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By email

Dear Neil,

The Future of Retail Market Regulation (FRR)

Thank you for the opportunity to respond to Ofgem's consultation on the Future of Retail Market Regulation. This cover letter sets out our views on what is required to make a success of principles-based regulation. We answer Ofgem's consultation questions in four appendices.

The transition to principles

British Gas supports Ofgem's proposal to move from a reliance on prescriptive rules towards more principles-based rules in the domestic retail market. Any effective regulatory framework should promote competition, encourage innovation and customer engagement, whilst also providing regulatory certainty for market participants. We believe that principles can promote competition and protect consumers more effectively than detailed prescription in some important ways, for example:

- Principles are more flexible than prescription so they should enable suppliers to innovate and offer more choice to customers
- Principles place more responsibility on suppliers to consider outcomes and not apply a "tick box" approach to regulatory obligations
- Principles provide further incentives for suppliers to undertake research and to understand what their customers want

However, in order to also ensure regulatory certainty, a principles-based regime should be built on what Ofgem describes as 'narrow' principles, which are created to promote a clear regulatory policy priority and address a market failure. Narrow principles target discrete policy areas, such as the sales process, and are focused on customer outcomes, for instance ensuring customers are able to understand what they are buying. Broader principles without a clear underpinning policy driver risk causing regulatory uncertainty.

In respect of the specific broad principles proposed by Ofgem, we have not seen any evidence or indication that these principles are needed to improve regulation of the domestic energy market. Ofgem has not said what problems it is trying to solve with these broad principles nor has it provided evidence that such problems exist. We believe that the existing regulatory framework already incentivises suppliers to conduct their business in a way that places the consumer at the heart of their decision-making, document their decisions and engage with the regulator.

We recognise that prescription will continue to have a valuable role for regulating some issues. We believe that prescription may be an appropriate response to meet market operation risks, such as the interoperability of smart meters. There may also be cases where clarity would be beneficial. For instance, the definition of what constitutes an advanced meter (under SLC 12) was open to interpretation, leading to inconsistencies in how suppliers reported their roll-out performance. It would have been preferable for Ofgem to have made their expectations clear, either by publishing guidance or adopting prescriptive rules.

Improving engagement

We welcome the constructive and open approach Ofgem has adopted in developing its proposals. We agree that greater reliance on principles requires regular engagement between suppliers and Ofgem, both at senior and working level. Ofgem and suppliers may also better understand each other through regular Ofgem site visits and joint workshops. This engagement is a valuable way for Ofgem to understand and monitor the market and should reduce the volume of ad hoc data requests.

We believe that suppliers and Ofgem may need to make some important changes to their culture and practices to attain the benefits of a principles-based approach. For example:

- Suppliers should be open with Ofgem regarding commercial strategy and should offer transparency in respect of decision-making, particularly in respect of how their decisions will deliver good customer outcomes
- Ofgem should accept that suppliers will do things differently to achieve the same principle, and that diversity is a natural outcome of an effective competitive market, and benefit consumers.

Establishing mutual confidence

Principles require mutual confidence between the regulator and suppliers. Ofgem and suppliers must have clear expectations of the other. Confidence will be earned by suppliers and Ofgem acting predictably and reasonably, doing what they say they will do and evidencing that their actions are appropriately considered and well-intentioned.

As a supplier, we believe that we need to demonstrate that we are committed to doing the right thing and have appropriate governance and processes in place to achieve that. We believe that Ofgem has an immediate opportunity to inspire mutual confidence in the following ways:

- **Adopting a ‘principles first’ approach.** During the transition to principles, we believe that Ofgem should consider principles first in all regulatory initiatives and avoid prescription that does not fit with the FRR approach. We recognise that Ofgem looked at principles in its work on smart billing and the Priority Services Register but we believe these proposals could have been more consistently based on principles.
- **Differentiating between ‘general fairness’ and Standards of Conduct (SOC).** We urge Ofgem to pay close attention to its use of the term ‘fairness’ when referring to supplier behaviour it observes or would like to see. We believe that sometimes Ofgem has used the term ‘fairness’ in a way that wrongly implies that the SOC (a) apply, (b) prescribe a specific behaviour or (c) prescribe a standardised behaviour across suppliers. The SOC (SLC 25C) are focused on how we communicate and deal with our customers, maintain systems and processes that are fit for purpose and put things right swiftly. But Ofgem has begun to seek to apply SOC beyond this scope. For instance, Ofgem is currently questioning the ‘fairness’ of collecting debt recovery costs from customers who give rise to them¹.
- **Introducing principles and prescriptive rules through due process.** It is important that stakeholders have confidence in Ofgem’s approach to replacing prescriptive rules. Ofgem’s approach to introducing principles must be based on objective risk-based criteria and involve meaningful consultation and thorough impact assessment. Ofgem should avoid introducing any rules through guidance and enforcement cases. Creating prescriptive rules in this way would avoid due process of consultation and impact assessment and create regulatory uncertainty.
- **Accepting that enforcement of principles requires a different approach to enforcement of rules.** As principles are more subjective and provide suppliers with flexibility to do things differently, the approach to enforcement needs to evolve. Suppliers should be able to challenge enforcement decisions on the merits of the case and Ofgem should require suppliers to demonstrate their approach to compliance. Enforcement of principles should not go beyond what Parliament intended either by challenging statutory rights or broadening protections provided in legislation.

¹Ofgem Proposals to improve outcomes for prepayment customers consultation
https://www.ofgem.gov.uk/sites/default/files/docs/final_consultation_ppm_0.pdf

Next steps

We believe that Ofgem is right to start the move to principles with the sales and marketing rules (SLC 25). Removing prescription from these rules enables more flexibility and allows customers to benefit from innovative sales practices. We also support Ofgem “reviewing the regulatory arrangements that apply to customer communications” and welcome its commitment to “removing as much prescription as possible from the licence”². Customer communications should be clear and simple and should adapt to changing technology, such as the increasing use of digital media. We believe that suppliers need more flexibility to determine what and how information is provided to customers.

We recognise that Ofgem has been constrained from outlining its FRR plans in full until the CMA published its provisional decision. However, now that the provisional decision is available, we encourage Ofgem to establish clear criteria for determining where prescription can be removed, and publish a roadmap. This roadmap should set out which areas of the licence it will review and when. Sales and marketing and customer communications should feature on this roadmap.

We urge Ofgem to proceed with pace to move to principles and enable suppliers to innovate and differentiate to the benefit of domestic customers. Such innovation is an important part of competition. We also believe that Ofgem should reflect on the conclusions of the Competition and Markets Authority (CMA) regarding Adverse Effects on Competition (AECs) and the remedies proposed as a consequence. Ofgem should then say clearly what this means for its FRR programme, and why.

We are committed to working with Ofgem on the transition to principles and look forward to continue working positively and constructively with Ofgem. If you have any questions about this response, please contact Alun Rees on 07557 619674 or Alun.Rees@britishgas.co.uk.

Yours sincerely

Sharon Johnson

Director of Regulatory Affairs and Energy Compliance
British Gas

² Ofgem, Improving consumer communications and the value of trials
https://www.ofgem.gov.uk/system/files/docs/2016/03/open_letter_trials_v6_nb.pdf

Summary of consultation response

British Gas supports the transition to principles. We believe the flexibility of principles allows suppliers to innovate and do things differently. Principles place more responsibility on suppliers to determine the right thing to do. Our views on the main issues raised by this consultation are summarised in the table below.

Ofgem proposal	Our view
Introduce narrow principles	Support. We believe that the transition to principles should be based on removing prescription or replacing prescription with well-defined narrow principles. Where narrow principles are required to address a market failure, they should be positively drafted, customer and competition-focused and clearly defined, without inadvertently introducing prescription. Any prescription should be well-justified against objective criteria. We believe this should involve consideration of risk, e.g. the type, severity and duration of the risk, unintended consequences and intervention costs.
Introduce supplemental broad principles	We are unconvinced that any supplemental broad principles are required. Ofgem has not explained the problem it is trying to solve. We believe that existing regulation, e.g. the Standards of Conduct (SOC), incentivises suppliers in the way envisaged by the broad principles that Ofgem suggested in its consultation.
Enhance the quantity and variety of monitoring	We recognise that Ofgem will have to understand more about suppliers' internal processes as well as customer outcomes. We agree that monitoring should be risk-based, targeted and proportionate. We believe that any changes to monitoring should be cost-effective and avoid unnecessary additional costs to suppliers and consumers. Ofgem should aim for no net increase in monitoring burdens imposed on suppliers as it moves towards principles.
Prescription should be removed in 'phases' rather than have a 'big bang'	Support. We encourage Ofgem to move as quickly as possible to introduce principles in the domestic sector.
Start the transition by removing prescriptive elements of the sales and marketing licence condition (SLC 25)	Support. We welcome more flexibility in sales and marketing. This is likely to require new principles rather than just the retention of existing principles. We believe that Ofgem should also look at the prescriptive Retail Market Review (RMR) rules on billing content and format.
Enforcement	We believe that principles, being more subjective, may be more vulnerable to interpretative challenges in enforcement decisions. Ofgem's approach to enforcement should take into account the increased level of subjectivity in licence conditions. We also believe that Ofgem should expect a greater level of scrutiny of its enforcement decisions.

Appendix 1 – Ofgem FRR consultation questions

This appendix sets out our response to Ofgem’s FRR consultation questions. Some of our answers are relevant to more than one question. We include clear cross-references when this is the case. The contents table below can be used to navigate our response.

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Question 1a: In what circumstances do you think that prescriptive rules are likely to be most appropriate?

This is an important question. To make sure that our response is clear we have summarised our conclusion first and explained our rationale in detail afterwards.

Summary conclusion

We believe Ofgem should use similar criteria to determine whether prescription is required as it would use to determine whether any form of regulation is required, only with a stronger bias against 'prescription' than 'regulation' more generally.

Ofgem should also consider the question of 'where to prescribe' with reference to the type of risk that it is trying to address and assess it against objective criteria. We have suggested some criteria below and illustrated how they might be applied to different types of risks. There are some types of risks that are better suited to management by prescriptive rules than others. For instance, we believe prescription is more appropriate for market operation risks than engagement risks.

Rationale

We believe that competition is the best way of protecting consumers' interests. Regulation is required where the market cannot be relied upon to do something. However, regulation can also have adverse impacts on consumers and competition.

We believe that prescription is more likely to be detrimental to competition than other forms of regulation because it requires all market participants to do the same thing in the same way. If market participants cannot do things differently, then they cannot innovate and differentiate themselves by finding new ways to make their customers happy and attract new customers. The CMA has also provisionally found that some of Ofgem's more prescriptive interventions 'may have an adverse impact on competition and consumer welfare'³.

We therefore believe that prescriptive rules may be more appropriate where the following criteria apply:

- a) There is no or low scope for innovation/differentiation
- b) Suppliers working individually are unable to deliver a desired outcome, e.g. the Change of Supplier process
- c) There are insufficient incentives on suppliers to deliver the outcome
- d) The risk of non-intervention in terms of consumer detriment and/or competition is high
- e) The risk of adverse unintended consequences of intervention is low
- f) There is no existing regulation that does a similar job, e.g. consumer protection law

³ CMA

https://assets.digital.cabinetoffice.gov.uk/media/559fb629ed915d1595000038/Appendix_8.2_Impact_of_RMR.pdf

- g) The proposed prescription flows directly from Ofgem’s statutory objectives and duties, as long as and to the extent that it does not run counter to promoting competition.

We agree with Ofgem that all regulation should manage risk⁴. When determining whether prescription is required, we believe that Ofgem should consider and articulate the risk that it wants to address against each of the above criteria. The table below illustrates how those criteria might be applied to different types of risk that we see in the market.

Risk type	Example	Case for prescription by Ofgem
Market operation	Market functioning requires interoperability, which may require prescription, e.g. smart meter specification.	High – market participants may struggle to facilitate interoperability (e.g. change of supplier) on their own. Regulation is required to ensure cooperation
Health and safety	Where customers need a supply for health reasons, prescription may be required to discourage disconnection.	High – the risk of consumer detriment is high if a customer needs a supply for health reasons and is disconnected
Debt	Customers may struggle to pay for ongoing consumption and/or debt repayments.	Low – there is scope for innovation and differentiation and suppliers have incentives to ensure debt repayments are affordable
Mis-selling	Customers should receive accurate and complete information at point of sale. Prescription or principles may achieve this.	Low – there is scope for innovation and differentiation and additional incentives can be imposed on suppliers via principles
Customer service	Customers should be able to contact their supplier easily and resolve matters promptly. Prescription or principles may achieve this.	Low – there is scope for innovation and differentiation and further incentives can be imposed on suppliers via principles
Fuel poverty	Customers may struggle to heat their homes to an adequate temperature. Poverty is a social policy issue for Government to address.	Low – whilst Ofgem must have regard to ‘individuals who are disabled or chronically sick, of pensionable age, with low incomes, or residing in rural areas’ ⁵ , it has also said that it should not ‘initiate or pursue a policy ... which has the purpose of...seeking significant redistribution of costs among consumers’ ⁶

⁴ 2.4, Pg. 12, Ofgem Future of Retail Market Regulation consultation

⁵ Gas Act 1986 and Electricity Act 1989, as amended by Utilities Act 2000

⁶ Pg. 11, Ofgem Corporate Strategy https://www.ofgem.gov.uk/sites/default/files/docs/2014/12/corporate_strategy_0.pdf

Engagement	The ability and/or willingness of customers to engage with the market may vary.	Very low – there are strong incentives on suppliers to engage customers. Prescriptive rules have a high risk of adverse unintended consequences as diagnosed by the CMA in its provisional findings
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Some risks are more likely to be resolved through prescription than others without unintentionally damaging competition. For example, as per the table above, we believe prescription is more appropriate for market operation risks than engagement risks.

Question 1b: Which specific SLCs/policy areas should remain prescriptive in nature?

We assume that each licence condition or policy area seeks to address an underlying market risk. As per the table above, we believe that there is a stronger case to use prescription to address some market risks than others and Ofgem should consider each risk according to objective criteria.

Question 2: Should we supplement the principle of ‘treating customers fairly’ with any other broad principles? If yes, please outline what these should be and why.

We have not seen any evidence or indication that supplemental broad principles are needed to improve regulation of the domestic energy market. Ofgem has not said what problems it is trying to solve with supplemental broad principles nor has it provided evidence that such problems exist. As explained in response to Question 3 below, our view is that customer outcomes can be better achieved through narrow principles.

Broad principles can focus on internal supplier processes or customer outcomes. It is difficult to envisage an ‘outcome-based’ broad principle that would not significantly, if not entirely, overlap with the SOC. We therefore cannot see a good case for Ofgem introducing any supplemental principles. The SOC already encourage suppliers to place the consumer at the heart of their decision-making, document their decisions and engage with the regulator.

Based on the rationale and evidence provided, we believe that it would be unnecessary and disproportionate for Ofgem to introduce broad principles which focus on internal supplier governance processes. It would be a significant step for Ofgem to regulate not just the outcomes for the market but also the internal governance process of how suppliers achieve those outcomes. Indeed to regulate the ‘how’ is more consistent with prescription than principles. We believe that suppliers already have incentives to conduct their business consistently with three of the broad principles proposed by Ofgem.

Broad principles directed at internal supplier governance processes

- **Constructive engagement with the regulator.** We believe that suppliers benefit from engaging constructively with Ofgem and other stakeholders. Engagement leads to greater understanding and improved information-sharing. Suppliers and Ofgem

may sometimes disagree and here, constructive engagement is particularly important and will lead to better decision-making. Some suppliers may choose not to engage constructively or indeed engage at all. In those cases, Ofgem already possesses statutory powers to compel suppliers to provide information. Suppliers that do not constructively engage with Ofgem are unlikely to reap the full benefits of a principles-based regime. For example, those suppliers may poorly understand the customer outcomes to be achieved through narrow principles and may face more ad hoc monitoring from Ofgem, incurring additional costs. Importantly though, it should be up to a supplier to determine how to behave and how to commit its own finite resources. We do not believe that Ofgem should dictate how any supplier should conduct themselves.

- **Good record-keeping.** Suppliers already have incentives to keep good records to demonstrate that they are compliant with licence conditions. For instance, Ofgem takes into account contemporaneous documentation when considering a possible breach of any licence condition, including the SOC. Suppliers also have obligations under the Data Protection Act 1998, as well as accounting record and shareholder record obligations under the Companies Act 2006. If Ofgem was to introduce this new broad principle then this should be justified by showing that customer outcomes have been negatively impacted by suppliers failing to maintain good records. We consider that suppliers that fail to retain good records would be less likely to benefit from the flexibility of principles because such suppliers would be unable to prove that their decisions had been taken with customer outcomes in mind. We can however see a case for rationalising the various specific licence conditions that require suppliers to provide information to Ofgem on request. As part of this rationalisation, Ofgem could set out what records it would expect suppliers to keep.
- **Board-level assurance to embed principles.** We believe that, if the whole organisation aims to 'do what's right', then suppliers will more effectively achieve narrow principles and treat customers fairly. We agree that senior management should be involved in embedding both principles and ensuring general compliance with Ofgem rules. British Gas has ensured that senior management have appropriate oversight as part of embedding the Standards of Conduct. However, individual suppliers may choose to embed principles in different ways. How suppliers embed principles should be determined by suppliers.

We currently see little benefit to Ofgem introducing broad principles to cover the internal processes of suppliers. If Ofgem wants to introduce additional broad principles, Ofgem should provide examples to illustrate the problems that it believes exist. As Ofgem acknowledges in the FRR consultation⁷, principles-based regulation will only be a success if suppliers and Ofgem have mutual confidence in each other. The broad principles proposed by suggest a lack of confidence in suppliers to embrace principles.

⁷ 3.17, Pg. 29, Future of Retail Market Regulation consultation

Broad principle not to put customer outcomes at risk

We do not support Ofgem's proposed broad principle for suppliers **not to put customer outcomes at risk** because we believe it would be counter to Ofgem's aim of stimulating innovation. Such a principle may have unintended consequences by making suppliers highly risk-averse and unwilling to try new ways of doing things. The current wording 'not to put customer outcomes at risk' implies that any risk, however small, is unacceptable. We do not believe that it is realistic to expect all activities to have zero risk. Creating such a risk-averse environment could hamper competition.

If this broad principle was introduced, we believe that suppliers would be likely to be less willing to undertake innovative trials. Such trials are designed to discover new ways to achieve customer outcomes and cannot guarantee that the outcomes will be achieved. We understand that Ofgem is keen to encourage more trials.

Question 3: Where might narrow principles be more appropriate than broad principles or prescription?

We set out possible criteria to determine where prescription could be removed or replaced by narrow principles in response to Question 1. Our response to Question 2 explains our concerns about Ofgem's proposed broad principles. The rest of this answer therefore sets out our views on narrow principles.

In some cases, we believe that prescriptive rules should be removed altogether, without the introduction of narrow principles. For instance, we welcome the removal of the meter inspection licence condition (SLC 12) from April 2016⁸. We also welcome the CMA proposals to revoke elements of the RMR rules on tariffs and customer information.

Where prescription is removed but it cannot be left to the market to ensure particular outcomes are delivered, we support the introduction of narrow principles. Such principles may focus more directly on achieving customer outcomes. In comparison to prescription, narrow principles better enable suppliers to find new and innovative ways to deliver these outcomes for customers. The principles must be framed as desired customer outcomes, be flexible enough to enable suppliers to innovate and establish differentiation in delivery. The principles must therefore be tightly defined with a clear scope but avoid inadvertently introducing implicit prescription. Well-defined narrow principles will help set expectations of suppliers and reduce regulatory uncertainty. Moving to narrow principles supports Ofgem's proposed phased approach to introducing principles, e.g. with narrow principles replacing prescriptive rules on an area-by-area basis.

We recognise that drafting narrow principles is not easy. In general, we consider that narrow principles should be:

⁸ Ofgem, Reforming suppliers' meter inspection obligations consultation
https://www.ofgem.gov.uk/sites/default/files/docs/2015/11/reforming_suppliers_meter_inspection_obligations_financial_proposals_0.pdf

- 1) **Positively drafted.** Positively drafted narrow principles should establish what good looks like and encourage the right behaviours.
- 2) **Customer and competition-focused.** Effective competition is in most cases the best means to achieve positive customer outcomes. Drafting should enable competitive responses from suppliers wherever possible.
- 3) **Clearly defined.** If the principles are too general, then there is an increased chance of suppliers and Ofgem disagreeing about what the policy intent was. If the principles are too specific, then there may be insufficient room for suppliers to innovate and deliver the outcomes in different ways. Overly specific principles risk stifling competition.
- 4) **Consistent with legislation.** Narrow principles should not change or contradict legislation, e.g. the rights and obligations set out in the Gas Act 1986 and the Electricity Act 1989.
- 5) **Limited in volume.** Too many narrow principles could lead to conflict between principles and increase the difficulty for suppliers to define effective strategies.

Narrow principles could replace prescription to promote competition in a number of the licence conditions. As set out in our response to Question 1, we believe that Ofgem should develop risk-based criteria to assess whether principles or prescriptive rules will be more effective. Ofgem is already exploring the sales and marketing rules (SLC 25), where there is scope for innovation and differentiation by suppliers. Ofgem could also explore licence conditions which try to use prescriptive rules to increase customer engagement but constrain supplier innovation. We suggest some examples below, all related to customer communications, that we encourage Ofgem to explore. The licence conditions highlighted in these examples do not target market operation, health and safety or debt, reducing the rationale for prescription.

We believe that all customer communications should be clear and simple and should seek to achieve well-defined customer-focused outcomes. Communications should also adapt to changing technology, such as the increasing use of digital media, including smartphones and tablets. For instance, some customers may prefer to receive billing information via text message or in interactive form via an app. We believe that suppliers need more flexibility to determine what information they provide to customers and how that information is provided. We think that all customer communications should seek to achieve the following:

1. Suppliers provide a clear messaging hierarchy to support customers navigate around and understand the communication. This hierarchy would be determined by suppliers.
2. The language used is simple and clear for customers to understand. Suppliers work with their customers to determine what is simple and clear.
3. Where appropriate, the content and format of the communication is personalised.
4. Where appropriate, suppliers are able to offer different brands for different products.

Additional narrow principles may apply to specific customer correspondence. We provide examples below, first setting out what outcome we believe the piece of correspondence is trying to achieve.

- **Billing information (SLC 31A).** We believe that the primary purpose of the bill is to inform the customer of how much money they owe (or how much credit they have), when any amount is due and how much energy they have consumed. We believe that narrow principles would be more appropriate for governing the provision of billing information because there are strong competitive incentives on suppliers to engage customers. Suppliers want their customers to understand and respond to bills and can gain competitive advantage from designing engaging bills. The current prescriptive rules set out, in detail, the layout and content of the bill. Such prescriptive rules run a high risk of adverse unintended consequences. Narrow principles, e.g. bills should be understood by the customer, could encourage innovation and achieve more positive customer outcomes.
- **Annual summary (SLC 31A).** We believe that the purpose of the annual summary is to provide customers with a summary of their energy consumption and spend over the previous year. To achieve this outcome, we believe that suppliers should have greater flexibility over how and when they provide the annual summary to customers.
 1. Narrow principles which allow suppliers to determine the format of the annual summary would be more appropriate than prescriptive rules. The annual summary is heavily prescribed, both in content and format, reducing suppliers' ability to innovate and engage customers.
 2. We believe that suppliers should be able to send annual summaries and bills at the same time. Suppliers are currently prevented from sending such combined mailings by prescriptive rules in SLC 31A, imposing additional costs on suppliers.
- **Fixed term contract roll-offs (SLC 22C).** The purpose of roll-off letters is to ensure that customers on fixed term contracts are aware of relevant tariff options when their existing tariff expires. There are strong incentives on suppliers to engage customers at this point in the customer journey and prescriptive rules run a high risk of adverse unintended consequences. A number of aspects of SLC 22C could be reformed through narrow principles.
 1. The volume of information on the roll-off letters could be simplified. The roll-off letters now contain a significant amount of information for customers to process, with information provided about the customer's existing tariff, the cheapest relevant tariff, the cheapest alternative tariff and, if different, the cheapest evergreen tariff. The volume of information currently required makes it more difficult for suppliers to find innovative and interactive ways of presenting information to customers.
 2. We believe that the best time to send this notification should be up to suppliers to determine based on customer insight. The time-frame for notifications to be sent to customers about their fixed term contract is currently prescribed (between 42-49 days before contract end).
 3. We think that suppliers should be able to market new products to customers in their fixed term notifications. Prescriptive rules which prevent such marketing reduce competition. Moving to narrow principles should enable suppliers to market new products and recommend tariffs. Existing consumer

law, e.g. the Consumer Rights Act 2015, already requires the key terms of the new contract to be prominent and transparent.

- **Unilateral disadvantageous price change letters (SLC 23).** We believe that the purpose of price change notification letters is to inform customers of an increase in prices and to enable customers to switch to a different tariff or supplier before the change takes effect. Ofgem heavily prescribe the information that suppliers must provide to customers during a price change. Much of the information set out in SLC 23 is covered by consumer protection and contract law. These detailed rules could be replaced by a principle that suppliers will provide appropriate notice to customers ahead of a price change and allow a customer to act before imposing the price change.
- **Cheapest tariff messaging (CTM).** Ofgem heavily prescribe how, where and on which communications suppliers must provide the CTM to customers. This prescription reduces suppliers' ability to innovatively engage with customers. The CTM could be replaced by a principle, e.g. suppliers will ensure that customers are made aware of a range of relevant tariffs.

Question 4: What are your views on the potential merits or drawbacks of incorporating consumer protection law into licences?

We believe that the current consumer protection law framework, which has been recently overhauled, consolidated and enhanced, is robust. This framework gives Ofgem the powers it needs to provide redress to consumers and to deal with infringing conduct through enforcement action.

Based on the rationale provided, and in the absence of evidence of a problem, we would not support a proposal to incorporate consumer protection law into the supply licence in order to give sector-specific powers to Ofgem for a number of reasons:

- **Ofgem has not made clear why it needs sector-specific powers**

Ofgem has not made clear why it is necessary for one regulator to establish a sector-specific regime to impose financial penalties. Ofgem has also not explained how incorporating compliance with consumer protection law into licence conditions will work in parallel with the enforcement rights under existing consumer protection law. For instance, it is not clear whether any fine would take account of redress made or proposed under other legislation and what the overall effect would be on aggregate payments for breach. We are unsure why Ofgem is considering a separate regime when Government is also exploring the introduction of powers to issue civil fines for breach of consumer protection law⁹. We believe it would be sensible for Ofgem to await the outcome of planned Government consultations.

- **The existing regime is sufficient to protect consumers**

⁹ BIS Call for Evidence, Terms and Conditions and Civil Protection Fining Powers
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/504063/bis-16-67-terms-and-conditions-call-for-evidence.pdf

We believe that the current consumer law framework provides essential protection to all consumers. We played an active role in the consultation stages in respect of the Consumer Rights Act 2015 and welcome the effect this has had in consolidating the consumer law framework. We consider that the existing framework for dealing with breaches of consumer right and redress for consumers is extensive and sufficient. Enforcers already have powers to apply for enforcement orders against businesses in breach and accept undertakings from businesses confirming that they will cease the infringing conduct. Enforcement orders can now include compensation for a consumer's loss and introduce compliance measures. Taken together, these measures are sufficient for ensuring consumer redress.

- **It would introduce inconsistency and complexity to consumer redress and enforcement arrangements that were designed to be simple to understand and consistent across sectors**

Additional complexity in consumer protection law would be unhelpful. The explanatory notes to the Consumer Rights Act 2015 explain that one of the purposes of the Act was to counter '[as then] existing UK consumer law [being] unnecessarily complex', 'developed piecemeal over time', 'fragmented' and 'in places, unclear'¹⁰. The notes also cite a number of consultations and academic research papers supporting simplification of consumer protection law. Ofgem provides very limited details on how the proposal would work in practice but it is likely to undermine the recent consolidation and simplification of the legislative framework by introducing parallel enforcement measures.

Question 5: How should we use principles and prescription to most effectively protect consumers in vulnerable situations?

The transition from prescription to principles will improve the experience of all customers, both the vulnerable and non-vulnerable. Principles will enable suppliers to explore new and innovative ways of delivering for and protecting their customers.

It may be appropriate to retain prescription in some areas to protect particular types of customers, such as protecting from disconnection those whose health depends on an uninterrupted supply of electricity. We recognise Ofgem must have regard to 'individuals who are disabled or chronically sick, of pensionable age, with low incomes, or residing in rural areas'¹¹. Such prescription should be well-targeted, customer-focused and risk-based and we outline possible criteria in response to Question 1. However, Ofgem has also said that it should not 'initiate or pursue a policy...which has the purpose...seeking significant redistribution of costs among consumers'¹².

Ofgem should avoid creating uncertainty during the transition to principles by considering – when amending licence conditions – whether principles or prescription are best placed to enable positive customer outcomes. If Ofgem's assessment is that some prescription is necessary, then this should be communicated clearly upfront and not applied retrospectively.

¹⁰ Consumers Rights Act 2015 explanatory notes <http://www.legislation.gov.uk/ukpga/2015/15/notes/contents>

¹¹ Gas Act 1986 and Electricity Act 1989, as amended by Utilities Act 2000

¹² Pg.11, Ofgem Corporate Strategy
https://www.ofgem.gov.uk/sites/default/files/docs/2014/12/corporate_strategy_0.pdf

For example, Ofgem's PSR consultation did not make clear whether Ofgem's approach to vulnerability would be led by prescription or principles. We think that it would be inappropriate for Ofgem to first enable suppliers to determine vulnerability themselves and then retrospectively determine its own view of vulnerability and monitor and enforce on this basis.

Question 6: Do you agree with our proposed approach to guidance?

We agree with Ofgem that the use of guidance should be limited. We also believe that Ofgem should provide further clarification on their approach.

We welcome Ofgem acknowledging the risk of guidance introducing 'prescription by the backdoor'. Such prescription would limit the benefits of the move towards principles. However, there may be instances where clarity (rather than prescription) is necessary. There will be circumstances in which Ofgem should publish guidance and subject that guidance to consultation. Such consultation is particularly necessary where operational consequences result from a standard, definition or approach that Ofgem considers should be adopted by suppliers. For example, the definition of what constitutes an advanced meter under SLC 12 was open to interpretation amongst suppliers during the roll-out. Ofgem failed to provide sufficient guidance during the roll-out mandate which introduced a risk of inconsistencies in how suppliers reported their roll-out performance. It would have been preferable for Ofgem to either publish guidance making their expectations clear or to adopt prescriptive rules.

As identified by Ofgem, any published guidance should be 'concise, straightforward and located in a single, well-signposted place'¹³. When creating a central location for guidance, all previously issued guidance should be included. It should be clear which guidance is still relevant in areas where principles have replaced prescription.

We welcome Ofgem committing to alert stakeholders, including suppliers, to the publication of guidance. We believe that Ofgem should avoid relying on social media such as 'tweets' to communicate such guidance. Ofgem should use the daily email alert and could explore sending an email to designated points of contact at each supplier.

Ofgem could be clearer on what it means by guidance. Ofgem's intention is unclear in some parts of the consultation. For instance:

- We take Ofgem to be referring to guidance issued to the whole market rather than any steers provided to individual suppliers, e.g. during bilateral meetings. We would not expect conversations between individual suppliers and Ofgem to be published.
- We do not believe that Ofgem has stated clearly whether guidance would be binding or non-binding. Ofgem states that suppliers 'not having had regard to guidance could indicate a potential breach'¹⁴, suggesting that some guidance may effectively be binding on suppliers. Guidance should be consulted upon as the guidance will inform how Ofgem assess the application of a principle and the guidance could amount to

¹³ 2.40, Pg 22, Ofgem Future of Retail Market Regulation consultation

¹⁴ 2.37, Pg 22, ibid

additional prescriptive regulation. We ask Ofgem to confirm in its response to this consultation that, whether a supplier adopts non-binding guidance or not, cannot be used to indicate a potential breach.

- We believe that Ofgem should avoid retrospectively creating prescriptive rules or issuing guidance through enforcement cases. Creating prescriptive rules in this way would avoid due process of consultation and impact assessment, while suppliers, including new entrants, may not be aware of guidance included in enforcement cases. If Ofgem believes guidance would help suppliers better understand the outcomes that principles are trying to achieve, this guidance should be published as a separate document to the enforcement case.
- It is unclear whether former enforcement decisions will continue to act as guidance in a principles-based regime once prescriptive rules are replaced with principles. For instance, Ofgem states that ‘in some cases, [enforcement] decisions will provide examples of behaviour that is not compliant with the principles, and as such may help suppliers better understand our rules’¹⁵. As prescriptive rules are removed, the associated enforcement decisions should cease to have any effect. We ask Ofgem to confirm in its response to this consultation that enforcement decisions concerning prescriptive rules which are no longer in force will cease to have any effect, even as guidance.

Question 7: How can we best engage with suppliers in the context of principles?

We welcome Ofgem considering how best to engage with stakeholders. We agree that greater reliance on principles requires regular discussion between suppliers and Ofgem. Principles cannot be sustained without mutual confidence between the regulator and suppliers. Ofgem and suppliers must have clear and understood expectations of the other. Mutual confidence will be earned by suppliers and Ofgem:

- a) Acting predictably and reasonably
- b) Doing what they say they will do
- c) Providing evidence that their actions are appropriately considered and well-intentioned

Positive engagement through regular conversations is required to engender mutual confidence and predictability. Stakeholders, including suppliers, must possess shared understanding about the interpretation of principles and the intent of rules. In the consultation, Ofgem defines engagement in terms of how it will ‘help suppliers understand their obligations’¹⁶. In a principle-based regime, we believe engagement works in both directions and involves Ofgem learning how suppliers are seeking to deliver customer outcomes. These conversations may involve:

- 1) Enhanced engagement between the senior leaders of suppliers and Ofgem
- 2) Greater use of bilateral meetings between suppliers and Ofgem at working level
- 3) Site visits by Ofgem

¹⁵ 2.38, Pg 22, Ofgem Future of Retail Market Regulation consultation

¹⁶ 3.7, Pg 26, *ibid*

4) Additional workshops with all suppliers

Ofgem highlights in the FRR consultation the importance of ‘safe testing of new products and services’¹⁷. Trials and testing allow suppliers to understand customer interest in products and propositions. Trials are an important part of a competitive market. We would like to undertake more trials in future. The move to principles-based regulation should create more room for suppliers to innovate. Ofgem should provide flexibility around prescriptive rules before they are removed or reformed, and allow suppliers to carry out trials in a responsible way, otherwise there is a risk that innovation will be constrained. The Financial Conduct Authority’s (FCA) use of principles through Project Innovate¹⁸ appears to be a less bureaucratic way of facilitating trials than the Ofgem derogation process. We suggested some principles that Ofgem might use to facilitate trials in our response to Ofgem’s Simplification Plan 2016-17. We suggest that trials should:

- a) Be ‘customer-focused and rigorous’, clearly articulating the intended customer outcome
- b) Involve a representative sample of target customers (whether existing or prospective) that is large enough to be statistically significant
- c) Involve supplier research into the customer requirements, and clarify where existing rules constrain those outcomes
- d) Involve sharing data from the trial with Ofgem. Ofgem may publish any non-commercially sensitive findings (as notified by suppliers) in aggregated and anonymous form
- e) Allow suppliers to have the discretion to approach Ofgem about a trial, i.e. there is no need for a pre-approval process for product trials.

Question 8: What specific support may be needed for new and prospective entrants?

We believe that support offered to new and prospective entrants is also likely to be useful for existing suppliers. Some engagement activities may benefit all market participants, even if those activities are aimed at new suppliers who may be less familiar with the regulatory regime. For instance, we welcome Ofgem publishing the details of meetings with small suppliers.

Ofgem could improve the accessibility and navigability of their rules. We provided examples in our recent response to Ofgem’s Simplification Plan 2016-17. These are summarised below. Adopting these changes may reduce the need for specific support for new and prospective entrants.

- 1) **Information provision requirements.** Consolidate into a single obligation all licence conditions that require suppliers to provide information to regulators or government.
- 2) **Definitions.** Consolidate all definitions, making clear whether the definition applies generally or to specific prescriptive rules. Defined terms should be hyperlinked to

¹⁷ 3.12, Pg 28, Ofgem Future of Retail Market Regulation consultation

¹⁸ FCA Project Innovate, <https://innovate.fca.org.uk/>

allow easy navigation between the rules and the definitions. Ofgem should consider whether the number of defined terms could be reduced as a result of a move from prescription to principles.

- 3) **Navigability.** Ofgem should make sure suppliers can search rules online and explain interactions and interdependencies between different rules.
- 4) **Date stamps for rules.** Ofgem should include implementation dates for each rule, whether prescriptive or principles.
- 5) **Version control.** Ofgem should allow suppliers to see what the licence conditions looked like in the past. The FCA website includes such a feature.
- 6) **Dual fuel rules.** Rules should be drafted on a dual fuel basis, with specific sections devoted to gas or electricity as required.
- 7) **Derogations.** Ofgem should make it easier for suppliers to see which suppliers have been awarded derogations from licence conditions.
- 8) **Guidance and enforcement cases.** Ofgem should provide links from each rule to any relevant guidance and to any relevant enforcement cases.
- 9) **Consultations and impact assessments.** Ofgem should provide links from each rule, in particular prescriptive rules, to relevant consultations and impact assessments. Ofgem should provide a short summary of the policy intent of each prescriptive rule, which should only reflect what stakeholders could find if they searched for the relevant consultation.
- 10) **Rules under review.** When reviewing specific rules, Ofgem should signal which rules are under review. Ofgem should provide links to relevant consultation documents.
- 11) **British and EU legislation.** Ofgem should make clear where a licence condition puts into effect British or European legislation.
- 12) **Smart meters.** Ofgem should ensure that, as the smart meter roll-out continues, the rulebook is regularly updated to remove unnecessary distinctions between smart and non-smart meters.

Question 9: Do you have any views on how best to approach monitoring in the context of principles? Specifically, which indicators and approaches should we use to catch potential problems early?

We welcome Ofgem's recognition that monitoring should be proportionate, targeted and risk-based. What risk-based and proportionate means in practice will depend on the specific purpose and focus of the monitoring. For instance, where there is substantial risk of harm to individual customers or where non-compliance would undermine confidence in the market, then Ofgem monitoring should be consistent across all licensed suppliers. We think that Ofgem should focus on systemic issues rather than individual complaints and identify and monitor the leading indicators of issues, using the minimum data required. While principles-based regulation may require new forms of monitoring, principles do not necessarily require more monitoring. Principles will encourage suppliers to take more responsibility for delivering customer outcomes, which could involve less monitoring for Ofgem to undertake. It will be easier for suppliers to determine appropriate monitoring once we have a better idea of what the principles are.

We believe that Ofgem should impose no overall additional cost burden on regulated firms for monitoring in future. Ofgem already receives significant volumes of information from suppliers. This information is qualitative and quantitative, covering both supplier policies and data. As prescriptive rules are replaced by principles, Ofgem should review what data it receives from suppliers and rationalise regular data requests wherever possible. We would expect the coordination of regular and ad hoc monitoring to improve following these reviews. As suggested in our Simplification Plan 2016-17 response, Ofgem can also keep costs down by engaging in informal discussions with suppliers in advance of requests for information being sent and by rationalising existing reporting requirements.

In a principles-based regime, we suggest that Ofgem monitoring should concentrate more on understanding regulated businesses rather than the narrower question of whether firms are complying with prescriptive rules. Regular meetings between the supplier and Ofgem would help the regulator understand how suppliers operate. We welcome meetings – ad hoc or regularly organised – with Ofgem at all levels. Suppliers could, at their discretion, provide information about governance structures and how they are achieving desired outcomes.

We welcome Ofgem looking for leading indicators. Such regular monitoring should mean fewer ad hoc information requests. Assuming all else is equal, regular monitoring is more predictable, less disruptive and less costly than ad hoc requests. As we highlighted in our recent response to the Simplification Plan 2016-17, the high volume of ad hoc monitoring suggests that regular data provided by suppliers is not focused on the right areas.

We believe that the indicators Ofgem uses to monitor the market should be publicly available, should not be too numerous and should be linked to outcomes. We believe that individual supplier figures should only be published if:

- 1) There is a clear objective for publication, which meets Ofgem's principle objective of protecting consumers wherever appropriate by promoting competition
- 2) The data is complete, accurate, not misleading (in terms of the information provided or omitted) and otherwise fair both in terms of its content and in terms of how it is presented to consumers by third parties as well as Ofgem
- 3) Publication of the data is proportionate and takes into account the costs of intervention
- 4) Publication does not result in damaging unintended consequences for consumers or competition.

More information on our views of each of the monitoring options proposed by Ofgem is provided in Appendix 2.

Question 10: Do you have any views or comments on the following proposals?

- **We will expand our engagement with suppliers to enhance our understanding of their businesses and help them better understand our rules so they can get things right first time.**
- **We will collaborate closely with the Citizens Advice Service and the Ombudsman Services: Energy to ensure we maximise the effectiveness and impact of the monitoring activities across our organisations.**

We agree with both of Ofgem's proposals. This response focuses on Ofgem's proposed collaboration with Citizens Advice and the Ombudsman Services: Energy. Our response to Question 9 covers engagement between suppliers and Ofgem.

We recognise that Citizens Advice and the Ombudsman already play an important role in monitoring the domestic energy market. However, relying too heavily on such organisations may present a misleading picture of how well suppliers are achieving customer outcomes. In particular, both organisations are much more likely to receive data about instances where suppliers could have done more for their customers. Few customers contact Citizens Advice or the Ombudsman to provide positive feedback.

We also recognise that principles-based rules will change how suppliers engage with organisations like Citizens Advice and the Ombudsman. Suppliers will adopt different policies to achieve outcomes required by narrow principles, increasing the complexity faced by these organisations when advising consumers on what they should expect and what their options are. Citizens Advice, the Ombudsman and suppliers may need to engage with each other more proactively and regularly to ensure that those providing advice to consumers understand suppliers' policies and suppliers gain additional insights into consumers' experiences.

Question 11: Do you have any views on how best to approach compliance in the context of principles?

We agree that the enforcement regime should be fair, consistently applied, involve clear messaging, incentivise a customer-centric culture, and provide credible deterrence and swift remedy¹⁹. These attributes apply to how prescriptive rules should be enforced as much as principles.

We agree with Ofgem that regular dialogue between suppliers and the regulator is an important part of achieving compliance with principles. Positive engagement through regular conversations will increase understanding about what compliance looks like and reduce the likelihood of enforcement action. Such conversations between Ofgem and an individual supplier should not be treated as guidance. Our response to Question 6 stresses the importance of avoiding guidance becoming prescription. We believe that suppliers should always retain ultimate responsibility for determining how to achieve customer outcomes where there is flexibility in how they can do so.

Ofgem states in the FRR consultation that 'some stakeholders suggested that deterrence should become more severe to encourage good outcomes'²⁰. We do not believe that severe deterrence is the way to encourage good outcomes. Competition is a more effective means of delivering positive customer outcomes, while also acting to discipline the conduct of market actors. Ofgem already possesses significant enforcement powers and has issued

¹⁹ Pg 35, Ofgem Future of Retail Market Regulation consultation

²⁰ 4.7, Pg 34, ibid

large fines for breaches of the SOC²¹. Research on compliance, for example Parker (2004)²² suggests that firms are most likely to achieve good outcomes if their motivation is to 'do what's right'. We agree with Ofgem that no supplier should have a 'poor compliance record on a regular basis'²³. All suppliers should possess cultures that aim to deliver positive customer outcomes.

Question 12: Do you have any views or comments on the following proposals?

- **We will retain our current flexible and discretionary approach to escalating issues to enforcement. We will prioritise compliance activities where possible and appropriate.**
- **We will increase the links to the level and impact of harm when deciding whether to open a case.**
- **Engaging early with Ofgem may reduce the likelihood of later enforcement. Information from engagement and monitoring activities may be shared with enforcement where appropriate.**
- **We will continue to apply our full range of enforcement tools to principles-based rules.**
- **We will make it easier for all suppliers to learn lessons from enforcement outcomes.**
- **Enforcement action will continue as usual throughout the transition to principles.**

We think that Ofgem's proposals are consistent with its approach to enforcing the SOC and – rightly – do not mark a significant change. We agree that the 2014 Penalties Policy²⁴ is fit for principles and that enforcement should continue throughout the transition to principles. To the extent that any changes are required to the Enforcement Guidelines²⁵, these should be consulted on. More specifically:

- We believe that the pre-investigation and investigation stages need to be without prejudice to encourage open dialogue. Principles require more exploration and discussion between suppliers and Ofgem to understand whether an approach is achieving the desired outcomes. Ofgem may need to allow more time to understand the actions of the supplier, the basis for that approach being adopted and the extent to which the outcome was achieved.
- As principles are more subjective, suppliers should be able to challenge enforcement decisions on the merits of the case to an independent party. We agree that determining whether suppliers have acted consistently with principles should involve

²¹ December 2015, npower case <https://www.ofgem.gov.uk/publications-and-updates/investigation-npower-s-compliance-standards-conduct-standard-licence-condition-25c-standard-licence-condition-27-provision-final-bills-and-gas-and-electricity-consumer-complaints-handling-standards-regulations-2008>

²² Parker, C (2006), The Compliance Trap: The Moral Message in Responsive Regulatory Enforcement, 40:3 Law and Society Review

²³ 4.15, Pg 36, Ofgem Future of Retail Market Regulation consultation

²⁴ Ofgem Statement of Policy on financial penalties and consumer redress https://www.ofgem.gov.uk/sites/default/files/docs/2014/11/financial_penalties_and_consumer_redress_policy_statement_6_november_2014.pdf

²⁵ Ofgem Enforcement Guidelines https://www.ofgem.gov.uk/sites/default/files/docs/2014/09/enforcement_guidelines_12_september_2014_published_version_0.pdf

consideration by an independent ‘reasonable person’. We believe that enforcement of principles should focus on supplier intent. Questions to explore include whether the supplier possesses sufficient customer insight to believe that their approach would achieve the desired outcome. Some suppliers may also choose to continue to comply with prescriptive rules that have subsequently been replaced by principles.

- We do not believe that Ofgem should introduce new prescriptive rules through enforcement cases. Suppliers need regulatory certainty to make planning and investment decisions. Prescribing new standards and processes through enforcement has significant operational consequences.
- We welcome the increased focus on customer harm, though it is unclear how this will differ to what happens now. We presume Ofgem’s focus on customer harm will reduce the focus on technical breaches that result in no customer harm. A reduced focus on technical breaches that result in no customer harm would be consistent with Ofgem encouraging trials for innovation.
- We believe that Ofgem could do more to publicise why investigations do not lead to enforcement cases and make clear why the case has been closed, whilst respecting confidentiality as appropriate. For instance, Ofgem could describe the assurances provided by suppliers about their approach. Such assurances are particularly important because Ofgem expects that the use of principles may lead to more investigations opening and then closing. We believe that Ofgem should ensure that this increase does not create the false impression that the use of principles means less supplier compliance.

Question 13: How would you like to engage with us on our proposals and the broader work programme?

Given the transformative potential of Ofgem’s transition to principles, we would welcome ongoing dialogue at senior and working level about all proposals and the broader work programme. We consider that such dialogue will improve mutual confidence and ensure that momentum is maintained. We welcome Ofgem’s constructive engagement. We are happy to continue engaging with Ofgem through bilateral meetings and multi-stakeholder workshops like the one held in February 2016.

Question 14: Do you agree with our proposal to take a phased, priority-driven approach to reforming the supply licences?

We agree with the need for prioritisation and the initial focus on the domestic sector. There is more unnecessary prescription hampering competition that can be removed from the domestic licence. We are open-minded about principles applying to the non-domestic sector. However, care should be taken to ensure any application of principles to non-domestic is fit for purpose. For instance, it may not be appropriate to use exactly the same principles-based approach in the non-domestic sector as applied in the domestic sector.

Of the three options considered by Ofgem – big bang, phased and gradual – we support a phased approach. A phased approach builds confidence and helps suppliers manage regulatory change during 2016-2017. However, the transition to principles should occur as

swiftly as possible. The longer the transition takes, the longer it will take suppliers to evolve from their current approach of following prescription and the longer it will be before customers reap the benefits of increased supplier flexibility and competition. We recognise that Ofgem cannot act in some areas until the CMA finalises its recommendations in the Energy Market investigation. We agree that Ofgem should coordinate the transition to principles with the CMA's removal of prescription. Once criteria for removing prescription are in place, Ofgem should provide a roadmap of which prescriptive licence conditions it intends to remove or replace as part of the transition to principles.

We broadly agree with how Ofgem plan to prioritise the removal of prescription. We particularly welcome the focus on areas where innovation is constrained. Ofgem should also consider where competition is best placed to address consumer risks, suppliers can achieve outcomes in different ways and other stakeholders, e.g. price comparison websites (PCWs), will benefit from flexibility.

Question 15: Which areas of the licence should we prioritise? In particular, please provide examples where existing prescriptive rules may be causing problems or where market developments are leading to new risks to consumers.

This answer focuses on Ofgem's current prioritisation of removing prescription from the sales and marketing licence conditions (SLC 25). Our response to Question 2 makes clear our concerns about the introduction of additional broad principles. We note the priority areas of the domestic licence conditions in our response to Question 3. In particular, we believe that narrow principles would be more appropriate for billing information because there are strong incentives on suppliers to engage customers and prescriptive rules run a high risk of adverse unintended consequences.

We agree with Ofgem prioritising the sales and marketing rules. The prescriptive elements of SLC 25 are low-hanging fruit because:

- a) The rules already contain principles
- b) Removal allows more flexibility for suppliers
- c) Customers may benefit from new, innovative sales practices
- d) The rules are not being considered by the CMA

We believe that Ofgem should clarify whether suppliers will be responsible for the compliance of PCWs engaging in door-to-door sales. Any consideration of the sales and marketing rules should also cover supplier 'representatives'. As currently drafted, SLC 25 applies indirectly to other market participants, in particular PCWs. In some scenarios, these websites are considered to be 'representatives' of suppliers, though it remains unclear what those scenarios are. For instance, is a PCW acting as a representative of all or any supplier when presenting a whole of market view to the customer? Or does a PCW only act as a representative once it recommends a particular supplier or tariff? As long as suppliers and PCWs remain unclear on who has primary responsibility for compliance, they are likely to adopt a cautious approach to face-to-face selling by PCWs. Ofgem should decide whether PCWs carry out sales in their own right. We would welcome separation of compliance for:

- a) product design, which should remain with the supplier
- b) distribution, which could sit with either the supplier or the PCW depending on which entity presents the product to the customer

We would welcome Ofgem considering whether the regulatory framework for PCWs remains fit for purpose. We are aware that a number of such websites are exploring conducting face-to-face sales. Ofgem's primary means of regulating these websites - the Confidence Code - does not cover face-to-face sales or telephony sales.

Question 16: Can you provide any initial views on potential costs and benefits (eg avoided costs) of regulation via principles versus prescription to your organisation? Please explain which parts of our proposals (eg rulebook, operations) these costs relate to.

As Ofgem identifies in the consultation, it is difficult at this early stage to quantify the costs and benefits of the transition to principles. It is not yet clear which prescriptive rules will be removed or replaced by principles. Once Ofgem outlines the priority areas in June or July 2016, suppliers will be better able to provide a view of the costs and benefits. At this stage, we would note the following:

- **Monitoring.** As stated above, we believe that, as a minimum, Ofgem should aim for no net increase in monitoring burdens imposed on suppliers as it moves towards principles.
- Changes to how Ofgem monitor the market will inevitably have cost implications. If the overall level of monitoring increases, the cost to suppliers and Ofgem will also increase. Cost increases may be minimised if Ofgem rationalises its quantitative monitoring to compensate for any increase in qualitative monitoring, e.g. through bilateral interaction, site visits and understanding supplier research and policies.
Dynamic competition. The dynamics of increased competition make working out the costs and benefits more difficult. The benefits and costs of principles may differ across suppliers. Some suppliers will embrace the flexibility and the focus on customer outcomes that principles enable. Other suppliers may not do things much differently from today and continue to follow today's prescriptive rules. The 'no change' approach will likely involve lower costs but fewer benefits.
- **Transition to principles.** Suppliers may find that the transition to principles increases costs in the short-term, e.g. as system changes are made to take advantage of increased flexibility. In the medium-term, these costs should be compensated for by the benefits of that increased flexibility.

Ofgem should conduct a full impact assessment for the removal of each rule and its replacement by principles. As acknowledged in Ofgem's Impact Assessment Guidance, impact assessments form a 'vital part of the decision-making process'²⁶. We recognise that it may be more difficult to carry out an impact assessment when changing the type of rule. As noted above, it may not be clear how increased flexibility will benefit different suppliers and

²⁶ Ofgem Impact Assessment Guidance
https://www.ofgem.gov.uk/sites/default/files/docs/2013/10/impact_assessment_guidance_0.pdf

their customers or competitive dynamics in general. We encourage Ofgem to provide sufficient economic resource to conduct these impact assessments.

Question 17: Are the existing provisions of SLCs 25.1 and 25.2 the right ones for regulating sales and marketing activities (or are any additional principles needed)?

We believe that additional narrow principles to those contained in SLC 25.1 and SLC 25.2 may be required for regulating sales and marketing activities. As drafted, we consider that SLC 25.1 replicates SLC 25C.4 of the Standards of Conduct. Both principles require suppliers to:

- Carry out any actions in a fair, transparent, appropriate and professional manner
- Provide complete and accurate information, whether in writing or orally
- Avoid misleading the customer

The similarities between the principles are set out in more detail in Appendix 3.

We believe that, in order to ensure regulatory certainty and provide clarity on customer outcomes, Ofgem should consider new narrow principles for sales and marketing, as well as removing prescription. We think that these principles should be focused on the positive outcomes that Ofgem would expect to see during the sales process. Any additional narrow principles should also be consistent with, but not duplicate, existing consumer law protections. For instance, consumer law requires suppliers to avoid unfair and misleading practices²⁷, unfair contract terms²⁸ and ensures cool-off²⁹. The narrow principles could be drafted with reference to the following:

- a) Provide accurate and complete estimates of cost to customers before the customer agrees to enter the contract. The customer should be provided with an estimate of how much they are likely to pay under that contract, and should understand how that estimate was calculated.
- b) Comparisons are carried out when comparative claims are made and are understood by the consumer. The customer should be able to understand how the comparison was carried out.
- c) Customers understand the product they have signed up to
- d) Customers are aware of their legal rights, e.g. that they can cancel the contract for up to 14 calendar days after signing
- e) Agents are identifiable and properly trained (currently reflected in SLC 25.5)
- f) Customers know they can contact Citizens Advice about the sale (currently reflected in SLC 25.12(e))

Ensuring that agents are identifiable and properly trained is particularly important for face-to-face sales. Before the customer invites the agent into their home, it should be clear who the agent is representing, e.g. a supplier or a PCW.

²⁷ Consumer Protection from Unfair Trading Regulations 2008

²⁸ Consumer Rights Act 2015

²⁹ Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013

Question 18: What, if any, prescriptive rules are needed in addition to the principles in SLC 25 to deliver good consumer outcomes?

We are unconvinced that Ofgem needs to retain any prescription that is currently in SLC 25. Suppliers could deliver good customer outcomes through a principle including the elements suggested in our response to Question 17.

Question 19: What engagement and monitoring process might be required to best operate SLC 25?

It will be easier for suppliers to determine appropriate monitoring once we have a better idea of what the principles are. We think that the monitoring of SLC 25 will be similar to monitoring other principles. We have provided a general answer on monitoring in Question 9 and Appendix 2.

Appendix 2 – Ofgem monitoring

Further to our answer to Question 9 our views on monitoring options are set out in more detail below

Ofgem proposal	British Gas view
Supplier self-reporting, e.g. demonstrating arrangements are in place to comply with principles and achieve good outcomes	We agree that suppliers may proactively and voluntarily provide information to Ofgem about their processes. For instance, suppliers may choose to provide statements of their policy or an overview of their accountability map.
More regular one-to-one meetings	We support regular working and senior level meetings with Ofgem.
Information requests	We agree that there will be an ongoing role for information requests. These requests should be proportionate, risk-based and well-targeted. Please see our Simplification Plan 2016-17 response for more information.
Senior-level Challenge Panels	We are unsure that further senior-level challenge panels will be required.
Supplier customer research	We agree that suppliers may be happy to share customer research on a confidential basis.
Online panel of customers to do certain tasks (e.g. getting a quote)	<p>We do not support this proposal. An online customer panel may be too small to be representative.</p> <p>We believe mystery shopping may be more effective, especially to monitor sales.</p> <p>Ofgem could adapt their annual customer survey to spot potential areas of concern.</p>
Collaborate with suppliers on a survey to be distributed to customers	We do not support an Ofgem questionnaire being sent to customers. Customers do not expect to be contacted by the regulator, even via their supplier.

Appendix 3 – Similarities between SLC 25 and SLC 25C

Sales and marketing (SLC 25)	Standards of Conduct (SLC 25C)
<p>25.1 The objective of this licence condition (the 'Objective') is to ensure that:</p> <p>(a) all information which the licensee or any Representative provides (whether in Writing, by electronic display or orally) to Domestic Customers in the course of the licensee's Marketing Activities and/or its Telesales Activities is complete and accurate, is capable of being easily understood by Domestic Customers, does not relate to products which are inappropriate to the Domestic Customer to whom it is directed, does not mislead the Domestic Customer to whom it is directed and is otherwise fair both in terms of its content and in terms of how it is presented (with more important information being given appropriate prominence); and</p> <p>(b) the licensee's Marketing Activities and Telesales Activities and all contact by the licensee or a Representative with, and the behaviour of the licensee and any Representative towards, a Domestic Customer in the course of the licensee's Marketing Activities and/or Telesales Activities are conducted in a fair, transparent, appropriate and professional manner.</p>	<p>25C.4 The Standards of Conduct are that:</p> <p>(a) the licensee and any Representative behave and carry out any actions in a Fair, honest, transparent, appropriate and professional manner;</p> <p>(b) the licensee and any Representative provide information (whether in Writing or orally) to each Domestic Customer which:</p> <p>(i) is complete, accurate and not misleading (in terms of the information provided or omitted);</p> <p>(ii) is communicated (and, if provided in Writing, drafted) in plain and intelligible language;</p> <p>(iii) relates to products or services which are appropriate to the Domestic Customer to whom it is directed; and</p> <p>(iv) is otherwise Fair both in terms of its content and in terms of how it is presented (with more important information being given appropriate prominence);</p>