The future of retail market regulation

The Citizens Advice Service formal response

Consultation questions

Chapter 2: Reforming the rulebook

Question 1: In what circumstances do you think that prescriptive rules are likely to be most appropriate? Which specific SLCs/policy areas should remain prescriptive in nature?

Citizens Advice and Citizens Advice Scotland (Citizens Advice Service) are pleased that Ofgem recognises a continued role for prescription as, in some cases, it may be the best way of delivering the right consumer outcomes. Ofgem identifies three criteria for situations where prescription would still be required: specific minimum standards below which suppliers' outputs should not fall, prohibition of a specific detrimental practice and where standardisation across the market is essential. We agree with each of these criteria.

It is important that, in reviewing the existing rulebook, Ofgem takes a balanced decision as to whether principles, prescription or a combination is most appropriate for each specific area of the supply licence. In particular, we would warn against a new approach that sees principles as the default option. Whilst Ofgem is right to strip out unnecessary prescription in the current rules, it should remain open to the possibility that new prescriptive rules may be needed in some areas.

We suggest that the following areas should retain elements of prescription. The majority of them already meet Ofgem's proposed criteria for retaining prescriptive rules and we've provided further detail about why we believe continued prescription is required. Where required, each of these areas could work well with broad or narrow principles to ensure there are no gaps in consumer protection.

Domestic customer transfer blocking (SLC 14)

It is currently permissible for suppliers to prevent customers switching in certain circumstances through the transfer blocking process set out in SLC 14. These circumstances are fairly limited in scope to instances where transfers have been raised in error, customers are in debt or suppliers have not applied for the transfer correctly, and there is a clear procedure outlined for notifying the customer. Despite this very clear guidance, the Citizens Advice Service and the Extra Help Unit (EHU) see evidence of suppliers not adhering to this licence condition by inappropriately objecting to transfers and then applying ex-post rationale, without going through the necessary steps to inform the customer.

Given the underpinning principle of our energy market is that consumers should be able to switch wherever possible, we are in favour of the circumstances under which a transfer can be blocked continuing to be subject to very clear rules which set clear expectations on suppliers concerning their conduct. Previous enforcement cases concerning abuse of the objections process indicate to us that introducing greater supplier discretion on this matter would not lead to better outcomes for consumers.

Case study 1 (1776171) in the Appendix provides an example of suppliers misusing the objections system and the need for prescriptive requirements.

Erroneous transfers (SLC 14.A.10 - SLC14.A.11)

Erroneous transfers (ETs) are occasions where a customer is accidentally switched to a new supplier without their consent. Occurrences are rare, with ETs accounting for about 1% of all switches annually. However, the consequences can be severe, ranging from consumers being switched to more expensive tariffs, having to spend time and effort resolving the problem, to receiving large catch-up bills when the fault is eventually identified.

Supply Licence Conditions currently set out a narrow principle requiring suppliers to take 'all reasonable steps' to ensure they have a valid contract before beginning to supply. However, where ETs are discovered there are no specific requirements governing the timescale for when consumers must be switched back. Rectifications are only covered by a voluntary arrangement among suppliers and can take up to 8 weeks to implement. As these experiences involve consumer detriment, and switching speeds are being emphasised by policy makers through current (17 day) and prospective (next day) switching programmes, it would be prudent to ensure that the requirements for putting consumers back to their original supplier are tightened accordingly by stipulating, at the very least, a minimum timeframe.

Duty to offer and supply under Domestic Supply Contract (SLC 22)

We believe it is important to retain the prescription within SLC 22 given the potential consumer detriment if a household cannot obtain a supply contract with the existing supplier for the property or if suppliers are able to refuse to offer terms to certain groups of consumers.

We are anticipating that implementation of the Competition and Market Authority's (CMA) remedies will result in changes to SLC22A-22D so have not commented on that section of the licence.

Entering into and ending contracts (SLC 23, SLC 23A and SLC 24)

We think it is essential that the key elements of each these conditions are retained as they meet Ofgem's identified criteria for retaining prescriptive requirements. It is important that consumers benefit from consistent processes in these areas.

Requirement to offer a wide range of payment methods (SLC 27.1 - 27.2)

Another area where we would be concerned if there was a shift to principles is SLC 27, which requires suppliers with over 50k customers to offer a choice of payment terms. This requirement exists, in part, to ensure that more consumers in vulnerable situations are able to access an appropriate range of payment methods that are suitable for their needs. We accept that the existing prescriptive approach can lead to some anomalies whereby suppliers who specialise in the prepayment market are required to offer (uncompetitive) direct debit tariffs. At this stage of the smart rollout, we believe that a shift away from the existing prescriptive requirements could have a negative impact on existing prepayment meter users or potential prepayment meter users.

We are more comfortable with specialist suppliers being able to apply for derogations, e.g. a prepayment meter specialist supplier applying for a derogation to avoid having to offer Direct Debit or Standard Credit terms.

Security deposits (SLC 27.3 - 27.4)

Given the potential for consumer harm, we believe that the existing prescription around security deposits should remain. We acknowledge that the use of security deposits is now more limited. However, for those households who are required to pay a security deposit, it is important that suppliers are subject to clear obligations.

Treatment of consumers in debt (SLC 27.5 - 27.8)

Whilst there is an existing narrow principle within this section of the licence, it is an area where there remains a requirement for clear and consistent protections.

In particular, it is important to retain the prescription within SLC 27.5-7 'Customers in payment difficulty' whereby suppliers must give the options of Fuel Direct (if the customer is in receipt of benefits), a repayment plan or a prepayment meter when a customer is having difficulty paying.

Disconnection (SLC 27.9 - 27.11)

Current prescriptive rules prohibit disconnections in winter for certain categories of consumers in vulnerable situations. Given the potential consumer detriment, it is essential that prescriptive protections remain. We also believe that an additional narrow principle is required, which we discuss in our response to Q2.

Provision of information (SLC 27.12 - 27.16)

Given the potential for consumer harm, we believe it is important for suppliers to continue providing their customers with key information on a regular basis.

Citizens Advice also has extensive experience of advocating for consumers within the financial services sector. Based on this, we think it should be mandatory for suppliers to publish certain policies under principles-based regulation. Prior to the 2008 financial crash, the Financial Services Authority rules for mortgage lenders stated that lenders must have policies on responsible lending and arrears and repossession. When Citizens Advice asked certain sub-prime lenders if we could see

these policies, we were refused on the grounds that they were commercially sensitive. This hindered our ability to undertake well-informed advocacy work. The Financial Conduct Authority's rules on these issues are now much more prescriptive.[1] We think there are useful parallels with the energy sector and would like to see requirements on suppliers to publish their policies on areas such as vulnerability, ability to pay, the way they use credit reference information, etc.

Provision of the final bill (SLC 27.17 - 27.18)

We believe suppliers must adhere to a minimum standard for despatch of final bills. Suppliers will remain free to despatch final bills within faster timescales and, as previously discussed, this is an area where reputational regulation could be used to drive improvements in supplier performance.

Prepayment meters (SLC 28)

It is essential that all prepayment meter (PPM) users are provided with consistent information about their meters and know how to resolve any problems.

Regarding SLC 28.1A, we believe Ofgem should produce more detailed guidance in this area.

Case study 2 (1776190) provides an example where a supplier had not informed the consumer of how to access the emergency credit facility on her PPM and this led to self-disconnection.

General information for Domestic Customers (SLC 31)

We believe that existing requirements to inform consumers about how to access independent advice via the Citizens Advice consumer service and energy efficiency information should be retained. We believe the requirement to inform consumers about the concise guidance (also known as the consumer checklist) could be incorporated into the existing requirements of SLC 31.1.

The existing requirements of SLC 31.A-31.E are a possible candidate for earlier reform of the licence.

Reporting on performance (SLC 32)

We believe this requirement should be retained as prescriptive rules will be necessary to support compliance monitoring under principles, for example in terms of self-reporting requirements. One example of this is the existing requirement for suppliers to report on performance in relation to their Social Obligations Reporting (SOR) in SLC 32. The SOR data provides valuable indicators of detrimental practices around debt and treatment of consumers in vulnerable situations. It will become all the more important in a regulatory regime where suppliers have flexibility in the

[1] See MCOB sections 11 (responsible lending) and 13 (arrears and possession)

way they deliver consumer outcomes. The reporting requirements should therefore remain prescriptive.

Smart and advanced meters (SLCs 25B, 39 - 51)

There are a number of smart meter licence conditions in the supply licence which are both prescriptive and principles based in approach. The Citizens Advice Service is keen to see these (recently developed) licence conditions remain unchanged in the short to medium term, primarily as they are largely untested in the context of the wider mass rollout. Given the broad scope and potentially high risk nature of the rollout it would be prudent to retain the licence conditions as they are and allow them to be embedded in supplier practice.

As we begin to gather more information about consumer experiences during smart meter installations - and indeed more generally with smart metering - these licence conditions may need to be amended. It will be important that there are mechanisms in place to ensure that any reviews can be done swiftly, working with all relevant bodies from across the smart meter governance framework. We expand on this in our response to Q11.

Some recent research we've carried out indicates that there are some emerging problems with SLC 25B, with consumers unaware that their current meters could result in potential switching issues in the future. We will provide you with the details separately.

It should be noted that issues have already been encountered with some of the existing smart metering licence conditions where principles based approaches may have the potential to be beneficial in the future. For example the widely understood (and publicised) interpretation of SLC 47 was revealed to be flawed when tested by Ofgem's legal team. This despite all energy suppliers (bar one), government and Ofgem staff initially believing it provided consumer protections that it did not.

Similar issues emerged with SLC 40 after the Citizens Advice Service raised concerns about a specific supplier's policy, which challenged the original policy intention of the licence condition. This issue was resolved through a subsequent DECC consultation to amend the condition and ensure that it achieved the intended outcomes.

Statutory instruments

At this stage we are unclear whether associated statutory instruments will form part of the transition process. We would not support their inclusion in this process. The experience of the financial services sector is relevant here, with the FCA having to overhaul its rulebook in response to failure by financial services firms to adequately respond to payment protection insurance (PPI) related complaints.[2]

Within the energy sector, there have been multiple investigations to date, which have highlighted suppliers failure to meet the existing requirements of the Gas and

[2] http://www.fca.org.uk/static/documents/thematic-reviews/tr14-18.pdf

Electricity (Consumer Complaints Handling Standards) Regulations 2008. Ofgem's most recent published research into the sector's complaint handling performance was poor, with overall satisfaction levels at 30%.[3]

Back billing

At present there is a back billing principle which sits outside the licence. Our organisation has experienced significant difficulties over many years in encouraging suppliers to operate to a consistent and fair definition. Case studies 3 (1774148) and 4 provide examples of this. We would **not** class the back billing principle as an example of where a narrow principle, albeit one that sits outside the licence, has always worked effectively in practice with suppliers acting in the interests of consumers or delivering consistent outcomes. It has worked as a result of ongoing and focussed attention placed in this area by both the Citizens Advice Service (and our predecessors) and Ofgem.

Smart meter technology should deliver accurate bills, and this has been promoted as a key benefit of the rollout. Following a research exercise, several workshops and a consultation, all involving a range of stakeholders, Ofgem published a consultation document that suggested its preferred option was to:

> *introduce a measure that would give consumers a minimum standard of protection from backbills after they have a smart meter installed. We propose that this protection would take the form of a time limit on the duration of backbills for consumption that took place on a smart meter, to be implemented via suppliers' licence obligations.*[4]

In our response to the consultation we welcomed this decision, given the high consumer expectations in this space and severe consumer detriment historically caused by big back bills. In our view, it meets two of Ofgem's three requirements: prohibition of a detrimental practice and specific minimum standards below which suppliers' output should not fall.

We are awaiting the publication of Ofgem's decision. We continue to believe that adding a specific requirement to the licence is necessary. Back billing is not something consumers are generally aware of or make decisions with reference to, so in our view there is no evidence to suggest that it could be a facet of supplier differentiation.

As stated earlier in our response to Q1, we are not convinced that principles should become the default approach for new supplier obligations. Ofgem's assessments should continue to explore whether prescription or principles will deliver the best outcomes for consumers.

[3] https://www.ofgem.gov.uk/publications-and-updates/complaints-energy-companies-research-report-2014
[4] https://www.ofgem.gov.uk/sites/default/files/docs/2015/08/smart_billing_proposals_0.pdf

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.

Yes, we think the existing Stands of Conduct (SOC) principles of "treating customers fairly" should be supplemented by the additional four broad principles.

We also think there is a case for making the requirement for appropriate staff recruitment and training more explicit within the existing SOC. This could ensure consistency across a number of areas where there are existing provisions, such as marketing activities (SLC 25) and smart meter installation.

Not putting consumer outcomes at risk

We support introducing this broad principle into the licence.

It would be helpful to understand the impact it could have, if any, on a growing regulatory challenge. With the opportunities and challenges presented by new technologies and other innovative solutions coming into the energy market, including the growth of bundled energy services and/or non regulated energy products, it is essential that both suppliers and consumers are clear on the regulatory boundaries between Ofgem, Ofcom and other regulators. It is not clear at present. This should be a priority for both Ofgem and the UKRN.

Furthermore, it is our experience that consumers do not differentiate between energy supply, services and products, particularly when a 'supplier' has also been responsible for providing, selling, installing or fitting products and services. The Citizens Advice Service has in the past commented on the confusion that energy consumers face when seeking advice and redress across energy products, services and supply.[5]

We would also agree that this principle should require suppliers to actively think about, and put plans in place to manage, risks to consumers when developing new products or changing business processes. Innovative new products from suppliers will carry different levels of risk for different groups of consumers, and they will need to have measures in place to mitigate these risks such as enhanced consumer protections, enhanced consideration of whether the product is appropriate for the consumer, and the provision of extra information. Such measures will be particularly important in the early phase of the introduction of such products.

The smart meter rollout should act as an technological enabler, leading to greater interaction and engagement with energy use in the home. It should also facilitate interaction with other products and services. With the growth of smart home services the principles of ensuring that in-home equipment remain open,

[5] citizensadvice.org.uk/Global/CitizensAdvice/Energy/Knowingwhocanhelp-final.pdf

interoperable and interchangeable will also be critical to ensuring an open competitive market in services.

As the smart meter rollout progresses it is essential that issues around data use, access and privacy are considered, both within the framework set up for smart energy usage data but also more widely in other markets. This includes, for example, the use of financial information such as credit reference information and payments data. Suppliers must be responsible for the security (including data security) of products and services offered to their consumers. It should be noted that many consumers have agreed to have a smart meter installed on the basis of existing data protections and controls, any moves that would change these after the fact risk undermining consumer confidence and potentially breaching the Data Protection Act.

Constructive engagement with the regulator

We agree that this is a useful principle. Given our formal role, we will also inform Ofgem about whether a company's engagement with our Service has been constructive.

Good record-keeping

We agree that good record-keeping should be expected from energy suppliers. Whilst we support this as a broad principle, it is clear that prescription will still be needed in some areas. One example of this is the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 and a series of past Ofgem enforcement investigations have found deficits in this area.

Board-level assurance around embedding of principles

We agree with the need for this principle. It is essential that suppliers are held accountable for their actions.

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

The Citizens Advice Service has extensive experience of working with the energy industry and individual suppliers to help deliver improved consumer outcomes. Our experience of the existing narrow principles within the licence is that it shouldn't be assumed that suppliers will be able to deliver consistent and fair outcomes without a significant amount of external pressure. We have concerns that without guidance, the introduction of further narrow principles could require a significant increase in time and effort needed to ensure suppliers deliver consistent protection for consumers.

Information for all consumers (SLC 20-21)

There will be an ongoing requirement for consumers to be provided with key information to ensure they are aware of their rights, details that will enable them to

carry out a price comparison, who and how to contact for emergencies and the right to regularly receive a bill based on meter readings. However, we believe that some of the existing prescriptive requirements could be safely removed from the licence and replaced with narrow principles.

Ability to pay (SLC 27.8)

SLC 27.8 (ability to pay) is an existing narrow principle already contained within the licence. Our organisation and Ofgem have had to put in extensive and ongoing work with suppliers to ensure they understand the practicalities of taking ability to pay into account, as well as understanding what is considered good practice or best practice as it evolves over time. This has included multiple formal debt review[6], multiple research reports by both our organisations[7], enforcement investigations,[8] ongoing monitoring through the SOR as well as our ongoing and joint engagement with industry. Given this, we think there is a strong case for Ofgem to provide additional guidance to ensure suppliers are aware of their obligations under the licence.

Case study 5 (1769185) provides one example from the Extra Help Unit where the supplier did not take into account the consumer's ability to pay.

Protecting consumers from risk of disconnection (SLC 27.9 - 27.11)

We also think that narrow principles could have a greater role in the area of debt and disconnection, in addition to the continued use of prescriptive requirements. In particular, Ofgem should consider whether a variation of the Energy UK Safety Net pledge could be brought into the licence as a narrow principle.

The Energy UK Safety Net is a voluntary code of practice which currently only the largest six suppliers are signed up to. This in itself speaks for the need to bring it into the supply licence, so as to ensure protection for consumers in vulnerable situations across the market. The central premise of the code is a pledge to never knowingly disconnect vulnerable customers. It also includes a commitment to reconnect customers who are subsequently identified as vulnerable as a priority and usually within 24 hours. To support these aims, the code sets out enhanced measures to be integrated into suppliers' debt management processes, such as:

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[6] 2010:https://www.ofgem.gov.uk/publications-and-updates/review-suppliers%E2%80%99-approaches-debt-management-and-prevention,
2008:https://www.ofgem.gov.uk/publications-and-updates/debt-and-disconnection-best-practice-review,
2005:https://www.ofgem.gov.uk/publications-and-updates/preventing-debt-and-disconnection-review-independent-review-sohn-associates,
2003: https://www.ofgem.gov.uk/publications-and-updates/preventing-debt-and-disconnection-1

[7] A selection of past research:
https://www.ofgem.gov.uk/sites/default/files/docs/2008/01/accent-debt-disconnection-final-report.pdf,
https://www.ofgem.gov.uk/sites/default/files/docs/2010/06/experiences-of-customers-new-to-energy-debt.pdf
http://webarchive.nationalarchives.gov.uk/20140408144827/http://www.consumerfutures.org.uk/reports/ability-to-pay-an-rs-consulting-report-for-consumer-futures

[8] https://www.ofgem.gov.uk/sites/default/files/docs/2011/11/letter-to-suppliers---customers-in-payment-difficulty.pdf

- Communication with support agencies
- A range of debt management and repayment options
- Follow-up procedures to support vulnerable customers

It also includes an illustrative debt path and good practice guidance on communicating with customers during the debt management process. It highlights the role of prepayment meters in collecting debt where other options have been exhausted and it is safe and practicable to install one. The code identifies that "suppliers will put the Safety Net into practice in different ways, depending on how their businesses are structured".[9]

Neither the current licence conditions nor the Safety Net reflect the fact that most suppliers now install prepayment meters rather than disconnecting a property. In 2014, there were 233 disconnections for debt across GB (192 electricity disconnections and 41 gas disconnections). In comparison, there were around 175,000 electricity PPMs and 195,000 gas PPMs installed to manage debt.[10] This brings with it an increased risk of self-disconnection for financially vulnerable households. The Citizens Advice Extra Help Unit dealt with 108 cases of self-disconnection in Q4 2015, where consumers in vulnerable situations were unable to top up their prepayment meter due to lack of available funds. This is compared to two physical disconnections over the same period in 2014.[11] The total number of self-disconnections is currently unknown, as not all consumers who self-disconnect will seek help either from their supplier or another party. This should, in theory, become easier to monitor as smart meters become more prevalent. However, the evidence shows that current regulations are not offering sufficient protection for consumers in vulnerable situations.

For one, suppliers do not have sufficient incentives to ensure prepayment really is the most suitable option for the customer. In 2014, 300,000 new electricity PPMs and 320,000 new gas PPMs were installed in Great Britain, with around 60% installed to manage a debt.[12] Suppliers must ensure that a PPM is safe and practicable but, as we highlight in Q6, this is interpreted narrowly by many suppliers and is not taken to cover, for example, the risks associated with self-disconnection in vulnerable households. SLC 27 also requires suppliers to offer Fuel Direct (if appropriate), repayment plans and prepayment before disconnection. In our experience, however, consumers are often pressurised to accept a prepayment meter even when another option might be more suitable for their individual circumstances. PPMs ensure that suppliers receive payment in advance and it is not surprising that this is the approach favoured by suppliers. Case study 6 is an example of this.

[9] energy-uk.org.uk/publication.html?task=file.download&id=3155, p. 3
[10] ofgem.gov.uk/sites/default/files/docs/2015/09/annual_report_2014_final_0.pdf
[11] ofgem.gov.uk/about-us/how-we-work/working-consumers/supplier-performance-social-obligations
[12] ofgem.gov.uk/sites/default/files/docs/2015/09/annual_report_2014_final_0.pdf

In 2014, there was also an increase in the number of PPMs installed for reasons other than to repay debt (around 115,000 electricity PPMs and 120,000 gas PPMs). This means either that consumers are requesting a PPM due to a lack of alternative choices for managing payments or the supplier has recommended they take a PPM before they have formally fallen into arrears.

Furthermore, suppliers are not obliged to offer any support when consumers do self-disconnect, this includes consumers in vulnerable situations.[13] Case study 8 illustrates this. Being without heating and cooking facilities poses a serious risk to the health and wellbeing of some consumers, equivalent to that of being disconnected by their supplier, and we believe there is a need for additional protections.

To deliver an appropriate level of protection for consumers in vulnerable situations, we think that a suitable narrow principle for the supply licence would be:

Suppliers will never knowingly allow a vulnerable consumer to become disconnected

We are also mindful that debt collection activities will change with the advent of smart meters and the ability to remotely switch consumers to prepay mode. The current rules require suppliers to treat a smart switch from credit to prepay or disconnection as though there wasn't a smart meter at the premises e.g. undertake a site visit, vulnerability check, etc.

A narrow principle would future-proof consumer protection in this area.

Case studies 6 - 9 provide additional examples of the need for stronger protections in this area.

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

It is our understanding that Ofgem's enforcement route for consumer protection law is more complex and can be more time consuming. If the existing and proposed new broad principles leave gaps, which are currently covered by general consumer protection law, then we believe it would be sensible to bring these principles into the supply licence. It would ensure Ofgem is able to take timely action against any possible breaches.

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

[13] We shared good practice with suppliers in October 2015 ('Responding to consumers who self-disconnect') and will be publishing a revised version this spring.

The move towards principles-based regulation and, more generally, a wholesale reform of the regulatory rulebook is a unique opportunity to improve protections for consumers in vulnerable situations.

Ofgem's Consumer Vulnerability Strategy states that "in order to treat customers fairly, [customers] may need to be treated differently, according to their needs or circumstances. Establishing principles-based regulation puts an emphasis on the outcomes for consumers and allows suppliers some flexibility regarding how they meet these needs."

At this stage, we remain open minded about introducing a specific broad principle around vulnerability. The advantage is that it could offer greater flexibility to adapt to future changes in the market or the wider environment and encourage innovation in this area. However, key to instituting any such principle is Ofgem's ability to make it both intelligible to all suppliers and enforceable. We would welcome the opportunity to discuss further with Ofgem about how this might work in practice.

The greater use of principles could give suppliers the ability to tailor their vulnerability offer far more in line with customer need and embed such practice into their business as usual activities.

We have welcomed the increased focus on outcomes in recent proposals for the Priority Services Register (PSR) review and for PPM customers. Suppliers should be accountable for identifying and responding flexibly to the individual needs of their customers. Narrow principles can and should play an important role in protecting consumers in vulnerable circumstances, although our experience of working with some of the existing narrow principles (as described in our response to Q3) also demonstrate the associated challenges. Narrow principles are able to target specific issues, situations or 'hotspot' areas in which consumers in vulnerable situations are at risk of detriment. Issues around affordability and debt are one example, as detailed in our response to Q3. Importantly, narrow principles enable suppliers to respond flexibly to the individual needs of their customers in such situations, rather than taking a tick-box approach.

However, given the relative lack of expertise and inexperience of some suppliers (particularly newer ones), there is a need to ensure that the issue of vulnerability is not left entirely to the market; such a situation could lead to greater confusion and result in consumer detriment. Therefore the model selected needs to retain some level of prescription, in order to provide clarity in certain key areas without reducing the discretion of suppliers to do what is right for their individual customers in any given circumstance.

Prescription will continue to be the most appropriate means of ensuring suppliers deliver for core groups of consumers in certain situations, such as those which are health critical.

The area of vulnerability will be of particular importance as the market develops, as more suppliers with less exposure to meeting the needs of consumers in vulnerable situations enter the market. In our experience and that of the Extra Help Unit, newer entrants can often provide an excellent service to the majority of their customers whilst treating customers in vulnerable situations very poorly in some cases. In order to prevent this from happening, Ofgem also needs to consider how it can best engage with suppliers to provide guidance on meeting their obligations toward vulnerable customers. This may take in a range of techniques from sharing best practice to issuing notes on particular issues and drawing attention to helpful case studies from the Citizens Advice Service, Ombudsman Services: Energy (OSE) or other complaint handlers.

Case studies 11 and 12 provide examples of situations where suppliers have not taken a consumer's vulnerability into account during their debt collection activities.

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

We accept Ofgem's point about not replacing prescriptive SLCs with prescriptive guidance. However there will be a continuing need and role for guidance. Based on our experience of advising both individual consumers and working with individual suppliers (particularly newer entrants), we believe that following areas require guidance in order to achieve improved consumers outcomes.

Policy area	What guidance is needed
Consumers in vulnerable situations	
General	Ofgem's expectations in line with the Consumer Vulnerability Strategy
Ability to pay	How to determine what is affordable
Debt	
Supplier objections	Reasonable application
Repayment methods	Considering all payment methods (see case study 6)
Debt collection activities	Expectations around customer communications and identifying vulnerability
Disconnection	If prohibition of disconnection is extended to all consumers in

	vulnerable situations, e.g. by bringing an amended Safety Net into the licence, then guidance would be needed. This could fall under general guidance on consumers in vulnerable situations (see above).
Prepayment	
Switching from credit to prepayment	The safe and reasonably practical assessment for fitting a PPM; clarifying what is permissible in terms of switching a smart meter from credit to prepay mode (see case study 10)
Self-disconnection	How to support consumers who self-disconnect
Security deposits	Fair and reasonable application of security deposits
Back-billing	How to correctly apply the back billing principle (see case studies 3 and 4)
Data management	A clear explanation of the intentions of licence conditions regarding smart meter data - particularly around ensuring consumer opt-in and out choices are preserved and respected

There is a strong argument for compliance guidance being made available ahead of principles coming into force. It could create difficulties if Ofgem is seen to be writing guidance after the fact, i.e. as a result of enforcement action.

A practical example where we believe the proactive production of guidance would have been helpful is around the withdrawal of two tier tariffs as result of the RMR's standardisation of tariff structures. This had a negative impact on some vulnerable households. Our predecessor body, Consumer Futures, flagged up throughout the RMR consultation process that most suppliers were unlikely to offer zero standing charge tariffs that went against their own financial interests as it would restrict their ability to recover all fixed costs associated with supplying a property. Suppliers behaved as expected and our organisation, and others, received numerous complaints from consumers who experienced an unexpected rise in bills as a result. For some vulnerable households, this caused serious detriment. Whilst we, and Ofgem, were able to work with the majority of suppliers to come up with some acceptable solutions for more vulnerable households, it was a problem that was anticipated and more could have been done to stop it from occurring in the first place.

Chapter 3: Operating the rulebook: engagement and monitoring activities

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

Ofgem's leadership and commitment to delivering the right consumer outcomes will become more important with the transition towards principles.

We agree that for this approach to work effectively, there will need to be significant changes to how Ofgem approaches its interactions with suppliers. It is also essential that Ofgem's engagement with suppliers is consistent. With the rapid growth of independent suppliers in the market, it is likely that Ofgem could be receiving the same or similar questions from a series of different suppliers. There is a risk that this approach could turn out to be a time consuming process for both Ofgem and suppliers as well as increasing the risk of inconsistent advice being given out. It would be helpful if Ofgem were to set out a clear and transparent process for how it will make a decision on which issues will require published information about good or best practice in the sector and/or official guidance.

Depending on the approach taken by Ofgem with regard to the treatment of vulnerability, we believe that suppliers will need additional support during the transition period and beyond to ensure they understand how they should offer fair and consistent support to all of their customers. In our experience, how to go about offering appropriate support to their vulnerable customers is not an issue most suppliers are able to instinctively grasp. We frequently get asked by suppliers for advice on what type of support they should be providing to their customers. We also regularly provide feedback to individual companies where we have identified that their policies are out of step with industry norms.

There will also need to be a change in Ofgem's interactions with consumer groups such as ourselves. The Citizens Advice Service provides advice to millions of energy consumers each year through our website, telephone helpline, face to face through at our hundreds of local Citizens Advice as well as operating the specialist complaint handling service, the EHU. The transition to principles based regulation will arguably make our role more complex. We also have a distinct role as a policy organisation as the statutory consumer advocate for energy consumers. Our ability to gather evidence and insight about suppliers' policies and practices in this new landscape will become even more important. The pace of technological change as well as the developments in the supply market also have the potential to more rapidly redefine or shift understanding of what is 'reasonable' or 'acceptable' supplier behaviour and practices.

Furthermore, the transition to principles will make it even more essential that consumers are able to access help and support from the right organisation. At present, the customer journey in the energy sector is not functioning as effectively as it should.[14] The majority of energy consumers who contact OSE are too early in the complaints process. They should, instead, be contacting the the Citizens Advice Consumer Service for independent advice about how to take forward their complaint. We are the body appointed by the Government with responsibility for providing information, education and advice for energy consumers.[15] We are working with OSE to ensure these consumers contact the right organisation at the right point in time. It is essential that improvements are delivered in a timely manner to ensure these consumers get the help and support required and the evidence and insight is recorded and analysed.

We agree with the suggestions listed in paragraph 2.42 for making the rulebook more user friendly.

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

We anticipate that the introduction of principles based regulation would require Ofgem to do more proactive work with new and prospective suppliers to help them understand the requirements as well as the key industry norms.

The EHU and Citizens Advice energy team frequently receive contacts from new entrants seeking advice on how to interpret the existing prescriptive regulations as well as the narrow principles already in the licence. We anticipate that such requests would increase if there is a substantial shift towards principles and this could have an impact on the team's workload.

Furthermore, the EHU is concerned that this could require them to have ongoing negotiations with the growing number of suppliers about the interpretation of the various principles, in the course of their complaint handling work, which would greatly add to their workload and could delay resolutions to complaints, particularly those involving vulnerable households.

The Citizens Advice Service is considering whether we could play a role in providing informal advice or guidance to suppliers about expectations in certain areas through our complaint handling work at the EHU and/or our ongoing advocacy work. There is a key difficulty with this approach, in that we would not want to create a situation where we are required to or are unable to 'police' our non binding guidance if suppliers don't follow it. It would be useful to discuss this further with Ofgem as the transition proceeds.

[14] https://www.citizensadvice.org.uk/Global/CitizensAdvice/Energy/Strengthening%20and%20streamlining%20energy%20advice%20and%20redress%20-%20Full%20report.pdf

[15] According to the 2014-15 Annual Report, 56% of energy consumers who contacted OSE were outside its terms of reference. https://www.ombudsman-services.org/downloads/OS_annualreport_energy_2015.pdf

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?

Ofgem's monitoring regime will be crucial to the success or failure of any transition to principles based regulation. Our key concern with the proposals in the consultation is the lack of detail as to how Ofgem would build up a new monitoring team. The FCA has over a thousand staff in its authorisation and supervision departments monitoring the behaviour of its licensees. Whilst the number of active energy suppliers is not comparable to the financial services sector, Ofgem's budget would need to expand in order to develop an equivalent function sized to reflect the needs of the energy sector. Given the ambition of the other large scale programmes Ofgem will be delivering in the next couple of years, we are unclear how significant numbers of existing staff could be diverted to a new monitoring team.

In the earlier stages of the transition, suppliers are going to need significant help from Ofgem to ensure that the transition process does not put consumer outcomes at risk. The suggestions listed by Ofgem such as using supplier self-reporting, mystery shopping, consumer panels, regulator input into supplier commissioned customer surveys all appear useful.

Citizens Advice is making a series of changes to our own work in preparation. The key elements are:

- We are reviewing what information we currently collect across the service with a view to standardising and improving the information collected (see response to Q10)
- We will publish more information about supplier performance and product offerings, which should help identify if there are any outliers.
- We will also be improving our ability to track and record our ongoing engagement with suppliers to improve the quality and consistency of our monitoring work.
    - This will allow us to develop a new risk based framework, which means we can focus greater attention on and work closely with suppliers who have high risk business models or performance concerns.

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 are supportive of the two proposals.

As Ofgem is aware, Citizens Advice has been a long time advocate of the regulator shifting to a greater emphasis on compliance, as this should help identify any detriment more quickly thus enabling companies to improve their policies. Coupled with an enforcement function that serves as a strong deterrent, we believe this approach will deliver better consumer outcomes.

The Citizens Advice service is currently carrying out a review of the information it collects from energy consumers who contact our service. Following the conclusion of the review, we will put measures in place to improve the type of information collected. This will in turn ensure we are able to improve our own internal analysis and ongoing monitoring work, as well as providing evidence to Ofgem and suppliers about issues causing consumer detriment. The new Consumer Service codes will be introduced in Autumn 2016 and will improve our ability to analyse issues affecting energy consumers.

Our vision for the future of the energy consumer advice and redress framework considers how to improve the way that energy consumers can access support, advice and redress across energy services supply and products.

We have also called for closer working between Ofgem, OSE and ourselves to ensure that emerging issues are quickly identified and resolved, where possible, with follow up action taken where needed. Following the Lucerna review, OSE will also be required to work with suppliers to identify emerging issues. This should complement the work already done by the Citizens Advice Service and Ofgem. But with three organisations, each with different formal remits and responsibilities, playing a role in identifying issues and working with suppliers to resolve them, it is essential that a framework is developed to ensure that there is greater cooperation and information sharing. This will help avoid duplication of effort and mixed messages being sent to industry. We would welcome further discussions with both Ofgem and OSE about how we can make this work in practice.

Citizens Advice research[16] highlighted the confusion of energy consumers in knowing which organisation to contact for advice or redress and when, and suggested the need for more coordination between providers to make this simpler. Whilst the Citizens Advice Service and OSE are the two key statutory bodies in his area, it will be essential to ensure that a principles based approach to regulation

[16] https://www.citizensadvice.org.uk/Global/CitizensAdvice/Energy/Strengthening%20and%20streamlining%20energy%20advice%20and%20redress%20-%20Full%20report.pdf

considers the interplay between energy markets - as discussed earlier, consumers do not differentiate when there is a problem, and indeed it might not always be clear which company is at fault, or one complaint could span a number of companies active in different areas of the market or outside the energy market.

Chapter 4: Operating the rulebook: compliance and enforcement

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

The transition to principles based regulation will require a wholesale change in Ofgem's approach to industry.

We are conscious that Ofgem is already due to deliver a highly ambitious programme of work over the next few years: CMA remedies, faster switching, Project Nexus, half hourly settlement in the domestic market as well as the smart meter rollout.

Financial services is a similar sector which relies on a mixture of prescription and principles. The FCA has a large team responsible for monitoring the behaviour of companies. As discussed in our response to Q9, Ofgem's consultation does not make clear whether resource will be made available to enable the establishment of a sufficient monitoring function. This will be key to ensuring successful implementation and ongoing compliance.

In terms of the techniques and approaches that Ofgem could introduce, we agree that data requests, site visits, mystery shopping and challenge panels will be useful. With regard to challenge panels, these will only work if suppliers whose policies or practices could carry greater risks are compelled to participate. If the process is voluntary then these suppliers are less likely to volunteer.

We agree that self reporting by suppliers should form an important part of any future monitoring regime. At this stage it is unclear what level of self reporting will be required. If the detriment relates to new products and services, it may be difficult for Ofgem to determine whether the self reporting regime is capable of tracking the emergence of any problems.

It will also be essential for Ofgem to consider the timeliness of any compliance monitoring, bearing in mind the potential need for decisions and actions that may need to be taken collaboratively. For example, during the smart meter rollout there will be significant scrutiny and oversight of supplier activity by DECC, Ofgem and the Citizens Advice Service, both in terms of plans for the smart meter rollout as well as the monitoring of consumer experience during the installation visits and

beyond. There will also be significant interest in understanding the way in which suppliers are encouraging consumer engagement with, and use of, the IHD and any subsequent behaviour change as a result of this data. It will be essential to ensure that at all points the oversight, scrutiny and monitoring roles that the regulator, Government and consumer body have are coordinated where possible, and do not place an undue burden on suppliers.

It will also be important to ensure that any compliance and enforcement activity is responsive, with the regulator able to act quickly, given the high profile nature of the rollout and the need to ensure that any problems are addressed swiftly in order to maintain consumer confidence in the rollout. Dependent on the nature of the problem this could necessitate the involvement of a number of organisations, from the SEC Panel or SMICoP to the DECC Governance programme.

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 are supportive of the proposals.

Chapter 5: Managing the transition effectively

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

We anticipate that this transition will place new challenges on the Citizens Advice Service due to our multiple roles as the statutory consumer advocate, a provider of first tier advice and our specialist complaint handling service.

We are keen to avoid a situation whereby our advisers need to be provided with extensive training materials that provide detailed information about a series of policies at individual suppliers as a result of to the variation in how they've chosen to interpret the principles. With approximately 35, and rising, active domestic suppliers in the market, this could cause problems for our ability to provide consumers with timely, comprehensive and accurate advice.

Therefore, we would like ongoing support from Ofgem during the transition period to ensure our advice for consumers remains accurate. Our recent joint project producing additional advice for PPM users is a good example of how we could work together.

As discussed in our answers to Q7, 8 and 10, we think this transition process will require closer working with the Citizens Advice Service in our role as both a policy organisation and an advice provider. We are eager to work closely with Ofgem and Ombudsman Services to ensure any emerging issues are quickly identified and resolved. With the smart meter rollout and introduction of new service offerings, there are likely to be incidences where it would be helpful to have ongoing conversations about the potential impact on consumers.

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

Yes. We are not supportive of a big bang approach to reform as we think this would carry far too much risk at a time of significant change within the energy sector.

A phased approach would give Ofgem the ability to pause or halt reform if monitoring work demonstrates that the transition is not delivering the expected improvement in consumer outcomes.

We would also like there to be a strong emphasis on a research driven transition with greater use of testing, particularly when it comes to making changes to energy bills and other key communications.

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.

We believe there is an opportunity to remove some of the prescriptive rules around the content of bills and key communications. This is something Citizens Advice has already called for in our report *The Lost Decade*.[17] However, we believe there should be robust testings of new formats to ensure they meet the needs of different groups of consumers. It is our understanding that Ofgem had originally intended to do more consumer testing during the RMR process and that this had to be cancelled due to lack of time. We therefore welcome the CMA's remedy in this area as this is an opportunity to ensure any future changes are properly tested.[18] When approving derogations, Ofgem must ensure that suppliers are testing their proposals with a proper cross section of their customer base such as PPM users.

The timetable for energy switching is another area which could be examined. Given the massive emphasis that has been placed by DECC and Ofgem on consumer choice as a vehicle to keep prices down and ensure good customer service (an emphasis highlighted by initiatives such as 'Power to Switch'), current practices are unacceptable. Despite the introduction of a prescriptive licence condition on the switching timeline, some suppliers have been slow to reform their processes. This situation has been ameliorated to some extent by a voluntary commitment to 17 day switching (although this only covers part of the market), and should be further improved by the Energy Switching Guarantee which is due to come into force later this year. However, the inability of suppliers to work together until now in the interests of creating a uniform customer experience is disappointing. For the move to next day switching it will be crucial that Ofgem places watertight requirements on suppliers, to ensure consumer confidence and satisfaction with the process. In the interim, Ofgem should investigate what more it can do to improve the current licence condition and the use of a narrow principle, in conjunction with prescriptive regulation, should help deliver improved consumer outcomes.

The introduction of cost-effective half hourly settlement (HHS) from 2017 is likely to lead to greater participation by consumers in Demand Side Response (DSR). We would expect that one of the first forms of DSR to be marketed after this change will be innovative Time of Use (ToU) tariffs. These new products have potential benefits, both to participating consumers through lower bills, and all consumers through lower system costs. However, they also carry risks for consumers who cannot respond to the tariff by shifting their demand.

[17] https://www.citizensadvice.org.uk/Global/CitizensAdvice/essential%20services%20publications/Lost%20Decade%20Report2%20New%20Front.pdf
[18] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/506578/Summary_of_provisional_decision_on_remedies.pdf

The existing Standards of Conduct and principles outlined in SLC 25.1 should ensure that suppliers only provide information and marketing about products and services that are appropriate for the consumer. Suppliers will need to consider how they determine whether innovative ToU tariffs are appropriate for consumers, and may require more guidance from Ofgem in this area. We would expect that under a broad principle to not put consumer outcomes at risk, suppliers would ensure that consumers who signed up to these tariffs were protected in the event they were unable to respond and saw their bills increase, for example by providing more regular bills, capping bill increases and allowing consumers to switch back to a non-ToU tariff without penalties. Such steps would also increase consumer confidence in trying new tariffs. However, given the risks of severe detriment to consumers it may be necessary for Ofgem to supplement this principle with narrow principles or prescriptive rules that ensure a minimum standard for consumers who take up these tariffs.

In our response to Ofgem's open letter on HHS[19] we also called on the regulator to complete its previously announced work on extending the RMR 'clearer information' protections to ToU tariffs before the introduction of cost effective HHS. This will be necessary to allow consumers to understand and compare innovative ToU tariffs. It is likely that new prescriptive rules may be required to enable standardisation across the market and to support consumer understanding and engagement with the market for these tariffs.

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.

Depending on the scale of the changes, we anticipate there would be costs associated with the redesign of consumer advice, the materials used by our advisers and the associated training costs.

Chapter 6: Exploring priority areas for reform

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)?

[19] https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/energy-policy-research-and-consultation-responses/energy-consultation-responses/

The principle should refer to 'the consumer' rather than 'a customer'. This reinforces that the approach needs to be appropriate for the individual, in addition to the other principles outlined.

It is our expectation that more suppliers will seek to enter non-energy markets and offer a wider range of bundled services. As discussed in our response to Q2, it would be helpful to understand more about whether Ofgem and its fellow regulators will be able to come up with a more comprehensive protection regime that would apply to consumers purchasing bundled products and services. We see this as a particular issue where a failure in one market could impact on the consumer's energy bill eg a consumer experiences a wifi failure or a failure of their technological kit which causes the consumer on a dynamic tariff to use additional power during a peak pricing period.

Consumers will be marketed and sold products designed to make their life easier or benefit from new and interesting offerings. However, the development of new markets must go together with an easy to understand protection framework which ensures consumers know how and who to contact for advice and/or redress.[20] A good example of the complexity of this is the rules guiding what suppliers can do during a smart meter installation. There is a ban on suppliers conducting sales during the meter installation itself but consumers can opt in to have products marketed to them during and after the installation. There are also additional caveats in the licence condition for energy efficiency advice. There is no specification on what products they can market, so conceivably it could encompass anything from interior design to broadband to security and health systems based upon the HAN (although the supplier is required to agree with the consumer what will be marketed at the visit). Where non-energy products are marketed, we would be keen for Ofgem to retain regulatory overview in order to provide consistent protection and prevent mis-selling.

The sales and marketing of energy has often suffered from suppliers not behaving in the best interests of their consumers. It is important that suppliers respect consumers' wishes when they do not wish to be marketed to, which would include respecting no cold calling zones, no call lists or only contacting consumers at reasonable times of the day.

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

We would prefer that existing requirements of SLC 25.6, 25.10 and 25.12 are retained given the previous enforcement cases. It would send an important message to suppliers that there is certain key information that must be provided to consumers as well as certain processes which must be followed in order to ensure compliance. The requirements of SLC 25.6 in particular would ensure that during

[20] https://www.citizensadvice.org.uk/Global/CitizensAdvice/Energy/Strengthening%20and%20streamlining%20energy%20advice%20and%20redress%20-%20Full%20report.pdf

the marketing of innovative ToU tariffs consumers receive a fair estimate of their likely annual charges. In order to understand any estimate consumers will need to be provided with a clear explanation of how it was calculated, including (in the case of ToU tariffs) any assumptions about the consumer's current load profile and how this may change in response to the tariff. These outcomes are currently achieved through SLC 25.7 and 25.8 for traditional tariffs, but it may be appropriate to replace these with a narrow principle supplemented with guidance about how to provide fair estimates of bills.

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

Given the history of doorstep and telesales marketing problems in the sector, this is an area that will require close monitoring during the transition.

In our experience, this has always been an area where problems are under-reported as many consumers who have experienced a problematic sales contact will not report this to the responsible supplier (as they have no existing relationship with them) or their existing supplier (as they cannot do anything about it). Our Consumer Service receives some contacts from consumers who wish to warn other consumers about the behaviour of suppliers' sales agents.

Where possible, we have set up an arrangement where suppliers receiving marketing related complaints are sent the case notes from the Consumer Service on a weekly basis to allow them to quickly investigate whether their sales agent is behaving inappropriately.

At a minimum, we believe that any supplier or TPI seeking to conduct face to face sales should be required to use electronic tablets with mobile internet access so any pricing information is as accurate as possible. This would also ensure the entire sales process is trackable and recorded should any problems be suspected at a later date. Similarly any telesales activity should be subject to full call recording.

Other means of monitoring supplier activities include mystery shopping, suppliers sharing data from their audit processes such as the percentage of contracts cancelled during the cooling off period as well as research interviewing a percentage of people who've recently switched suppliers. If individual suppliers can demonstrate that their processes are functioning well then their monitoring could be downscaled over time.

Extra Help Unit case studies

Case study 1

1776171

This case study demonstrates the need for prescriptive rules around supplier objections.

We recently arranged a conference call with a growing energy supplier. On this occasion we had a new case that involved an 88 year old consumer who lived in a small pensioner's flat and had suffered three strokes in the past year. The consumer had been paying £18 by direct debit for two years when suddenly he was notified that his direct debit would go up to £48 per month. The consumer was unhappy about this and decided to transfer to another supplier but the transfer was blocked. The consumer contacted the supplier to ask why this was the case and they asked for payment before he could move to his chosen new supplier. The new supplier later investigated the accuracy of the meter and found out that it was faulty.

When we raised this as a concern during the conference call we were told that the company's policy was to block a consumer from transferring if their direct debit account was in deficit (as opposed to debt) by £40 or more. We challenged this as being out of line with what is stipulated in the licence conditions. The company also don't appear to have automatically provided information to the consumer about why they had blocked the transfer. The company said that if we could tell them where in the licence conditions it stated this they would review their policy, although they gave no indication that they would change it. They also said that customers often came to them through switching sites with the wrong consumption information and this often led to problems validating their usage when readings hadn't been taken for a period of time due to lack of access or other issues, which is why they had put the policy in place for their direct debit customers. A similar point about validating readings was previously made when we discussed failure by the company to refund credit until flows were returned from another supplier.

Case study 2

1776190

In this case the consumer did not know how to access the emergency credit facility on her smart prepayment meter which led to her being off supply. This highlights issues covered in SLC28 regarding Information about Prepayment Meters. The supplier had not explained properly how to access the emergency credit facility which left the consumer off supply.

The consumer received income support and had a four year old child. She had topped up £15 and only got £3 of credit; she was then unable to access the emergency credit facility and had gone off supply. She had no further funds to top up for three days and was referred to the EHU as she had self-disconnected.

The supplier responded to the EHU explaining the consumer's partner had been able to check the instructions on the meter which allowed her to access the emergency credit facility. This should have been explained fully to the consumer in the first place. They also offered that she contact them if the emergency credit ran out before getting her next lot of income support to see if they could offer discretionary credit. In this case it also transpired there had been an issue with the communication between the IHD and the meter.

Case study 3

1774148

This case is an example of a backbilling case where the period concerned was less than one year but the amount of the bill was substantial and caused significant financial detriment.

The consumer did not receive a bill for 11 months. They had contacted the supplier on a number of occasions and had been advised that a bill would be issued shortly. Eventually a bill was issued for approximately £2,000. The consumer acknowledges that the cancellation of the Direct Debit – over £200 – would have contributed to the accruing of arrears but states that this was done out of frustration over the supplier's inability to produce a bill and with a view to transferring to an alternative supplier.

Although the company claimed that it was made clear a bill could not be produced, the consumer rejects that this was communicated.

The supplier offered a £40 goodwill gesture and a 24 month payment arrangement, explaining that the failure to produce a bill was due to a report from the meter operator (MOP), suggesting the meter serial number (MSN) was incorrect. The company also claimed that "the majority of the delay was caused by the consumer not co-operating with our investigations".

The case was escalated, as the consumer and EHU felt that the resolution was not reflective of the failure to provide a bill or the detriment caused by the company. The company maintained that the consumer was informed that a bill could not be

issued without confirmation of the MSN, suggested that the consumer was largely responsible for the delays, and cited correspondence sent by email and letter.

Crucially, the supplier had not been able to provide any correspondence or records that would suggest that the 'majority of the delay' was down to the consumer. The correspondence provided did not outline that the consumer was required to provide the MSN (a copy of the email was not available, letters provided in June, July, and August 2015 made no mention of the inability to create a bill, but instead confirm that the company was due to produce a bill and a reading would "help us prepare". The letter from August states that the consumer needs to "do nothing" if they are happy with the estimated bill). The supplier also acknowledged contact in April 2015 when the consumer called to make payment (after cancelling the Direct Debit), but the root of the problem was not relayed.

The supplier made a final offer of £230, leaving £1,700 outstanding. When escalated further, it was suggested that the case may benefit from a review by the Ombudsman.

Case study 4

Back-billing and Standards of Conduct

We started seeing a large number of cases relating to how back-billing was being applied by a certain supplier. This was often leaving consumers in detrimental situations with large balances. A spreadsheet of several of these cases was written up and sent to management at the supplier. However, in each of the cases, there were arguments according to the code of practice for accurate bills about why back-billing shouldn't apply. For instance, in some cases, the consumers involved had stopped paying bills, when it said in the code of practice that consumers must continue to make payment to be eligible. The problem was that in these cases the complaints had been ongoing for long periods of time without bills being produced, or the consumers' complaints were shut without the error having been correctly identified. As the situations were quite unusual there was no provision made for them in the code of practice and some of the requirements placed on consumers were clearly intended to avoid consumers wilfully avoiding payment, which had not been the situation with any of these cases.

Part of our argument to the supplier was based on the fact that aspects of the code of practice were being interpreted incorrectly to cover situations they had never been intended to cover, and the consumers involved were therefore being placed in a detrimental situation. The other part of our argument was that under Standards of Conduct the supplier's failure to bill or resolve complaints in a timely manner had led to detriment. When the supplier reviewed the situation at a managerial level they agreed with our assessment and said that a back-billing team that they had introduced had been applying the code of practice too rigidly and often forgetting the core purpose of the code. They therefore agreed to apply the

12 month back-billing to each case although in a number of cases 12 months of consumption had left a large balance.

Our impression was that the inclusion of the Standards of Conduct licence condition assisted us with making the case. However, the case also very much relied on an individual critique of how the code of practice for accurate bills had been interpreted in each example.

Case study 5

1769185

This case highlighted an issue with the supplier not taking into account ability to pay principles as the maximum payment plan offered was 12 months despite being aware the consumer would struggle to meet this.

The consumer was paying by Fuel Direct but her benefits had stopped temporarily when her husband died. She had epilepsy and her son was autistic and had mobility issues. She had contacted the supplier to discuss a payment plan and was told she was still on Fuel Direct. She was given the same advice on further occasions. She called the supplier again on receipt of a large bill and was told payments had not been made for several months.

It transpired that DWP had stopped Fuel Direct some months earlier but had not informed the supplier. When the consumer phoned, it was still showing on their system that Fuel Direct was in place although no payments were being made.

The supplier offered a payment plan for the balance over 12 months, despite being made aware of the consumer's financial situation and vulnerability and did not agree to extend this when challenged further by the EHU, although a reduction to the balance was offered. Fuel Direct was no longer an option due to the change in benefits and her no longer being on a qualifying benefit. The consumer submitted an application for the Trust Fund.

Case study 6

Prepayment meter installed under warrant

The consumer was off work receiving Statutory Sick Pay due to multiple health problems including depression, vertigo and a heart condition. The supplier had obtained a warrant but she had only found the letter advising of the court hearing after it had taken place. The consumer was experiencing financial difficulties due to her circumstances and wanted to agree a payment plan with her supplier.

The supplier advised that unless the consumer paid a substantial upfront payment they would proceed with installing prepayment meters in two days time using the warrant. The consumer had asked that, if a payment plan was not possible, the

PPM installation be delayed by a month to allow her to budget for purchasing top ups as she would not be able to afford to top up. This was not agreed to.

The consumer could not afford any upfront payment and the supplier proceeded with the PPM installation under warrant on the original date. The consumer returned to the Extra Help Unit two weeks later as she had self-disconnected from both supplies. Discretionary credit was then provided by the supplier to keep the consumer on supply.

Case study 7

1775366

This case is an example of the impact that disconnecting vacant properties can have on future tenants.

The consumer moved into a property and provided the supplier with the tenancy agreement. The electricity supply at the property had been disconnected some months earlier due to a previous tenant's debt and the supply was off when the consumer moved in.

The consumer contacted the supplier and was advised that he could potentially remain off supply for fifteen days. However, he was informed that if he paid the previous tenant's debt he could be reconnected within 24 hours.

The landlord contacted the supplier and paid a deposit. An appointment was booked for 3 days time but the engineer did not have the correct meter and the appointment failed. The supply was finally reconnected the following day. The supplier said a fee of £60 would normally be charged for a meter reconnection but this was waived as a goodwill gesture.

Whilst the landlord should have arranged reconnection of the supply prior to the tenant moving in, this highlights the problems that can be caused by disconnecting vacant properties.

Case study 8

1773318

In this case, the supplier stated the maximum wind-on credit an engineer could provide was £5 and that the repeat top-up process for collecting credit would mean it could be 5 days before a consumer picked up the credit. These processes were essentially used by the supplier as the reason for not providing discretionary credit.

The consumer was referred to the EHU as she was off supply for gas, with no heating or cooking facilities. She was between jobs and her partner was not due to be paid for a further five days, so they had no income to top up the PPM. The consumer had asthma.

They were in a situation where 70% of any top ups were being taken towards debt – it transpired this was due to a shortfall of standing charges and the debt recovery rate.

The supplier said discretionary credit would take up to five days to collect using a repeat top up process to pick up an electronic message, by which time the consumer would have funds to top up, essentially saying that there was no point arranging credit.

The supplier also said that sending an engineer would not help as they could only add a maximum of £5 credit. There was a shortfall on the meter of £7.46. The supplier failed to explore whether an engineer could be arranged to reset the meter, which could have been done to get consumer back on supply. The issue of adding a maximum of £5 credit seemed to be used as a barrier to helping the consumer.

Case study 9

1774144

During the progress of this case the supplier refused to arrange for an engineer to attend the property to top up the meter as the consumer was not off supply. This is an issue we see time and time again with suppliers, where they will not send engineers out until the supply is off completely despite significant vulnerability at a property.

The consumer was heavily pregnant and three days past her due date on contacting the EHU. She suffered with anxiety and had two children aged 18 years and 2 years old.

She had been dealing with the supplier for a number of weeks trying to resolve issues with her gas supply. Her meter had been exchanged to a prepayment meter but no card had been received and the £10 credit left on the meter was due to run out.

An engineer was arranged to put credit on the meter and the EHU was told a card had already been issued with £70 credit which should arrive the following day. A phone number was provided if the consumer went off supply in the meantime.

The new card arrived but there was no credit on it. The supplier had arranged a further code to allow the consumer to collect the £70 at a top up point but the code was not picked up when the consumer attempted to vend. The consumer had gone into labour at this point and was unable to keep trying to vend the meter.

The supplier established there had been an issue with the registration of the new card and that a further one would need to be issued with the whole process started again to collect the £70 credit.

The EHU requested an engineer to attend and apply the credit to the meter or exchange the PPM to a credit meter given the exceptional circumstances. The supplier advised this could not be done as the consumer was not off supply. The best they could offer was that they could arrange an emergency job once the consumer was off supply.

The case was escalated within the EHU but no further resolution was offered. The case was reviewed by the supplier almost two months later and contact made with the consumer confirming the card and £70 credit was received. A goodwill gesture of £25 was also provided as credit on the meter.

Case study 10

1772054

In this case a PPM was installed in an unsuitable location with access issues and the supplier's credit check policy was preventing the PPM being exchanged back to a billing meter. This highlights issues covered in SLC 28, regarding safety and reasonable practicability of prepayment Meters.

The consumer contacted the supplier having received a card through the door requesting contact ASAP. The supplier informed him there was an outstanding bill but the consumer had not received this. A copy was requested but was not received until some weeks later.

On the day he was due to pay the bill a warrant was carried out and a prepayment meter installed. The meter was located in the doorway of a neighbouring shop which was only open between 8.30am – 5.30pm. The meter was also located seven feet up the wall, out of reach.

The consumer was in recovery from cancer and had to use a ladder to access the prepayment meter. He was limiting his gas usage due to the difficulties accessing the meter and could not top up.

The supplier responded to the original EHU complaint stating they would not exchange the meter back to a credit meter, quoting their policy that the consumer would need to be debt free for 12 months and complete a credit check before a credit meter would be reinstalled. The EHU caseworker challenged this position and was met with the same response.

The property was privately rented and the landlord was unwilling to pay the cost for relocating the meter position within the property. In the background the balance had increased from £308.99 to £519.64 taking into account warrant costs and usage up to the meter exchange.

The matter was escalated within the EHU due to concerns with a breach of licence condition 28, given that the location of the prepayment meter was not safe or reasonably practicable. The case was reviewed by a manager at the supplier and it

was then agreed that a credit meter would be re-installed on payment of the balance in full.

Case study 11

1774330

This highlights issues with the current processes suppliers follow for identifying vulnerability on pre-disconnection visits. For example, if the property is not occupied at the time of the visit, vulnerability is missed and it is unclear what other steps are taken, if any, to identify this. Furthermore, vulnerability is not always visible or obvious. Note that the debt path on this case was also fairly quick.

The consumer was on the autistic spectrum and had a clinical diagnosis of Obsessive Compulsive Disorder. He moved into the property around May 2015 and the letting agent advised they would take care of setting up all the utility accounts. Letters addressed to 'The Occupier' began arriving at the property but due to his condition the consumer would not open these believing they were for the previous tenant.

In September 2015 the consumer was on holiday. Upon his return, he discovered there had been forced entry into his property and that a prepayment gas meter had been fitted.

The consumer's stepfather contacted the Extra Help Unit on his behalf and advised the situation has had a detrimental impact on his life. He had recently moved into his own home, and had managed to secure employment, but there were concerns this could all now be in jeopardy. The consumer no longer felt secure in the property. He had become very restless, checking the gas as often as every 15 minutes, as a result of his condition.

The debt recovery rate had been set at £10 per week and legal fees of £360 had also been added to the balance. He was extremely stressed by this, continually topping up the card and receiving very little gas. The supplier did not appear to have taken the consumer's condition into consideration before taking the action and he had only been in the flat a few months. His stepfather felt the action was unfair and heavy handed. He was not avoiding payment, he was merely awaiting a bill addressed to him, which he would happily have paid.

After EHU intervention the supplier did agree to waive the legal fees from each account (gas and electricity), but only after being challenged.

In one response, the supplier stated that a debt agent visit carried out within three months of the consumer moving in 'was to check if the property was occupied and if there was any vulnerability'. The consumer was not at home at the time so a letter of intent was left and the opportunity to explore vulnerability was missed.

The supplier explained they had not been made aware of the consumer's condition prior to the action being taken.

Case study 12

1771128

This case is an example of a supplier not recognising the consumer's vulnerability and the impact their actions would have on her. For example, they would not place a hold on the account and it took EHU intervention for the supplier to consider alternative resolutions, e.g. accepting usage only pending a trust fund application.

The consumer was vulnerable with anxiety and depression following the breakdown of her relationship. She was off work due to this and had fallen behind on payments to the supplier and a balance had accrued of £584. She had contacted the organisation Stepchange for assistance and had reduced her electricity usage.

She had received a debt collection visit saying the balance was £700 and threatening to install a prepayment meter. The consumer's mental health had deteriorated to the point she was struggling to leave the house, so a prepayment meter would not be suitable.

The EHU contacted the supplier but they were not willing to place a hold on the account whilst a resolution was sought. The EHU proposed that they accept payments for usage only pending an application to an energy trust fund. This was agreed on the understanding that a smart meter would be fitted and a meter exchange appointment booked.

A month later, a bailiff turned up with a warrant to remove the meter. The EHU contacted the supplier whilst the bailiff was at the property and was told a call back would be arranged after speaking with the debt department. The matter was escalated within the EHU given the urgency of the situation but there were problems reaching the escalated contact and the prepayment meter was force fitted with £25 credit given. The supplier agreed not to recover this from the consumer and arranged a further discretionary credit of £25 to prevent the consumer going off supply.

The meter was later exchanged to a smart meter so that she would be able to top up remotely given her circumstances. It was agreed that warrant fees of £395 would be removed from the account and that a repayment rate of 50p per day would apply. The supplier also provided details of their own energy trust fund.