Appendix A: Detailed Response to Consultation Questions

Chapter 1: Introduction

Question 1: Do you agree with the envisaged implementation timetable set out in this chapter? If not, what factors do we need to take in to account in setting this timetable?

Whilst we broadly support the Retail Market Review (RMR) proposals, we are concerned that the implementation timetable Ofgem have proposed does not adequately take into account the impact on suppliers' processes, policies, procedures and systems. Whilst we appreciate that the issues identified within the RMR must be addressed as soon as possible, Ofgem should allow suppliers a reasonable period of time to implement the proposed solutions to give it the best chance of succeeding.

Standards of Conduct

Implementing the Standards of Conduct will be a significant undertaking. Having recently entered the financial services market, with our home insurance product, British Gas already has experience of implementing similar schemes under the Financial Services Authority (FSA) regulatory framework. Our experience from this market is that genuine compliance with the principles set out in the Standards of Conduct will involve:

a) identifying the scope of the work required,
b) engaging with customers and capturing their views,
c) completing a gap analysis on the results,
d) implementing changes to processes, policies, procedures and systems as required, and
e) measuring the results and starting the process again.

This work cannot be fully started before the end of June 2013 when Ofgem propose to finalise the Standards, and certainly cannot be fully implemented by this time. Given the extent of change already underway in the industry, we believe suppliers may need at least eighteen months in which to fully implement these proposals.

An immediate implementation of the Standards of Conduct could arguably therefore place all suppliers in immediate breach of their Supply Licence. This would be both unreasonable and inconsistent with the Better Regulation principles, which say new rules must "*be implemented fairly*"[1]. Whilst Ofgem have indicated that the time allowed to implement the proposals will be taken into account *during* (as opposed to *before*) any enforcement action, this does not mitigate the significant increase in regulatory risk suppliers will face.

Protections for small businesses

We recognise the benefit that adding the contract end date to the bill will have, and welcome this proposal. This is not a simple change for suppliers to implement however, and will require system changes to ensure that the contract end date can be extracted and added to the print file each time an invoice is sent. In order to ensure that the information is communicated effectively, it will also require a redesign of our bill.

Our initial impact assessment is that we would require a minimum of six months to deliver these changes from the moment a final decision on the RMR is made. The proposal to allow suppliers just four months to implement this change would be unreasonable and could expose us to significant regulatory risk.

[1] "Better regulation - from design to delivery (annual report) 2005", pages 26-27.

We are also concerned that Ofgem is proposing to extend the provisions of Licence Condition 7A to pre-RMR contracts one hundred and thirty days before their first rollover date. Whilst we support the intent behind this proposal, it incorrectly assumes that suppliers are able to vary the terms and conditions of customers' contracts before the end of their contract term. Whilst we believe that this may be true for genuinely small businesses, we also believe that the use of a consumption test will mean that some large organisations will also be affected, necessitating changes to their terms and conditions too[2]. As these changes will unnecessarily limit their options, we do not believe this would necessarily be in their interests, and could potentially expose suppliers to claims. Ofgem should instead seek to apply these changes to any contract agreed four months after the implementation of the RMR.

Chapter 2: Market Overview

Question 2: Do you have any comments on our success criteria and the outcomes we expect to see?

We agree that the proposal to increase the level of protection afforded to small businesses will better enable them to engage with the contract renewal process. We therefore agree with Ofgem that this package of proposals will reduce the number of unnecessary problems these customers will experience throughout the contract life cycle, and welcome them as a positive step forward.

Although there is no specific proposal to change the operation of the change of supplier process, we welcome Ofgem's support for industry developed solutions to issues such as abuse of the Change of Tenancy Flag (COT Flag) and the use of multiple invalid registration flows. Whilst we believe that some of the outcomes Ofgem seek in this area are largely contingent on addressing abuses of the acquisition process (for example, a reduction in the number of objections), we have already raised an industry change proposal[3] which seeks to address COT Flag abuse. We are hopeful that, with Ofgem's support, the industry can use change proposals like the one we have raised to deliver meaningful improvements to the change of supplier process without Ofgem regulating directly.

We are also confident that, provided the content is sufficiently rigorous, the proposal to introduce a single Code of Practice for Third Party Intermediaries (TPIs) will also reduce the number of problems customers have during the change of supplier process. Whilst the vast majority of TPIs provide a valuable high quality service to customers, we are aware that a small number of TPIs create serious problems for customers. Addressing these problems will materially benefit customers.

Finally, we believe the Standards of Conduct and its focus on providing fair customer outcomes, has the potential to provide significant long term benefit. We recognise the need to improve customer trust in energy suppliers, and we believe that putting customer fairness at the heart of everything suppliers do is the single biggest step the industry can take towards achieving this. We therefore agree with Ofgem that there may be wider benefits from the RMR proposals in this area, for example a reduction in complaints or an improvement in the accuracy of billing.

Chapter 3: Standard Licence Condition 7A: Protections for small businesses

Question 3: Do stakeholders agree with our proposal for a revised definition for the expansion of SLC 7A?

[2] This point is discussed further in response to Question 4.
[3] Master Registration Agreement Change Proposal 0198.

The level of regulatory support small businesses receive today does not reflect the fact they are more similar to micro-businesses than larger organisations. We therefore support Ofgem's proposal to extend the scope of Licence Condition 7A to these customers provided the definition of the customers impacted is clear and appropriate scoped.

Question 4: Do stakeholders foresee any significant costs or difficulties to our revised definition?

An estimate of implementation costs is provided in confidential Appendix B of this response.

As above however, we believe this cost is outweighed by the benefits the proposal will have for small businesses. We believe that extending the scope of Licence Condition 7A would not have benefits for larger organisations however, which is why it is important to agree a definition of a "small business" which enables suppliers to take a view of the whole customer when making an assessment of whether a businesses is in scope of the regulations or not.

We are therefore concerned at the proposed consumption based test for determining whether a business is small or large. Suppliers only have access to the consumption data for sites they supply today, and cannot therefore make an assessment size based on an aggregate view of the customer.

Large organisations for example will typically have a mixture of large and small sites within their portfolio. If the smaller sites are placed with one individual energy supplier – as is sometimes the case – the aggregate consumption managed by that supplier may never exceed the 100MWh electricity or 293MWh gas thresholds per annum. This would mean such customers would be erroneously classified as small, even if their energy needs were purchased centrally.

Regulatory protection of this type would constitute an unnecessary expense for suppliers and large organisations alike. Suppliers will be required to put in place processes to ensure compliance with rules on providing specific documentation at set times, and large organisations would be limited in the type of offers they can agree at contract renewal. Whereas large organisations typically will choose longer contracts at lower margin, suppliers may only be able to offer them a one year product when the contract comes up for renewal. As this impact will only be faced by suppliers who hold a minority share of a customer's portfolio, there is a risk that Ofgem's proposed definition could distort competition in the large business market, by restricting the contract terms some suppliers will be allowed to offer the same customer.

These issues could be avoided if Ofgem defined a small business as having less than 50 FTE and a revenue smaller than €10m; the definition used by the EU. Whilst we are aware of historical difficulties in capturing such information for micro-businesses, there are reliable sources of independent information available on FTE and revenue for the organisations considered by this proposal. Suppliers could therefore operate such a definition.

Finally, we also believe that, whatever definition Ofgem decides on, public sector organisations should be explicitly excluded. It would be inappropriate and unnecessary to include such organisations when, on the whole, their energy is purchase centrally. Including them would also increase cost for suppliers and Government alike, without necessarily adding any benefit.

Question 5: Do stakeholders agree with our proposal to mandate contract end dates on bills for consumers covered by SLC7? Are there significant cost implications? and **Question 6:** Do stakeholders agree the last termination date should be included alongside the end date on bills? Are there any significant cost implications?

We support the proposal to oblige suppliers to add the contract end and last termination date to customer's bills. Although these dates are already communicated to customers, additionally providing them on the bill will better enable customers to make informed decisions about their options at contract renewal.

These proposals are not without cost – our own initial assessment of the cost associated with these proposals is detailed in Appendix B to this response. We accept that these costs will be outweighed by the customer benefits however, and therefore welcome the proposals.

As we set out above however, this will require changes to both our systems and bill design. Ofgem should therefore allow suppliers at least six months to deliver these changes.

Question 7: Do stakeholders agree with our proposal to require suppliers to allow small business customers to give notice to terminate the contract (as from the end of the fixed term period) from the beginning of their contract? What are the implications of this proposal, including cost implications?

We recognise that allowing businesses to provide notice of termination at any point after the contract has been signed would be beneficial for customers. British Gas already allows all micro-businesses to terminate their contract at any time after it has been agreed[4], and given the ease with which this could be done, would be happy to extend this protection to small businesses.

Question 8: Do stakeholders consider that it would be to the benefit of customers to allow suppliers to terminate small business contracts, signed under the terms of SLC7A, in specific circumstances where a customer's energy usage significantly increases?

Yes. For the reasons given above, we believe the restrictions Licence Condition 7A imposes on suppliers would not benefit larger organisations, and will simply create unnecessary cost. Where a customer's business successfully grows so that, within contract term, they are significantly above the small business threshold proposed by Ofgem therefore, suppliers should have the flexibility to terminate that contract and renegotiate it based on more appropriate terms.

Question 9: Do stakeholders have views on the proposed amendments to SLC7A set out in Appendix 4?

We believe that Licence Condition 7A should provide an exemption from providing the contract end and termination deadline dates from bills where the customer is not in a fixed term contract. Such information does not exist for customers who are either out of contract, on tariff or on deemed contracts, meaning compliance would be impossible to achieve.

Chapter 4: Customer Transfer Blocking – "Objections"

Question 10: Do stakeholders agree that industry processes could be improved to alleviate the current issues with the objections process?

We recognise a number of the problems Ofgem have identified with the change of supplier processes, in particular the abuse of the COT Flag and the issuing of multiple invalid registrations.

[4] We even accept termination notices submitted after the contract has been agreed, but received *before* the Supply Start Date.

The COT Flag is used by an acquiring supplier to advise the withdrawing supplier that the contracting customer is not the customer that they have on record, and that any objection reason the incumbent may have will therefore be invalid. The presence of a COT Flag will therefore allow any site to withdraw, even during the middle of a fixed term deal or when there is a debt on the account.

The effect of misusing it, over time, will be to reduce the benefit for suppliers and customers of fixed term deals. If a customer's contract can be broken at any time through misuse of industry processes, with little opportunity for the losing supplier to identify and prevent it, then the hedging risk that supplier faces and the price customers are offered for contracts will tend towards that seen in the evergreen market. This is in neither the wider customer nor supplier interest.

This is still an issue today, and we have recently introduced a change proposal[5] to tighten up industry rules in this area. We therefore welcome Ofgem's support for industry developed solutions in this area and hope that this will improve the situation.

We are also pleased that Ofgem have recognised the problems associated with the sending of multiple invalid registrations. We are aware of one supplier who automatically reapplies for a site up to nine times following a valid objection. The effect of this is to decrease the ability of a withdrawing supplier to prevent a withdrawal when they are entitled to do so, increase the chances of a customer requested objection being over-ruled, generally inflate any reported objection volumes by an order of magnitude and increase the costs of managing the change of supplier process. We are hopeful that this issue too will be addressed in the near future.

Question 11: Do stakeholders agree that we do not need to make further changes to the licence conditions at this stage?

Yes. We believe that the rules within SLC14 are clear and robust enough to ensure customers are protected in the objections process. We also agree that the problems referred to above can be resolved by amendment to industry codes.

Question 12: Do stakeholders agree that we should collect and potentially publish information from industry sources rather than from suppliers?

We have no objection to Ofgem collecting objections data from industry sources.

We would have no objection in principle were Ofgem to consider that publishing objections data would be in consumers' interests, Doing this in isolation may be misleading, however. For example, it may not be clear whether high objection rates signify poor control of acquisition processes by competitors. Ofgem themselves cited these same concerns when they rejected an industry modification[6] designed to achieve the same outcome, concluding that "we are concerned that the proposed report could be misinterpreted and incorrect inferences made due to its public availability"[7].

We therefore expect Ofgem to explore which additional data items would provide the necessary context to an objections report before anything is published.

Chapter 5: Standards of Conduct for non-domestic consumers

[5] Master Registration Agreement Change Proposal 0198.
[6] Uniform Network Code (UNC) Modification 0255. Link.
[7] Ofgem decision letter to UNC Modification 0255, page 4. Link.

Question 13: Do you agree with our proposed approach to tackle issues in the non-domestic market? If not, which alternative proposals do you prefer?

We welcome the introduction of the Standards of Conduct and believe they are an important (and underplayed) part of the overall RMR package. We recognise the need to improve customer trust in energy suppliers, and we believe that putting customer fairness at the heart of everything suppliers do is the single biggest step the industry can take towards achieving this. We therefore support their introduction.

Whilst we appreciate why Ofgem cannot provide guidance to suppliers on how to interpret the Standards of Conduct themselves however, we believe it is important that Ofgem define the terms "billing, contracts and transfers"[8], used to define the scope of the Standards of Conduct. This will enable suppliers to ensure that Ofgem's proposals are fully implemented.

Question 14: Does the proposed approach to enforcement mitigate stakeholders concerns about regulatory uncertainty?

We are pleased that Ofgem has signalled that they will not seek to enforce the Standards of Conduct by imposing their own view on how the subjective principles within the Code should be interpreted. This, combined with the proposed "reasonableness" test, should enable Ofgem to ensure that the Standards of Conduct are being properly adhered to without constraining suppliers' flexibility to deliver outcomes which meet the needs of their customers.

This process will still however necessitate subjective assessments of compliance against broad undefined principles, creating significant regulatory risk. Suppliers will effectively be put in a position where they are unable to tell whether they are compliant or not, yet face the subjective judgement of a Regulator. In effect, Ofgem are proposing Principles Based Regulation control of market with a Rules Based Regulation approach to enforcement. This is both unworkable and unacceptable.

We recognise that Ofgem should not be placed in the situation where they are expected to provide guidance on how to interpret the Standards of Conduct. Other Regulators have however overcome this problem by providing processes which allow for dialogue, a good example being the mediation and arbitration processes allowed for by the FSA.

The fact that these elements are missing from the RMR proposals is a serious omission. This is likely to lead to higher costs of regulation (as suppliers may feel it necessary to "gold plate" their processes), and create new barriers to entry.

Question 15: Do you agree that the proposed binding standards should cover small businesses only?

Yes. We agree with Ofgem that the issues the Standards of Conduct seek to address are focused on small businesses. It would therefore be disproportionate to target these new regulations at large organisations as well. The fact that Ofgem's research[9] found that there was less support for the Standards of Conduct amongst larger organisations only reinforces our view.

[8] "The Retail Market Review – Updated proposals for businesses", paragraph 5.30.
[9] Ibid, paragraph 5.32.

Question 16: Do you agree with the assessment that the scope of the binding requirements should focus on the activities of billing, contracting, and transferring customers (and matter covered by related existing licence conditions)?

Yes. We believe that it is important that Ofgem target regulatory solutions as efficiently as possible. The issues identified in the small business market were identified as being in billing, contracting, and transferring, so it is appropriate to limit the scope of the Standards of Conduct to these areas.

As above however, we would appreciate clear guidance from Ofgem about how suppliers should interpret the terms "billing, contracting, and transferring". Providing this guidance would not carry the same risk as advising on the interpretation of the terms within the Standards of Conduct itself, and would ensure that suppliers implement the Standards of Conduct fully and effectively.

Question 17: Do you have any information about potential costs and benefits of the roll out of the Standards of Conduct?

We have some indication of how much it may cost to identify the changes required to satisfy these new obligations from our experience of implementing similar rules in our services business. Here, the project to scope out the work required, engage customers and identify changes, cost £2m.

Until we go through this process however, it will not be possible to identify the changes which will be required, and therefore how much the total eventual cost will be.

Question 18: Do stakeholders have views on the proposed new Standard Condition 7B set out in Appendix 4?

As above, we would appreciate guidance from Ofgem on how the terms ""billing, contracting, and transferring"[10] will be defined. We would also appreciate clarity from Ofgem on how conflicts between the Standards of Conduct and objections rules will be handled.

The draft wording for Licence Condition 7B.3 for example, states that "the licensee would not be regarded as treating a Small Business Consumer fairly if (a) their actions or omissions significantly favour the interests of the licensee; and (b) give rise to a likelihood of detriment to the Small Business Consumer"[11]. Licence Condition 7B.6 then goes on to say that "In the event of a conflict between this condition and paragraph 2 of standard condition 14 [the non-domestic objections rules], this condition will prevail"[12].

In the case of an objection which has been raised due to a large unpaid debt, preventing the customer from moving to another supplier with a cheaper price, it could be argued that the objection both significantly favoured the interests of the Supplier (by protecting their debt from potential default) and gave rise to the likelihood of detriment to the customer (by preventing them from lowering their energy costs.

The proposed drafting of Licence Condition 7B therefore suggests that suppliers may be prevented from raising an objection in such scenarios. We assume this it is not Ofgem's intention, but would appreciate guidance from Ofgem as soon as possible on this point.

Chapter 6: Third Party Intermediaries

[10] Ibid, page 74, SLC7B.11
[11] Ibid, page 73.
[12] Ibid, page 73.

Question 19: Do stakeholders agree with the proposal for Ofgem to develop options for a single Code of Practice (the Code) for non-domestic TPIs?

We welcome the Ofgem proposal to introduce a single Code of Practice for TPIs. This is a significant improvement on the November 2011 proposals and should go a long way to addressing the issues created by a small number of unscrupulous TPIs.

Question 20: Do stakeholders consider the Code should apply to all non-domestic TPIs, including those serving small businesses and large businesses)?

Whilst we appreciate why it may be preferable for a Code of Practice to apply only to TPIs serving small businesses, we have concerns that this approach may be impractical. For example, TPIs do not typically divide their activities between small and large businesses – many TPIs serve *all* businesses. Creating two sets of rules for them to follow, dependent on the customer in question, may be difficult; particularly when they are likely to have less access to the information required to determine whether the customer is small or large. We therefore believe any Code of Practice should apply to all TPIs.

Question 21: What do stakeholders consider should be the status of the Code, the framework in which it should sit, and who should be responsible for monitoring and enforcing the Code?

It is important that all TPIs sign up to the proposed Code of Practice. Without this, TPIs will be able to pick and choose the standards to which they are held accountable, with those TPIs who choose to mislead customers today likely to "opt out". This would then place the onus on customers to seek out and find accredited TPIs, with no guarantee that they would be successful.

This could be achieved by Ofgem placing a licence condition on all suppliers to only use TPIs who are accredited by the Code of Practice. This would mean the Code of Practice itself could sit outside of any licensing arrangement, perhaps adopting a framework similar to that seen in some industry codes[13]. We would prefer for Ofgem to administer the Code of Practice. This would not only give weight to any Code of Practice, but would also be consistent with the proposal that Ofgem assume powers under the Business Protections from Misleading Marketing Regulations. Were Ofgem to decide against this course of action, we believe any administrator of the Code of Practice must be entirely independent from either any supplier, or any TPI.

Finally, it is important that the content of the Code of Practice ensures the fair treatment of consumers. We believe that TPIs should adhere to the same high standards suppliers are expected to achieve, and therefore argue the content of the Code of Practice should mirror own obligations. Anything less than this will lead to differences in the customer experience depending on which route their sale is processed through.

Question 22: Would you like to register your interest in attending the TPI working group?

Yes. We look forward to helping Ofgem develop their proposals in this area.

Question 23: What issues should Ofgem consider in the wider review of the TPI market? What are the benefits and downsides to looking across both the domestic and non-domestic market?

We agree with Ofgem that any wider review should assess the role of TPIs in collective purchasing schemes, the Confidence Code and community energy schemes. We also believe there is an

[13] For example, the Supply Point Administration Agreement or Green Supply Guidelines.

opportunity to review the role of reselling organisations and make sure that the controls in place today ensure the end customer has adequate protection.