



Adhir Ramdarshan
Retail Markets
Ofgem
9 Millbank
London
SW1P 3GE
10th March 2016

Hazel Ward
Phone: 07989 493072
E-mail: hazel.ward@npower.com

Dear Adhir

The Future of Retail Market Regulation

RWE npower welcomes the move to principles based regulation and the opportunity to provide our views on the Future Retail Market Regulation model. We believe it will provide a platform for suppliers to deliver positive consumer outcomes in innovative and diverse ways that the existing, generally prescriptive framework does not engender.

Implementation of principles based regulation will only be successful if it is fully embraced by all market actors. To ensure this happens, it has been recognised that a culture shift needs to take place in Ofgem that clearly demonstrates a desire to embed this new form of regulation. Without this suppliers will take a risk averse approach and will be reluctant to move away from the current framework, rigidly sticking to the old rules even if technically they no longer exist.

Similarly, to engender innovation that will deliver positive outcomes for consumers Ofgem must provide a safe environment in which suppliers can innovate that is flexible, agile and accessible.

It is important too that prescriptive rules are kept to a minimum; a principles based framework with a high volume of prescription is unworkable. This would be in keeping with the principles of good regulation e.g. proportionate and targeted. To work, clear principles are needed with further guidance where appropriate. Guidance should not need to be extensive otherwise it runs the risk of becoming de facto prescription. Furthermore, Ofgem must take care to strike the right balance in compliance situations when considering a supplier's adherence to guidance to ensure its own actions do not foster a risk averse culture.

We look forward to seeing in Ofgem's Simplification Plan how it intends to deliver the new requirements proposed in the Enterprise Bill; and how it will remove regulatory burdens. Principles based regulation should in time help to remove much regulatory detail. As we said in our response to the Simplification Plan consultation, the key to simplification is to make matters simple from the outset; many of the existing licence conditions are excessively complicated. Accompanying the work on principles based regulation therefore must be an exercise to revise all those detailed conditions that will remain, in order to ensure that they are set out simply and clearly.

The scope of the proposed changes will initially focus on the domestic retail market. RWE npower sees no reason why the move to the Future Retail Market Regulation model should not also apply to non-domestic customers providing there is a genuine reduction of prescriptive rules.

We set out in Appendix 1 the answers to Ofgem's specific questions. We ask Ofgem to consider our views and concerns carefully when setting out their plans for the Future of Retail Market Regulation. Our response is not confidential.

Yours sincerely

Hazel Ward
Regulation Manager



Appendix 1. RWE npower's to Ofgem's specific questions on the Future of Retail Market Regulation.

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?

In RWE npower's view, prescriptive rules are usually appropriate in scenarios where greater detail is required to manage specific risks and deliver the right consumer outcomes. We therefore agree with Ofgem's proposal that the areas of meeting specific minimum standards, prohibition of detrimental practices, and standardisation across the market in areas such as the interoperability of Smart meters and the requirement for a cross-market view, should be subject to prescriptive rules. Similarly, prescriptive rules should apply to matters of safety such as gas meter safety inspections. We reserve our judgement on Ofgem's proposal to put in place limited standardisation of the type and presentation of specific information required to support consumer understanding and engagement with the market. It is difficult to critique this proposal without sight of the scenarios in which Ofgem may consider such standardisation applicable. However were this particular proposal to be put in place we suggest a set of criteria should be applied when assessing appropriateness of prescription in the interests of objectivity and transparency.

We welcome Ofgem's more recent open letter entitled "Improving consumer communications and the value of trials" and see this as an important step forward in allowing suppliers greater freedom to deliver more customer friendly and effective bills as well as other customer communications. The guidance on Ofgem's high-level expectations for trials is also particularly helpful.

Broadly, we believe all rules related to customer facing processes can be principles based, while industry facing processes (such as code governance or reporting requirements) lend themselves more to prescription. We feel greater flexibility is more appropriate for the regulation of supplier interactions with domestic consumers. Examples in this regard include how suppliers communicate price changes or give notice of product end dates and how they make information about cooling off, cancellation rights and other aspects of consumer law available to consumers. Another example would be how information is provided to customers who prefer their supplier to communicate and interact with them through digital channels. Essentially, more flexibility in all of these examples would give suppliers greater ability to tailor communications to suit their customers and, in doing so, deliver better consumer outcomes than the current prescriptive rules allow.

However, the regulation of vulnerable consumers is more suited to prescriptive rules and narrow, rather than broad principles. Prescription would be required to adequately and uniformly service customers who are blind or deaf - for example, bills need to be provided in certain formats. At present, the Priority Service Register is based on a combination of principles and prescription. Changing the rules in this area to be entirely principles based could make it difficult for suppliers to focus the required activity on those that need extra support. Rather than running the risk of missing some potentially vulnerable customers, they could cast their net too widely and as a result spread themselves too thinly, so diluting their effectiveness. Conversely, there is also a risk that some vulnerable customers could be missed if the definition of vulnerability was inconsistent and reliant on suppliers' judgement alone.

It should be noted however that too much prescription in respect of these customers could result in a reluctance on the part of some suppliers to include them in innovative solutions, so a balance needs to be struck between adequate protection and providing some space for innovation. An element of flexibility is still needed so that each vulnerable customer's treatment can be taken on a case by case basis to meet their individual needs.



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.

RWE npower does not think that the principle of treating customers fairly should be supplemented with other broad principles; introducing other generally broad principles alongside the Standards of Conduct (SoC) would be confusing and a distraction.

We believe the broad principles proposed in this consultation are unnecessary and to some extent, inappropriate and the issue Ofgem is trying to address is not clear. They are in fact a set of common sense procedures that should be the sort of good business practice one would expect a company to have in place to demonstrate compliance with principles based regulation but they do not need to be enshrined as principles for the purposes of the Future Retail Market Regulation model. Rather, Ofgem should consider publishing them as guidance on the measures it would expect to see a well-functioning company to have in place to demonstrate how it considers consumer outcomes throughout its organisation and the decisions it takes to ensure those outcomes are positive for its customers.

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

RWE npower agrees that there are specific areas within energy market regulation where narrow principles are required as they are more appropriate than broad principles or prescriptions in some circumstances.

We have previously mentioned that we believe it is important to keep narrow rules in place for vulnerable customers. While too many prescriptions or broader principles might not be suitable for adequately regulating this area, narrow principles would be more appropriate with some prescriptive rules where necessary.

We agree with Ofgem that narrow principles would also be appropriate for more focussed requirements such as providing information, billing practices, or other areas of the licence that would enable a range of delivery approaches and still secure a more specific consumer outcome. Examples of this would be some of the existing billing information and tariff end notice requirements; narrow principles could outline the information required allowing suppliers to decide how that information is delivered in line with the broad principles and customer expectations.

For the avoidance of doubt, there are some aspects of the clearer information requirements (to the extent these are retained), such as the Tariff Comparison Rate (TCR), Personal Projections and the Tariff Information Label (TIL), that we believe should be subject to prescriptive rules to ensure standardisation for consumers. However we believe that in some circumstances now, particularly when interacting with brokers, consumers are either provided with inconsistent versions of these or not provided with them at all. Ofgem may want to consider this as part of this review.

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

RWE npower does not believe that Ofgem has made a clear case as to why it is necessary to extend their jurisdiction by incorporating consumer protection laws into licences, other than to provide themselves with additional enforcement powers. Nor has it explained how this would benefit consumers who are already adequately provided for under the existing legislation. Therefore we cannot agree that there would be merits in extending the remit of the licences in this aspect.

To incorporate consumer protection laws into the licence would mean non-compliance would be treated as a licence breach, although it is unclear from the consultation whether Ofgem will seek to add the imposition of a financial or other penalty as an additional sanction. This would mean that a breach of consumer law would become a factor to be taken into account in any finding of breach under principles based regulation. This opens all suppliers to a clear risk of double jeopardy and the risk of incurring sanctions under more than one piece of legislation for a single act of breach which



goes against the principles of natural justice. Furthermore, the risk this poses to suppliers could have the unintentional effect of stifling innovation.

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

We have already provided some views on how a mix of narrow principles and prescription could support vulnerable customers in Question 1. We set out some further thoughts below.

We are generally supportive of Ofgem's recent review of the Priority Service Register (PSR) and the proposals put forward in the consultation although we do believe the proposals should be more cost reflective. It is important that this area is subject to review as it had remained essentially untouched for several years. We welcome the collaborative approach taken by Ofgem throughout its review process, the early sight of the draft licence condition and the workshop held in December 2015 being particularly helpful, and we would encourage Ofgem to consider this approach as a useful baseline template for future regulatory and industry reviews.

We note that Ofgem's proposed changes to SLC 26 have taken into account the transition to relying more on principles than prescriptive rules and indeed the draft licence conditions for the PSR appear to contain a mix of principles and prescription which we are in agreement with. As previously stated, we do believe it is best to keep some degree of prescription in this area and for it to be a mix of principles and prescription. Again as stated previously, we feel that some narrow principles to define an additional level of care over and above the Standards of Conduct (SoC) would also be useful. We believe this mix should provide suppliers with the space to innovate and, if principles and prescription are clear, should also be sufficient to protect vulnerable customers.

On the review, whilst we agree that it was long overdue, we do have some concerns about the proposed draft licence condition that chime with our concerns on the transition to the Future Retail Market Regulation model with regard to the need for clarity. The proposed changes are a hybrid containing principles of ensuring similar outcomes for eligible consumers while setting out a list of prescribed services. However, the target audience, so to speak, at whom these services and others are aimed isn't entirely clear. We detail our concerns at length in our response to Ofgem's consultation but would again draw attention to the need for clear principles in order to remove the need for extensive guidance. We cover this further in our answer to Question 6.

Also in respect of the PSR review, the rationale behind using the Treating Customers Fairly (TCF) statement as a means of promoting the PSR is unclear. The TCF statement serves a particular purpose of highlighting the generality of how suppliers are applying the Standards of Conduct (SOCs). To use this as a vehicle for individual licence condition compliance changes the nature of the TCF document from being a high-level report on SOC and may subsume specific (in this case, PSR-related) information into a more general form and so would defeat the object of the exercise of promoting or monitoring the PSR. We would therefore ask Ofgem to think again about this proposal.

The approach to monitoring suppliers' performance under PSR as covered in the review provides interesting parallels with the monitoring requirements for a principles based world; it shows that a "one size fits all" approach is inappropriate and ineffective. For example, we agree that a supplier-paid-for-audit-based approach is not the way to monitor compliance with any changes to or the operation of the PSR. Given the nature of vulnerability, in assessing supplier performance, particularly with non-core additional services there will be a large degree of subjectivity involved that will make comparisons difficult.

In RWE npower's consultation response we made a number of suggestions that again draw parallels with the wider discussions on monitoring for principles based regulation such as the need to review suppliers' existing Social Obligations Reporting for necessary changes; the need for Ofgem to continue the use of establishing and improving suppliers' performance by ad-hoc information requests and extolling best practice and the need to assess monitoring suppliers already undertake that could meet Ofgem's objective and which would provide the necessary insight into the efficacy of any changes to the PSR without the need to introduce any centrally based monitoring.



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

A successful implementation of principles based regulation is heavily reliant on trust between its main actors. Ofgem will need to have a degree of trust in suppliers to allow them to deliver positive outcomes for consumers in their own diverse ways. Similarly, suppliers will need to trust that Ofgem will allow them the space to deliver innovative and positive outcomes for their customers. Clear signals are required from Ofgem for the latter to happen. Furthermore, the buy-in and trust of other consumer bodies is equally critical to the success of the Future Retail Market Regulation model and should not be overlooked.

With the need for trust in mind it is disappointing that Ofgem states in its consultation that while not complying with its guidance might not result in immediate compliance or enforcement action, in some scenarios, a supplier not having had regard to guidance could indicate a potential breach. It is unclear how this would work and which guidance from Ofgem would have to be complied with to ensure there is no enforcement action. Ofgem therefore needs to define what it means by “guidance” to a greater extent. It would also need to clarify the difference between general guidance and the interpretation of the rules, that may become an extension of the rules themselves. Furthermore, this statement does not signal a willingness on Ofgem’s part to move away from a prescriptive approach.

We now move on to the amount of guidance that should be provided. RWE npower agrees with Ofgem that guidance should not become prescriptive through the back door. If the principles under the Future Retail Market Regulation model are clear enough extensive guidance from Ofgem should not be needed, although we may find that more is requested in the early days of the new model until the industry becomes comfortable with principles based regulation and the desired culture is embedded across the industry and Ofgem.

Our view is that, the right balance between rules and guidance would be, a combination of information on Ofgem’s website, one-to-one engagement with Ofgem and published written guidance. Ofgem’s website is complex and difficult to navigate so a central repository of all guidance that is easy to find and easy to navigate through is essential. To be clear, one-to-one engagement with Ofgem should not be necessary every time guidance is required on a specific rule or activity but, in the early days of mainly principles based regulation at least, Ofgem may wish to consider provision of a guidance helpline. We are aware, for example, that HMRC set up something similar to provide clarity on the rules and policy intent in respect of VAT.

Finally, to ensure the right consumer outcomes are reached, it is important that the original policy intent is also made clear, especially so for new entrants who may not be party to the historical context of regulatory requirements. In addition, some of the existing prescriptive rules are so poorly drafted that they disguise the original policy intent. A case in point would be the Retail Market Review (RMR) where policy intent was set down and referenced during the consultation and decision stages but poor subsequent drafting of the licence obligations then created confusion and stifled innovation as a result.

Chapter 3: Operating the rulebook: engagement and monitoring activities

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

The move to the Future Retail Market Regulation model creates the opportunity for a new approach to engagement between Ofgem and suppliers based on a platform of trust and collaboration. This direction of travel has, to some extent, already begun but there is still much to do. We welcome Ofgem’s acknowledgement that a culture change is required as much in its own organisation as suppliers’. It was gratifying to hear at the January Future of Retail Market Regulation event that Ofgem intend to recruit specialist expertise to ensure that its own culture change is effected at all levels as that will be critical to the success of principles based regulation.

Ofgem may wish to consider other examples of relationship management both within and outside of the industry when considering how to engage at a working level with suppliers, particularly with



regards to performance management. Within the industry, the example of Elexon's Operational Support Manager function shows that it is possible to have regular and constructive engagement with a wide variety of parties at appropriate levels using a relatively small team.

As previously mentioned, a helpline may support increased engagement. Our experience with RMR shows that this should be well resourced, robust and consistent both in terms of responding to queries and the actual advice given.

We await Ofgem's Innovation Plan with interest but as a high level summary, RWE npower welcomes Ofgem's proposals to support innovation and the safe testing of new products and services through engagement.

To foster innovation, Ofgem will need to be flexible, accessible and agile. The consultation does not make clear how it will do this. For example, would suppliers need to meet with Ofgem every time they would like to put in place an innovative solution? If so, what process would need to be followed and how quickly could Ofgem respond? This is the sort of detail that Ofgem must address in order to put in place an environment that truly fosters innovation as a means to provide consumers with positive outcomes.

At Ofgem's Innovation Event in February, Bob Ferguson of the Financial Conduct Authority (FCA) described the FCA's approach to supporting innovation. Under this model, their aim is to provide an informal steer quickly. They agree a pact with any business they enter into dialogue with that advice will be quick, frank and candid but businesses that choose to take that advice do so at their own risk. In their experience most businesses are happy to waive the right of reliance. This would seem like a sensible approach to fostering a culture on innovation in a flexible, accessible and agile way.

There is merit in the introduction of an Innovation Hub. We feel the Hub should be available to all suppliers. However, for it to be successful, suppliers will need to be confident that they can discuss ideas with Ofgem either via the Hub or through some other means in a safe environment. In practice this would mean that suppliers can take new products to Ofgem without fear of retribution and Ofgem can provide advice on a similar basis.

Additionally, given the commercial nature of these discussion, suppliers would need to be confident that the information provided, remained confidential until such time as the suppliers themselves chose to make the information public.

RWE npower believes that in general most forms of engagement can be helpful. However, there are certain forms of engagement that we do not believe fall into this camp. A particular example would be requests for information. Whilst we realise their importance in certain circumstances, we continue to experience requests with short and overlapping timescales (incorporating key holidays in some cases) for information that sometimes is not readily available. At the January event, several suppliers also raised the issue of near duplicate information being requested by Ofgem on a number of occasions, this resulting in duplication of costly and resource intensive work. Taken together with the consultations from other regulators and government departments, it is not difficult to envisage that this is far from an ideal state of affairs. These could therefore be more targeted and coordinated. Before sending out requests for information, we would urge Ofgem to consider the information it already has and whether that could be put to better use rather than always resorting to another information request. Where these requests are absolutely needed, to help suppliers with forward planning, Ofgem could consider providing on an annual, bi-annual or even quarterly basis a plan of requests that it intends to send out.

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

RWE npower is not in a position to answer this question in any detail as we are not new entrants to the market and so can only assume what would be helpful to them.

We have previously mentioned the particular need for new entrants to the market to have clear guidance around policy intent.



New entrants may appreciate a tailored engagement approach to support their entry into the market similar to that taken by the Master Registration Agreement (MRA) and Balancing and Settlement Code (BSC). This could be to provide the relevant information required to operate within the industry without putting customers at risk (the MRA and BSC ensure that the industry is not put at risk) rather than as a precursor to meet a specific qualification as required by the MRA and BSC.

It may also be helpful for Ofgem to consider a model similar to the FCA's Innovation Sandbox which is apparently designed specifically for a small number of new businesses.

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?

At this early stage of its development, it is difficult to have a clear line of sight on what forms of monitoring would best fit the new Future Retail Market Regulation model. We believe it is likely to be multi-faceted and, as previously mentioned should not be a "one size fits all" model. With these points in mind, we give some initial views with the caveat that more work needs to be done on monitoring with Ofgem and suppliers when greater detail is known about the content and framework of the new principles based operating model.

Our first suggestion would be for Ofgem to carry out a thorough assessment of the information it already receives from suppliers to determine whether it is still required either in its current state or with some revisions under the new model; also, to consider whether any new information is required and if so where it should come from. Suppliers do carry out their own internal monitoring - some of which, whilst it may not be suitable for a generic reporting template, may be helpful to share with Ofgem in more bespoke face to face discussions. However, new information does not necessarily need to be provided directly to Ofgem by suppliers. Ofgem could look for other independent sources such as Which? and uSwitch who monitor indicators in the industry and are already tried, tested and trusted by customers.

In Question 7 we flagged the example of Elexon's Operational Support Manager function as an example of supporting the management of suppliers' performance effectively. Constructive dialogue between suppliers and the Operational Support Manager fosters an atmosphere of collaboration and honesty in which suppliers, and (in the case of the BSC) other parties, are more likely to self report issues and work towards resolving them in a supportive but, where required by Elexon, challenging environment. Ofgem may wish to investigate this model further.

As previously mentioned and to ensure the clarity of our views, we do not believe that monitoring in a principles based model should be heavily reliant on requests for information. Principles based regulation will result in a variety of outcomes that will not easily lend themselves to a restrictive reporting template. Therefore Ofgem should look to reduce, rather than increase, this form of monitoring.

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.**

RWE npower welcomes Ofgem's proposal to enhance their understanding of supplier businesses as we believe this context could help Ofgem to make more informed decisions on regulatory and industry change, compliance and possibly even enforcement. However we appreciate that a greater level of bilateral engagement could stretch Ofgem's resource capacity so would be interested to understand how they propose to address this. Furthermore, if taken too far, there is a risk that Ofgem could fall into the trap of micro-managing suppliers which would be inappropriate and inefficient. Additionally,



such an approach would not foster the required level of trust on both sides and seems contrary to the desired outcomes of principles based regulation.

In Question 9 we suggested that Ofgem could look at information provided by other organisations to support its monitoring process. In that context we suggest that in working with other industry partners Ofgem should look to use the opportunity to develop a single set of specific industry data that could be used as indicators of performance both current and of trends. An example of such an indicator could be complaints. It is important however that any data collected from third parties is adequately validated by Ofgem before its use. Furthermore Ofgem must ensure that the data is credible and in proportion, and the information is balanced: the data may reflect a single incident in an otherwise good record of performance so wider context is necessary, particularly where such reporting is visible to a wider audience; a fast track approach to compliance should not be the immediate step.

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?

RWE recognises that the journey to the Future Retail Market Regulation model will not be an easy one and we have already emphasised the need for a significant change of culture within Ofgem and the wider industry to ensure its success. With this in mind, we believe assessing compliance will be extremely difficult both for Ofgem and suppliers, particularly in the early days of the new largely principles based world. There may be a reluctance to let go of old regimes and mindsets as we all move away from our comfort zones of mostly prescriptive rules and a singular approach to compliance and enforcement.

Examples of steps that could be put in place to help the transition are:

- Further clarity from Ofgem on what “good” looks like, in respect of consumer outcomes. In a largely principles based world this would be helpful for suppliers.
- Guidance on best practice would be welcome although it should be clear that best practice is not required practice. Suppliers should not be required to see best practice as prescription in all but name and should not be penalised for taking an alternative approach that also delivers positive consumer outcomes but in a different way.
- A set of industry wide key performance indicators may be helpful for suppliers to judge where they are with regards to their performance and could also help Ofgem in its compliance discussions with suppliers.

RWE npower believes that greater engagement is needed between Ofgem and suppliers, so that there is an opportunity to work openly and collaboratively on fixing problems before moving to more serious steps in compliance. In the new regulatory model, especially during the transition stage, a straight line to enforcement will only lead to further distrust between suppliers and Ofgem, and will constrain the aim of innovation.

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 do not agree with Ofgem's proposal to publish case opening decisions, as we feel it should be kept anonymous at that stage. It may be that the investigation finds that the supplier in question wasn't wrong or mitigated the problem without further escalation. However, a public decision to start an investigation could still affect its brand and reputation and make it guilty by public opinion.

Further clarification from Ofgem is needed on how it will define and assess harm under the new model. Will it, for example, be in terms of vulnerability or volume of customers, or related to the actual detriment to customers?

We agree that Ofgem's proposal for suppliers to learn lessons from enforcement outcomes through case studies, could generally be informative. However, it should be made clear that these case studies should not be prescriptive, as they should not become de facto guidelines. The benefit of sharing the case studies would be that the industry can learn what Ofgem sees as good practice. The risk is that it would encroach upon other suppliers innovative ideas such that, to repeat our earlier point, best practice would become required practice.

We do not think Ofgem's use of a public annual scorecard would be adequate under the new model: a more frequent publication would be more agile, particularly because its content could provide educational benefits for the wider industry.

Ofgem has indicated that it may look more favourably on suppliers who tell them early if something is not going right and what actions they are taking to correct it. It is not clear at what point or what level of incident suppliers would need to advise Ofgem or whether indeed there will be some kind of threshold. For example, if a supplier identifies and quickly resolves a problem that impacts a relatively small number of customers and also recompenses those customers, should they inform Ofgem? Clearly this proposal needs further work before there is a requirement to put it into practice but with a degree of work it could be a powerful tool for ensuring positive consumer outcomes in a more collaborative principles based model. It follows that any resultant compliance or enforcement action must be proportionate.

Finally, we do not agree that enforcement action should continue as usual throughout the transition to principles. Ofgem should go through a 'transition phase' with enforcement to match that of suppliers 'transition phase' to principles based regulation. Whilst we understand the need to protect customers from adverse outcomes, getting the right balance is critical to fostering innovation.

Overlaying today's enforcement approach on tomorrow's regulation model will result in a greater aversion to risk that will force suppliers to revert to the existing prescriptive comfort zones and limit innovation. The present system of enforcement is problematic to a principles based approach to regulation because it lacks sufficient checks and balances. A major advantage of the principles based approach is that there may be more than one way of delivering improvement for customers. Therefore, to have Ofgem, as at present, investigating, adjudicating on and enforcing suspected breaches is unhelpful in such a system. We believe that appeals should be capable of being made on the grounds of reasonableness, interpreted in lay terms understood by 'the man on the Clapham omnibus'; and on the basis of merit.

Chapter 5: Managing the transition effectively

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

Historically we have seen the most successful large scale programmes to be those that are developed collaboratively with all of the relevant actors. Therefore, to ensure engagement with, and the eventual success of, this programme, it is important that Ofgem develops the Future Retail Market Regulation model in collaboration with suppliers and other affected parties. As we often point out, the regulatory and industry landscape is currently in a state of unprecedented levels of change therefore it is essential that suppliers are able to plan for this activity. In order to resource and actively engage



with Ofgem over the coming year, clarification of the expected work plan, timescales and how it will feed into or take account of broader work programmes would be helpful.

In order to manage the transition, we feel consultations would be a good starting point, as they are quite specific. However, consultations often propose a fait accompli solution that suppliers are asked to comment on. To avoid this it would be helpful if Ofgem also followed a workshop approach to float and build ideas before consulting on them. Bilateral discussions to garner views would also be helpful throughout the development phase.

Additionally, Ofgem and the wider industry would do well to engage with other parties such as the Department of Energy Climate Change (DECC) or Citizens Advice, to consider where and how they would fit into the new regulatory model.

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

We agree with Ofgem's proposal to take a phased, priority-driven approach to reforming the supply licences. Having reviewed the other options, we feel this would be the most logical option to implement. However, we feel that a gradual phased approach would need a backstop date to ensure implementation does not take too long. A lengthy period of two parallel regimes would be impractical and possibly unworkable.

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 agree with Ofgem's decision to look at SLC25 as a priority area for the move towards principles. We also feel it would be appropriate to consider the billing information and tariff end notice requirements introduced by RMR. Further, it may be helpful to await full details of the remedy decisions from the Competition and Markets Authority (CMA) to identify other potential priority areas.

The existing prescriptive rules around RMR are problematic as they are not always clear, despite the fact they are prescription based and any revisions to make them clearer would be welcomed. In Question 3 we provide more detail on which of these rules could move to principles based regulation and which may need to remain as prescriptive. We would advocate moving those eligible obligations to principles as early as possible.

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 (e.g. rulebook, operations) these costs relate to.

Implementing the new regulatory model is likely to be very resource intensive and as such will incur costs, particularly as the new model is developed and implemented but at this stage we cannot quantify the scale of this.

Costs could also increase for suppliers if there is greater need for reporting, keeping more contemporaneous records and evidence backing which may be necessary to support the new regulatory model.

Benefits, at this point in time, are difficult to quantify especially as Ofgem has made it clear that principles based regulation does not mean deregulation, simply a different and multi-layered way of regulating therefore we cannot provide any views on avoided 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)?

We agree that SLCs 25.1 or 25.2 are necessary and the right provisions for regulating sales and marketing activities and do not any believe additional principles are required.

In summary, RWE npower believes moving SLC 25 to principles based regulation should allow suppliers to be more innovative in helping customers and in providing better consumer outcomes. It will give suppliers greater flexibility with regards to interaction with their customers, without the risk of breaching unnecessary prescriptive regulation, in order to provide better outcomes for those customers

The present regulatory approach does restrict suppliers ability to explore and implement better ways of engaging customers in the competitive market. So removing prescription from SLC 25 could provide suppliers with more opportunities to engage with customers who are currently out of reach and allow suppliers to be more innovative in the way they sell and interact with these consumers. As the consultation suggests, this could be done through helping consumers to access price comparison websites on tablets in face-to-face settings, as for some consumers face to face selling could potentially be their only route to engage in the market. This would allow the customer full access to all available products in the market.

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

In general RWE npower believes a principles based approach would be more appropriate in this area. With that said, removing prescription from SLC25 could also be seen as a significant risk not only to suppliers, given the previous history of mis-selling within this area, but also to consumer confidence in the competitive market. Given this, suppliers may be reluctant to step back into the face-to-face market place. Ofgem may need to consider what it can do to reduce the risk on suppliers if it wants to encourage a re-emergence of face-to-face. One way to do this would be to put greater onus on Third Party Intermediaries (TPIs) to be accountable and responsible for the SLC 25 provisions in relation to the sales journey. Currently, suppliers are responsible for the activities of the TPIs that they align with but the TPI could hold contracts with a number of suppliers at the same time therefore it can be difficult for one supplier to exercise sufficient control over the TPI's activities.

We have previously mentioned the need for a mix of narrow principles and some prescriptive rules for vulnerable customers where appropriate and we would suggest the risk to vulnerable customers should be considered before moving SLC 25 to an entirely principles based approach. However, it should be said that too prescriptive an approach could result in vulnerable customers being excluded from innovative solutions that could provide them with better outcomes. Therefore a balance is required that provides sufficient protection for vulnerable customers and yet still allows suppliers to deliver positive outcomes to them in diverse and innovative ways.

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

The early move of SLC 25 to a principles based approach gives Ofgem the opportunity to test out new approaches to engagement and monitoring and we refer you to our thoughts on both set out in Questions 5, 7 and 9.

More specifically, we are, as yet, not convinced on the use of a Sales & Marketing Challenge Panel which Ofgem proposes to hold prior to the migration to a principles based approach. We feel that, while the immediate experience of Challenge Panels are good, the outcomes from them are not always tangible. In our experience, they have a tendency to focus on positive outcomes and successes therefore, they can often be subjective.