaps where Ofgem may need to take action to ensure a desired outcome is delivered;  
or

- areas where the current approach to regulation is not the appropriate means to delivering the desired outcome, eg changing from principles to prescription or vice versa.

In this context, we consider it may be more reasonable to have a broader set of outcomes as this will support Ofgem in better assessing actions it needs to take to ensure the regulatory framework is fit for purpose.

We would support the use of the Consumer Outcomes for this purpose.

## 2. Using the Consumer Outcomes framework to test potential policy proposals

The Consumer Outcomes framework could also be used as a test to assess policy proposals, for example, whether the policy proposal meets the desired aims for the market, what tensions could emerge and whether an outcomes-based or prescriptive approach would be more appropriate. This use may point to having a broader set of outcomes, to ensure there is a full understanding of the potential tensions and interactions between the outcomes and how policy proposals could act to deliver (or potentially obstruct) particular aims.

Again, we would support the use of the Consumer Outcomes for this purpose.

## 3. Placing new overarching obligations on suppliers to deliver the Consumer Outcomes

There are also suggestions in the Cfl that Ofgem may use the Consumer Outcomes as the basis for imposing new overarching obligations on suppliers. We do not agree that this is an appropriate use of the Outcomes for a number of reasons. However, if this is Ofgem's intention, then the following points will be important in relation to this question around whether the current draft outcomes should be streamlined or consolidated:

- A number of the Outcomes go beyond what suppliers can reasonably deliver and it would therefore be inappropriate to place such obligations on suppliers.
- Even if outcomes are removed that are not within a supplier's control to deliver, there will be too many outcomes remaining to have as a set of overarching outcomes alongside Standards of Conduct, which we assume Ofgem would retain in some form. Therefore we believe some streamlining or consolidation would be required.
- In this context, we consider there is a lot of overlap between Standards of Conduct and a number of the draft Consumer Outcomes, where the intent is around themes and consumer protections that are largely already covered by the elements of SLC 0 and SLC 0A.

## **Question 5. 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?**

We have provided comments in Annex 2 on the text of the outcomes which includes comments on the explanations provided under the "further information" heading. We set out below some high level themes that our specific comments fall under:

- Some elements of the text appear to go beyond existing obligations by omitting "reasonableness" tests which recognise that there are limitations on what suppliers are able to do. For example, this would include the role customers play in engaging with suppliers to allow them to understand their characteristics, preferences and needs. Depending on how Ofgem intends using the outcomes, it will be important to ensure that such tests are retained to avoid creating an unsustainable market, removing the

responsibility on customers to engage, or placing unreasonable expectations on suppliers. These existing tests have been consulted on in previous robust regulatory processes and we do not consider it reasonable to remove them without further specific consultation.

- There are a number of cases where the explanations should make it clear that the outcomes relate only to products and services that consumers obtain from their energy supplier. While this is made clear in some outcomes, there are others where it is not, and without such clarity the reader could understand the supplier to be responsible for products or services that it is not. This could create confusion for consumers, and challenges for suppliers to manage.

Indeed, some explanations describe activities that depend heavily on Government, Ofgem or network companies. This further underlines the importance of clarifying whether the Outcomes are intended as diagnostic tools (which we support) or as supplier obligations (which we do not).

**Question 6. Why do you think these outcomes are not materialising consistently for all consumer groups given that they are in line with our existing rules?**

Ofgem states (paragraph 4.1) that it has “*performed a comparison exercise to assess how well the Consumer Outcomes align with our current rules*” and that the conclusion found a “*strong degree of alignment*” as well as identifying “*opportunities to improve how these outcomes are achieved*”. However, Ofgem has not shared any of this assessment with stakeholders as part of its programme of work despite suppliers asking Ofgem to share this.

Given Ofgem’s statement that not all consumer groups are experiencing the desired consumer outcomes despite the rules being in alignment, we would welcome Ofgem sharing its comparison of the draft Consumer Outcomes against the existing regulatory framework to support responding to this and other questions in the ongoing Consumer Outcomes programme of work.

In the absence of this assessment from Ofgem, our view is that there are likely a number of factors that may be relevant as to why not all consumer groups are seeing good outcomes on a consistent basis. This includes:

- *The appropriate regulatory framework:* As we have set out in other parts of this response, we think there are areas where prescription rather than principles may be the right framework to deliver good outcomes. We also agree with Ofgem that there are other areas where a more principles or outcomes-based approach would allow suppliers to develop more flexible routes to delivering a good customer experience.
- *Influence of factors beyond suppliers’ control:* In certain cases, particularly for consumers in financial difficulty, good outcomes depend on broader support systems. Without sufficient Government-led financial support, some customers will continue to have poorer experiences even where suppliers are meeting existing obligations.
- *Differences in customer characteristics:* Some variation is driven by external circumstances such as affordability pressures, digital confidence and housing arrangements. These cannot always be addressed through supplier action alone.

**Question 7. Do you think some outcomes are more important for consumers than others?**

The relative importance of outcomes for consumers will depend on a number of factors.

- Different consumer groups will have different priorities and may place different relative importance on outcomes depending on their characteristics and circumstances.
- Customer circumstances can change over time, and this may lead to customers changing which outcomes they consider more important at different times, and within different parts of the customer journey.
- Some outcomes relate to long-term market resilience and investability. While this is essential for a stable market, consumers may naturally take a more short term view where there are indirect benefits or trade-offs. Conversely, outcomes relating to support for vulnerable customers may be prioritised more highly by consumers experiencing acute issues.

**Question 8. 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?**

We think having a set of desired outcomes that the whole market should deliver to consumers is a helpful framework to test policy development and decisions against, and therefore to this extent, yes, we agree that there is an opportunity to apply outcomes to wider market participants other than just energy suppliers.

However, this will very much depend on how Ofgem intends to “apply” the outcomes. As we have noted above, we do not agree that a completely outcomes-based regulatory framework is the right approach for the supply market, and we expect this will also be the case for other parts of the energy supply chain.

**Section 4. How could Consumer Outcomes be delivered?**

**Question 9. 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?**

**Testing the regulatory framework**

Ofgem states (paragraph 4.1) that, in its assessment, the draft Consumer Outcomes are in line with the existing rules. We do not necessarily disagree with this (notwithstanding our views on the drafting of the outcomes and explanatory text). However, as Ofgem has not published this assessment, we cannot see whether it has tested whether the nature of the existing rules (ie prescriptive or principles) is supporting or hindering suppliers in delivering the existing protections to all consumer groups in a consistent manner.

Prior to making any decision on how the Consumer Outcomes should be used, Ofgem should publish its assessment of the existing rules against the Consumer Outcomes and build on this with a further review or test of whether the existing approach to regulation in each area is contributing to this inconsistency in customer experience.



We would not support Ofgem moving quickly to a largely outcomes-based framework without robust consultation. Ofgem must keep an open mind on regulatory approaches, to ensure that its assessment of the preferred approach in each area is based on evidence rather than preconceptions.

Indeed, we think there are certain aspects of the current regulatory framework where *more* prescription rather than less may be the right approach to deliver good consumer outcomes. Ofgem's Cfl, while asking for views on prescription and outcomes-based regulation, appears to have dismissed introducing more prescription. For example, Questions 12 and 13 ask about *less prescription* or retaining existing prescription – but there is no similar question asking whether there are areas where *more* prescription is appropriate. Ofgem should keep an open mind to ensure the right approach is taken.

### Regulatory integration of Consumer Outcomes

Ofgem has proposed the following routes to deliver the outcomes:

- Modify the supply licence
  - Introduce Consumer Outcomes as new licence conditions and remove some/all existing rules
- Reputational incentives
  - Publish an annual Consumer Outcomes report
  - Ofgem to collect and publish regulation Consumer Outcomes data
- Regulatory guidance
  - Embed the Consumer Outcomes with the Standards of Conduct Guidance

We set out our views on each of these below.

#### *Modify the supply licence*

Of the options Ofgem has set out, this is our preferred approach. However, this preference is only on the basis that Ofgem undertakes a full assessment of the appropriate route to regulation across the licence conditions, including whether more prescription rather than less, is the appropriate approach to the regulatory framework in specific areas.

As we have set out elsewhere, we believe the Consumer Outcomes could be used as a framework to review and test the existing rules and assess in each area whether a change in approach would support suppliers improving how they deliver good outcomes to their customers. We think this approach is aligned with Ofgem's "hybrid approach" (paragraphs 4.18 to 4.22) subject to recognising that there may be areas where *more* prescription is needed as well as areas where prescription is retained and/or streamlined.

Ofgem notes the role that Guaranteed Standards of Performance (GSoP) could play for rules implemented via prescription, and we agree that this could be an appropriate route to monitor rules under such a regulatory framework. We comment further on this in our response to Ofgem's Cfl on GSoP.

We would not support an approach as suggested where Ofgem simply removed all existing rules (whether prescriptive or principles-based) and replaced them with a new principles-based obligation to deliver the new Consumer Outcomes. Ofgem refers to this as a "radical" option, and we agree with this description, and consider there to be significant potential risk to consumers of such a change without robust evidence to support it. We think this also creates significant compliance risk for suppliers, with our recent experience suggesting there is a

significant risk of Ofgem changing interpretations of licence conditions that are principles-based (including those with accompanying guidance such as Standards of Conduct). This creates a potential compliance burden for both suppliers and Ofgem as well as increased compliance risk.

### *Reputational incentives*

We support activity to improve awareness of the energy market through publications that share information on customer experience and supplier performance. We are however wary of implementation of the Consumer Outcomes via reputational incentives such as those outlined by Ofgem in this Cfl.

- As we have outlined elsewhere, the delivery of consumer outcomes to certain customer groups may be impacted by issues outside of suppliers' control. There could therefore be a significant risk of reputational damage to suppliers with particular customer bases where the supplier has limited ability to take action to improve.
- We can see the potential for this approach to create a significant regulatory burden for both suppliers and Ofgem. Ofgem already collects significant amounts of data from suppliers with only a small proportion of this being published (either in existing reports or its data portal). Ofgem should be reviewing its need for data to ensure existing requests are proportionate and the data is necessary for its activities. We are concerned that this approach to implementing the Consumer Outcomes would further increase the RFI burden on suppliers.
- We would welcome Ofgem's review of previous similar approaches which were implemented in light of the introduction of SLC 0 (Standards of Conduct), for example the requirement for suppliers to publish a "Treating Customer's Fairly" statement and Ofgem's "Challenge Panels" which appear to follow similar forms to those set out in Ofgem's Cfl. As these requirements and approaches are no longer part of supplier obligations and/or Ofgem's monitoring of the market, it would suggest that they were not effective in the past and we would question what has changed which would mean they would be effective now.
- We are wary of a focus within these publications and monitoring on negatives rather than positives, which could contribute to reducing trust between suppliers and customers. This is already an issue within the sector, and arguably contributing to circumstances where consumers do not contact their supplier when they need to. We would therefore highlight the importance of ensuring there is a balance in reporting between positive and negative behaviours from suppliers.

### *Regulatory guidance*

Ofgem proposes adding the Consumer Outcomes to the existing guidance for SLC 0 (Standards of Conduct) with the aim of clarifying its regulatory expectations of suppliers. It notes that this could support the removal of some elements of existing prescriptive rules that "are no longer necessary or restrict supplier flexibility".

This is a potential option that we could agree is appropriate, for areas of existing regulation where an assessment concludes a principles-based approach is appropriate, and where the existing elements of Standards of Conduct are relevant. However, we are generally wary of increasing guidance rather than including regulatory obligations within the supply licence conditions, as it creates multiple documents for industry participants to navigate, leading to

the complexity already highlighted by Ofgem as creating a need for a review of the existing regulatory framework.

While Ofgem highlights that this could be an option that could be “implemented quickly following a consultation”, we think Ofgem must be careful in making any changes to the regulatory framework without undertaking a full review of the existing framework and allowing suppliers sufficient time to make operational changes where needed. In the context of this proposed “regulatory guidance” approach, we would make the following comments, some of which are already recognised as risks by Ofgem in its Cfl:

- If the Standards of Conduct guidance is revised to add the Consumer Outcomes without taking the time to ensure other necessary changes are made to other relevant parts of the framework, we think this could lead to potential conflicts within the framework, and/or duplication of obligations.
- There are areas where Ofgem’s Consumer Outcomes go beyond areas that suppliers have responsibility, and also go beyond areas already covered by Standards of Conduct. Ofgem will need to ensure it has undertaken a full and robust consultation to ensure any extension of SLC 0 is based on sufficient evidence.
- Our experience suggests that there is significant risk in changing interpretations of licence conditions that are principles-based (including those with accompanying guidance such as Standards of Conduct), particularly over time where there is a large turnover in staff within Ofgem. This creates significant compliance risk for suppliers and operational burden in demonstrating compliance with such licence conditions. We are therefore wary of the potential for this risk to increase significantly under this proposed approach, and have continued to raise concerns with Ofgem around the need for it to undertake a full consultation where it appears to be changing its views on the interpretation of specific requirements, from those set out in previous consultation and decision documents.

**Question 10. 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?**

We do not support a voluntary approach without formal regulatory change. This could lead to inconsistency of protection and experience for consumers between different suppliers which would undermine the aims of the Consumer Outcomes work overall. As Ofgem has already undertaken a review of the Consumer Outcomes against the existing regulatory framework, it is unclear to us what a voluntary approach would achieve. As we have set out elsewhere in this response, we consider the outcomes should be used to assess gaps in the existing regulatory framework and the best approach to regulation in specific areas (ie prescription vs outcomes or principles).

**Question 11. 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.**

We agree that there are certain areas where an outcomes-based framework is appropriate and could benefit both consumers and suppliers in creating a market where consumers can access products and services that meet their needs, have the support services they need based on their characteristics and preferences and have appropriate consumer protections in place. It may also help align regulatory expectations with new technologies and evolving customer needs.

We think Ofgem could learn from its previous experience. Since 2013 it has made a number of changes to the regulatory framework that changed the approach from prescription to principles or vice versa. A review of the success or otherwise of these changes would support this Consumer Outcomes programme of work, and we note that while Ofgem's document includes a review of sectors where principles-based regulation has been implemented, it does not include any assessment of its own past experience. While the experience of other sectors will be useful in benchmarking any changes here, it would be strange not to also assess past experience from within the energy supply market itself.

- *Sales and marketing*: SLC 25 ('Informed choices – Tariff comparability and marketing') was introduced in 2009/10 with an overarching principle and accompanying prescriptive rules on how to deliver the principle. Ofgem subsequently consulted on removing almost all the prescriptive rules with the obligations now largely being principles-based.
- *Tariff offerings*: Ofgem introduced prescriptive rules around the number and range of tariff offerings as part of the Retail Market Review in 2013/14, with the majority being removed a few years later after consultation on the impacts on competition. In this context we would highlight the reintroduction in 2022 of SLC 22B ('Requirements to make all tariffs available to new and existing customers'). This was reintroduced as a temporary measure to mitigate the impact on suppliers of tariff switching due to wholesale market movements, but Ofgem subsequently retained the requirement on a rolling basis. Ofgem is now suggesting a broader need for more prescription but has not yet consulted on it. This temporary measure, introduced for one purpose, is still in place for another purpose, but without the full consultation which would have allowed assessment of the merits of alternative approaches.
- *Estimated annual costs*: As part of the Retail Market Review, Ofgem introduced prescriptive rules setting out a formulaic approach to providing customers with quotes for tariffs. Again, after review and consultation, this prescriptive approach was removed and replaced with a more principles-based approach.
- *Customer communications*: The Retail Market Review also introduced significant prescription to various regulatory customer communications. These were again largely removed and replaced with new principles-based obligations which remain in place.

We think all of the above areas provide useful lessons for Ofgem for this programme of work, and Ofgem should review the approach and changes made over time and the impacts and outcomes for consumers, suppliers and Ofgem.

**Question 12. 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?**

Areas that have worked well with a principles-based approach to regulation have been those relating to customer communications, and we think there could be further opportunity to remove remaining prescriptive rules. Different customer groups have different needs and the principles facilitate this through flexibility in how suppliers communicate to their own customers in written communications. This flexibility is also helpful as we transition to market with a greater potential for innovation in tariff design through smart meter technology and where a one size fits all approach to customer communications may prove challenging.

While guidance can be helpful to provide a more detailed understanding of the intent of specific licence conditions, guidance has a number of limitations and potential risks, and therefore we think any move to introduce more guidance should always be carefully considered. We would flag the following points:

- Guidance is not always easily accessible to the reader, and therefore there is a risk that a new entrant to the market or new members of staff in existing suppliers may not be aware of the guidance when seeking to understand their regulatory obligations.
- There is a risk that guidance becomes prescriptive rules “by the back door”. If an area of the licence is deemed to be suitable for a principles-based approach, Ofgem needs to carefully consider the need for additional guidance. If it is needed, then it should avoid creating prescriptive rules underneath a principles-based licence condition. If prescriptive rules are appropriate, they should be in the licence conditions themselves and not solely in guidance.

We have also seen an increase in Ofgem’s issuing of “regulatory expectations” letters, sometimes alongside good or best practice guides. We would welcome Ofgem’s consideration of the driver behind this, and whether it is suggesting that a specific licence condition may need to be reviewed and updated. These letters can be argued to fall short of formal guidance that suppliers “must have regard” to, and they are likely to be even harder for a new entrant to the market to be aware of, creating potential risk within their processes.

**Question 13. Are there areas where prescriptive rules should remain in place? If so, why?**

As we have set out in other parts of this response, we consider prescriptive rules are the right approach to regulation in specific cases, and Ofgem should not dismiss these in favour of principles without full review and robust assessment. We consider there would be a significant risk of poorer outcomes for certain customer groups if Ofgem removes prescriptive rules without this assessment.

As we have noted in other parts of this response, consider there to be a case for introducing more prescriptive rules in certain cases, rather than only assessing the retention or removal of prescription. We would caution Ofgem against an underlying assumption that prescription leads to poor outcomes for customers.

We would highlight the following considerations when assessing the need for prescription:

- Areas (such as health and safety) where a minimum protection is imperative to ensure consumers are protected;
- Areas where a minimum level of consumer protection is desirable, but where a consistent process is not necessary and suppliers could choose to go above that minimum level if they wish to; and
- Areas where there is no competitive advantage between suppliers and where a simple common approach should result in reduced costs and consistency of experience for consumers and/or where a lack of a consistent approach creates poor experiences for customers.

From recent experience we would highlight the following areas as some that Ofgem should consider as part of its review of where prescription may be beneficial within the regulatory framework:

- *Involuntary PPM (SLC 28 and accompanying guidance)*: We think it is important that minimum protections exist for customers and that all parties, including the Courts who play a key role in granting warrants, are aware of these consistent minimum protections. While we consider a prescriptive approach should be retained, we continue to engage with Ofgem around its review of the current rules to ensure they remain fit for purpose.
- *Customer quotes (definition of Estimated Annual Costs within SLC 1)*: The current definition is largely principles-based, and we consider there are areas where more prescription would be beneficial for customers, providing consistent approaches to providing customers with estimates of their annual costs for their current and potential new tariffs. We are aware that the current principles-based process can lead to different approaches being taken for the customer's annual consumption, particularly for quotes from "new" suppliers, and this is leading to customers potentially taking decisions to switch supplier based on inaccurate information. We consider a prescriptive rule requiring suppliers to use industry consumption information as a default should be introduced, with customers then being allowed to adjust this consumption if they consider it is not reflective of their current circumstances (ie if they are a new tenant to the property).
- *Direct Debit quotes and reassessments (SLC 27)*: There are currently quite limited principles-based rules around how and when suppliers calculate Direct Debit payment amounts and make any adjustments to it. We consider there could be merit in having a prescriptive consistent approach for all customers to ensure Direct Debit amounts remain up to date and are reflective customer circumstances.
- *Billing and backbilling (SLC 21B and 21BA)*: We note that Ofgem has used billing as a potential area for a trial within this programme of work. We would be supportive of this, on the basis that this trial undertook a full assessment of the billing requirements, and assessed the appropriate route to regulation as we consider there are certain elements of billing and back-billing where a more prescriptive approach rather than a principles approach may be beneficial to all market participants. In particular, consideration of the benefits of having consistent monthly billing for all customers regardless of supplier, and also consideration of whether there could be more certainty and prescription to support all stakeholders in understanding the protections in what can quite often be a quite complex part of the licence conditions.

**Question 14. What factors should we consider to determine whether specific rules are best delivered through prescription, principles or outcomes?**

We largely agree with the factors set out by Ofgem in the table on page 21 of the Cfl.

**Question 15. 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 Cfl states that Ofgem would need to change its approach to monitoring supplier performance under any of the approaches it takes to implement the Consumer Outcomes into the regulatory framework.

The current monitoring undertaken by Ofgem of suppliers is predominantly data driven alongside consumer satisfaction surveys with limited sample sizes. We agree that continuing with these approaches would create significant limitations in Ofgem's monitoring of supplier performance in delivering the Consumer Outcomes.

We would highlight the following considerations for monitoring:

- We agree with Ofgem's assessment that using data to monitor consumer outcomes could lead to the potential for "prescription through monitoring". If there is a desired threshold for a particular process, this could suggest that prescription with minimum standards is the more appropriate regulatory approach.
- Ofgem must also ensure its monitoring takes account of the potential impact of differing customer bases across suppliers as this can be a key factor in consumer satisfaction, and Ofgem's monitoring must be sophisticated enough to ensure it does draw misleading conclusions.
- We note Ofgem's reference to complaints data as being one potential route to monitor consumer satisfaction. While we agree that complaints data is a good route to measuring consumer experience and supplier actions, from experience there are a number of limitations in using complaints data for this purpose without other supporting information. In particular:
  - The assessment of consumer "dissatisfaction" is by its nature subjective, and different suppliers could have different thresholds of dissatisfaction built into their policies.
  - Our experience over the last few years shows a particular issue in relation to customers with financial vulnerability where dissatisfaction will be registered and a complaint recorded in circumstances where the only issue the customer has is that they cannot afford to pay their energy bill. Measuring these as "normal" complaints would give a misleading perception of the energy sector or of particular suppliers with proportionately more customers with affordability challenges.
  - Assessment of complaint category has always proved quite challenging with billing generally being recorded as a significant root cause for complaints, as the bill is the customer's main interaction with their energy supplier. In many cases, when the issue is assessed in more detail, the root cause is not billing.
- Ofgem's current approach to consumer satisfaction surveys is quite limited with small sample sizes for each supplier. We think Ofgem should consider requiring suppliers to undertake much broader customer assessment. Ofgem states in para 4.43 of the Cfl that Ofgem needs to "*monitor whether consumers receive good outcomes throughout their interactions with suppliers, and not just at the end of the process*". We agree with this and we think that a route to do this would be through requiring suppliers to seek to measure customer experience at each and every interaction. ScottishPower is implementing this and we would encourage Ofgem to assess how this approach could be replicated across the whole sector to ensure satisfaction measurements are based on as many data points as possible to ensure its robustness.

**Question 16. 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**

It is difficult to answer this question at this stage in the programme of work when there the preferred approach to inclusion of the outcomes in the regulatory framework is still being developed. Once there is greater certainty of the preferred approach, Ofgem should undertake a full review of the relative merits of different approaches to measuring these factors.

**Question 17. 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**

We would make the following points in relation to how Ofgem works with suppliers in relation to both policy and compliance issues, and how it works with stakeholders more broadly in relation to policy development. These points have largely already been shared with Ofgem in bilateral and industry wide engagement opportunities.

- We think constructive engagement and collaboration between Ofgem and suppliers is critical to support the development of an energy supply market that delivers for consumers. Suppliers know their customers better than Ofgem does, and have a better understanding of customer needs and preferences, and therefore it is important that Ofgem's policy development and compliance activity leans into this knowledge to ensure that it is focused on the customer first and foremost.

While we have seen a change in some aspects of Ofgem's engagement to be more collaborative, it is important that this approach to engagement is embedded to build trust between the regulator and suppliers, which will support a more trusting market overall.

- We recognise the importance of ensuring that Ofgem can respond effectively to emerging issues, particularly where there is no clear precedent. A regulatory framework that allows for timely intervention is essential in maintaining market stability and protecting consumers. However, we caution against the tendency to treat every issue as an 'emerging issue', which can result in compressed consultation timescales and limited stakeholder engagement.
- We have raised concerns with Ofgem in more recent periods regarding its approach to engaging with suppliers which we consider is leading to potential risk of poor regulatory decision being taken by Ofgem. In particular:
  - A shift away from two stage policy consultations, and moving straight to statutory consultation after one policy consultation
  - The use of industry workshops as a substitute for formal policy consultation
  - Shorter timescales to respond to policy consultations
  - Significant increases in regulatory RFIs with short timescales and multiple RFIs due at the same time.

All of the above create reduced opportunities for industry and stakeholders to contribute meaningfully and increase the potential for incorrect or inaccurate data to be provided to Ofgem increasing the risk that Ofgem makes policy and compliance decisions based on incomplete information, leading to poor decisions.

- We welcome Ofgem's letter and engagement on a new approach to compliance engagement with suppliers and can already see positive changes as a result. This more collaborative approach will be important for any increase in outcomes-based regulation, given the more subjective nature of such a framework.



**CALL FOR INPUT: CONSUMER OUTCOMES  
– COMMENTS ON THE DRAFT CONSUMER OUTCOMES**

The table below sets out some relatively high level comments on the draft Consumer Outcomes. We would note that these comments cannot be interpreted as ScottishPower's full comments on the outcomes and the accompanying "further information" text as without understanding how Ofgem intends using the Outcomes, it is difficult to provide a complete view on the draft. We hope however that these comments are helpful in allowing Ofgem to further assess the outcomes within its programme of work and review of the current regulatory framework.

#	Consumer Outcome	ScottishPower comment
1	Customers in, or at risk of debt or arrears receive proactive, tailored, and consistent customer service that meets their needs and helps them sustainably pay towards their debt or arrears.	
2	Consumers are not charged excessive prices for their energy, irrespective of their engagement	This outcome and its "further information" text includes reference to "excessive", "unfair" and "fair" prices, however has no accompanying information on how these terms would be defined or measured. While we do not disagree with the intent of such an outcome, the route to how it is measured and assessed is important to ensure that all stakeholders understand what this means and how it will be measured.
3	Consumers pay prices which reflect the costs of an efficient well-run supplier business	While we agree that this outcome is important, we note that it is couched in terms of "supplier efficiency" without any reference to the critical role that Ofgem plays in ensuring that the price regulated part of the GB supply market allows suppliers to recover efficient costs.
4	All customers can benefit from shopping around for the best deal if appropriate for them	
5	Customers can choose from a range of suppliers and contracts and are supported, by suppliers or third parties, to identify the best deal for them	
6	Consumers have a reliable supply of energy and suppliers do everything within their remit to quickly resolve disruptions, giving priority to those who are supply dependant.	This outcome focuses on the "reliable supply of energy" which arguably is on balance more the responsibility of the network companies rather than suppliers. We understand that suppliers will have responsibilities relating to the impact of meter faults and the potential for prepayment customers to self-disconnect, however at present this outcome appears to go further than suppliers can deliver given the broader context. The "further information" text includes reference to "estimating the needs of consumers who are on deemed rates". As in most cases, consumers on deemed rates are those who have not

		engaged with their supplier despite multiple prompts to engage, we are wary of placing any obligations on suppliers to “estimate” those needs.
7	When consumers raise concerns, issues or complaints, suppliers investigate and address them fairly, effectively and promptly, via a channel and at a time that meets consumers’ needs.	We think consideration may need to be made of the expectation of the term “at a time that meets consumers’ needs”. We do not necessarily disagree with this aim at an overarching level for “consumers” as a general term, but care will be needed to ensure there is no suggestion that suppliers should be answering customer contacts in the middle of the night.
8	Consumers are charged for energy in a manner that accurately reflects their usage, with bills being easy to understand and provided in a consistent, timely and appropriate timeframe, as appropriate for the customer type. Customers who are struggling to pay their bills should receive compassionate support and flexibility in payment methods and frequencies, especially consumers in vulnerable situations.	
9	All products and services offered by suppliers should be fit for purpose, and where possible, inclusively designed.	<p>We think that some elements of the “further information” text should be amended to ensure that the “where possible” test is embedded in all of the outcome, recognising that there will be innovative products and services with a design that makes it impossible for certain customers to access.</p> <p>In particular, the drafting states that products and services should be designed to ensure “accessibility and ease of use for everyone”, and we believe this needs to have “where possible” as a direct link, to ensure there is no potential for this text to be interpreted in manner that would significantly limit offerings to other customers due to certain customer groups being unable to access it.</p>
10	Consumers receive appropriate and timely advice and information from their supplier that is relevant to them.	
11	Consumers are aware of energy options available to and suitable for them at an appropriate time and are able to make informed choices that best meet their needs.	
12	Customers should not be unnecessarily prevented from being able to switch energy supplier despite product or technology purchased or inherited.	
13	Consumers understand how to engage with and can make informed choices about the products	

	and services offered by suppliers that support the net zero transition	
14	Consumers understand how they are contributing to and benefitting from net zero products or services obtained via their supplier	We welcome the reference in this outcome to products or services “obtained via their supplier” and consider this approach needs to be replicated across a number of other outcomes to avoid placing responsibility on suppliers for services and offerings from other parties they have no responsibility for.
15	Consumers who choose to engage can and are supported by suppliers who remove barriers within their control	
16	Customers that engage with innovative products and services are protected from unexpected risk	<p>While we agree with this outcome, we consider there needs to be further assessment of which innovative products and services are included, recognising that there will be technologies offered by parties other than suppliers, and where suppliers have no engagement with consumers or responsibility for the outcome.</p> <p>We consider a similar approach could be taken as is under Outcome 14 which sets out specifically that it only applies to products and services obtained from the customer’s supplier.</p>
17	Consumers have confidence that despite how their energy is supplied and regardless of what parties are involved in supplying their energy, the service and technology will work effectively and efficiently	<p>We think, as drafted, this outcome could involve parties that fall outside of the definition of a supplier. For example, the term “supplying” energy could arguably include network operators and therefore we think further consideration is needed to fully understand Ofgem’s intention with this outcome.</p> <p>Definition of the term “parties” would be helpful to ensure there is no suggestion of placing responsibility on suppliers for third party technologies which a customer invests in themselves and where the supplier has no control or influence.</p>
18	Consumers are adequately protected from the costs of licensee failure	
19	Consumers can be confident that they are dealing with licensees that are financially resilient to external shocks	Ofgem play a critical role in ensuring that suppliers can recover efficiently incurred costs which is a critical factor in ensuring supplier and, the market overall, are financially resilient.
20	Consumers’ supply is maintained in the event of supplier failure	Given the critical role of Ofgem with the Supplier of Last Resort process, and the role of Government within the SAR process, this outcome is one that cannot be placed on suppliers alone, as while they can ensure that they have actions in place to ensure they would exit the market in a controlled manner, and that if appointed as a SoLR they could support the new customers appropriately, suppliers cannot control the actions of Ofgem and Government within this process.
21	Consumers benefit from fair prices, improved quality of services, and lower cost delivery of net zero as the sector attracts sufficient investment	This outcome is one which Ofgem and arguably Government will play the most important role in delivering rather than suppliers. This is particularly evidence in the “further information” text

		<p>which appears to reference only actions that would be ones set by the regulator and Government rather than suppliers.</p> <p><i>“A resilient, profitable, investable market is essential for sustainable competition, where energy retailers have incentives to innovate in the pursuit of net zero and receive a reasonable profit as they drive up consumer service standards.”</i></p>
22	Consumers benefit from licensees which are adequately resourced, demonstrating the right balance between resilience and innovation	<p>We would highlight that this outcome is one in which Ofgem will play a significant role in delivering with the drafting of the “further information” text including the following wording that appears to be an expectation on Ofgem’s approach to regulating the market rather than a test for suppliers.</p> <p><i>“We recognise the need to strike the right balance with financial resilience to avoid creating unnecessary barriers to entry to the market or constraints to competition.”</i></p>
23	Consumers in vulnerable situations should have their needs identified, be able to easily notify and update their circumstances, and have a good understanding of and access to support services designed to suit their circumstances and meet their needs	<p>While we agree with the aim of this outcome, we are concerned that there could be a risk that this Outcome is used to create an obligation broader than currently exists without full consultation. In particular, the current obligation on suppliers is to “seek to identify” customers in vulnerable situations, which sets out expectations on supplier processes rather than setting an absolute test that suppliers “will” identify all customers in vulnerable situations which depends on customer engagement and willingness to share such information with their supplier. The “further information” for this Outcome appears to go further stating that “suppliers are expected to identify signs of vulnerability” which may not be possible in many cases.</p>
24	Consumers in vulnerable situations should be provided with tailored communications that are easy to understand. They should be able to engage with their energy supplier with ease and do not face exclusion based on their circumstances.	<p>While we do not disagree with the intent of this outcome, we note that this outcome is definitive, and includes no “reasonably practicable” test as is currently included within the existing licence conditions, particularly SLC 0 and SLC 26. We are concerned that this expectation, depending on how it is implemented, creates a perception that is not achievable, certainly for energy suppliers on their own.</p>