

Future of Retail Regulation
Consumers and Competition
Ofgem
9 Millbank
London
SW1P 3GE

11 March 2016

Dear Adhir and Kiera,

THE FUTURE OF RETAIL MARKET REGULATION

Thank you for the opportunity to respond to the above consultation, which seeks views on Ofgem's proposals to rely more on principles than detailed rules within the supply licence.

We welcome Ofgem's work in this area and agree that a more principles based regulatory framework for the energy retail market will enable greater innovation and efficiency in delivering desired consumer outcomes. Market developments and regulatory interventions over recent years have resulted in a long and complex rulebook that could act as a barrier to entry and constrain more innovative products and services. We agree that it is right to review the licence conditions to ensure they can remain appropriate in an evolving energy retail market.

While we are supportive of replacing prescription with principles (especially narrow principles), we agree that there are likely to be areas where prescriptive rules should be retained in the licence conditions, and believe that a blend of principles and prescription is likely to best deliver Ofgem's aims.

We think that the broad principle set out in SLC 25C (Standards of Conduct) has worked well, and we can see there may be a case for additional broad principles where a need is identified. However, we would question whether the four examples of broad principles listed by Ofgem are appropriate for inclusion as licence conditions. We do not disagree with the thrust of these principles, but rather we think they sit more logically as factors which Ofgem may take into account in an enforcement investigation (or when considering whether to open one), rather than rules which could be subject to enforcement in their own right. Given that one of the aims of this initiative is to simplify and streamline the "rulebook", Ofgem should be cautious about adding new broad principles without clear evidence of a need.

We welcome Ofgem's recognition that engagement between Ofgem and suppliers needs to evolve as part of the move to a principles based regulatory framework. In particular, it will be useful to have constructive conversations between Ofgem and key stakeholders during the implementation of amended or new obligations, and we welcome the statement that Ofgem will provide "targeted advice" in response to supplier

questions. This will be particularly important during the early stages as parties adapt to the new framework, and will support the building of trust between suppliers and the regulator. We believe engagement should take place at both a bilateral and industry level to best identify and resolve issues, and share good practice across industry.

While we see a continued role for monitoring using quantitative reporting, we agree that alternative methods for monitoring consumer outcomes may be required within a more principles based regulatory framework. We think the increased bilateral and industry engagement will help Ofgem achieve a better understanding of supplier practices, but would note that any increase in engagement will likely require an increase in resource from both parties. This increase in engagement therefore needs to be proportionate and based on a transparent and targeted risk based approach.

We welcome Ofgem's recognition that within a principles based regulatory framework there will be alternative ways of achieving a desired outcome and would highlight that this needs to be recognised by all parts of Ofgem, including within compliance and enforcement activities. Where suppliers can demonstrate that they have made evidenced based decisions, implemented appropriate monitoring and taken action where issues are identified, we agree that fewer compliance cases should proceed to the enforcement stage. The proposed increased engagement between suppliers and Ofgem should give suppliers the opportunity to put things right without the issue necessarily proceeding to enforcement.

Our responses to the specific consultation questions are in the annex to this letter.

We would be pleased to discuss our response further with you, if that would be helpful. If you would like to do this or have any questions, please contact me or Rhona Peat (rhona.peat@scottishpower.com).

Yours sincerely,

A handwritten signature in blue ink that reads "Rupert Steele". The signature is written in a cursive style and is positioned above a horizontal line that serves as a separator.

Rupert Steele
Director of Regulation

**THE FUTURE OF RETAIL MARKET REGULATION
SCOTTISHPOWER RESPONSE**

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?

We are supportive of replacing prescriptive rules with principles where appropriate, but agree that prescriptive rules are still likely to be required in certain areas. We set out below some of the areas where we believe prescription (or a combination of prescription and principles) will still be required.

Translated EU and UK Government legislation

Where prescriptive rules are the result of transposing EU or UK Government requirements, there may be limited flexibility to replace these with principles. However, in the course of this review, Ofgem may wish to consider whether any “gold plating” has taken place and relax any over-prescription accordingly. Looking ahead, Ofgem should seek to transpose any new legislative requirements in a way that preserves flexibility - and revoke any existing rules that are duplicated.

Standardisation

Prescriptive rules will remain appropriate in areas where there is a need for standardisation. For example, where consumers are being provided with an estimate of their costs on a particular tariff, it is important that (where possible) suppliers use a consistent calculation so that consumers can easily compare tariffs across different suppliers. (Although suppliers could in principle agree a standard approach among themselves, this may be difficult in practice and the regulator is ideally placed to facilitate this process.)

We included the words “where possible” above, as we think in this example there would need to be an exemption for innovative tariff offerings where the existing rules genuinely did not work; the exemption might allow for an alternative approach to be used, where the supplier can justify that this is necessary.

Other examples could include where minimum standards will help ensure consistency across suppliers and make it easier for consumers to know what to expect. For example, setting a maximum switching transfer time (which some suppliers may choose to improve on), or setting a minimum level of support for customers in vulnerable circumstances that all suppliers must provide or exceed. We set out more detail on this in our response to Question 6.

Minimising compliance costs

As we explain in response to Question 16, our current view is that principles based regulation is likely to result in a greater compliance resource requirement than prescriptive regulation, for both regulator and licensee. In many areas, these costs will be outweighed by the benefits of increased flexibility and innovation. However, in areas where it is not possible to identify any such benefits (or such benefits are likely to be very small), it may be more efficient to stick with prescriptive rules. This may be the case, for example, in the

requirements for supplier of last resort, where the event itself will seldom arise, and having a clear set of rules to follow will minimise internal costs for suppliers.

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

We think that the broad principle set out in SLC 25C (Standards of Conduct) has worked well, and we can see there may be a case for additional broad principles where a need is identified. An example of a further broad principle could be similar to that proposed by the CMA requiring that suppliers have regard to the ability of customers to compare tariffs with others they offer when designing new tariffs.

However, we would question whether the four examples of broad principles listed by Ofgem are appropriate for inclusion as licence conditions. We do not disagree with the thrust of these principles, but rather we think they sit more logically as factors which Ofgem may take into account in an enforcement investigation (as mitigating or aggravating factors), or when considering whether to open one, rather than rules which could be subject to enforcement in their own right. If new broad principles are to be introduced, we would expect them to be more directly related to consumer outcomes. Given that one of the aims of this initiative is to simplify and streamline the “rulebook”, Ofgem should be cautious about adding new broad principles without clear evidence of a need.

Proposed broad principle	Comments
Constructive engagement with the regulator	As noted above, we do not disagree with the principle that “suppliers must be honest and transparent in their dealings with the regulator”. However, we would note that suppliers already have an incentive to behave in this way (not least since failure to do so would be an aggravating factor in any enforcement investigation) and it is not clear to us that there is a need to make this principle an enforceable licence condition.
Good record-keeping	We would support steps to simplify or remove duplication of existing record keeping obligations in the licence, if this is Ofgem’s intention. We are less convinced of the need for a broad principle that relates documentation of decision making by suppliers, as this can be adequately incentivised by enforcement guidelines. It is unclear to us whether Ofgem’s intention in this area relates to customer records or evidence of supplier decision making; to avoid any misinterpretation, the drafting of any broad principle needs to set out clearly more clearly the desired objective.
Board-level assurance around embedding of principles	Again we do not disagree with the principle of having board level assurance around embedding of principles, but would question whether this is something that should be enforceable per se. It is also necessary to deal with a variety of governance structures in companies. Likewise, we recognise the benefits of accountability maps, but see these as a tool that licensees should use to comply with licence conditions, not an enforceable licence condition in its own right.
Not putting consumer outcomes at risk	This is clearly a sensible principle, but we are unsure whether it is needed. If consumer outcomes are put at risk and consumers suffer detriment, Ofgem already has the ability to take enforcement action (for example under SLC 25C) – and the supplier’s approach to risk management would then be a factor in determining culpability.

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

A narrow principle (supported by prescription of particular requirements if appropriate) will be well suited where a specific outcome is desired, but where there are likely to be different ways to deliver that outcome. Specifically, in areas where prescriptive rules are likely to be overtaken by changing technology or innovative business practices, replacing rules with principles may help with future-proofing and allow the market to discover the most effective way of achieving the outcome without constraining innovation.

In assessing where narrow principles would be of benefit, Ofgem should consider to what extent the broad principle in SLC 25C (Standards of Conduct) would deliver the desired outcome without further intervention. For example, the existing narrow principle in SLC 25 relating to sales and marketing activities appears to be broadly similar to the principle in SLC 25C that sets out how suppliers should treat customers across all interactions, and is arguably rendered unnecessary by SLC 25C. Removing duplication within the licence conditions should be a key aim of the Future of Retail Regulation project as this will help to simplify and clarify supplier obligations. We set out further detail on this in our response to Question 17 and in Annex 2.

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

On a first assessment, including consumer protection law into supply licence conditions would appear at odds with the aims of simplification, as suppliers are already subject to the law. We are not aware of any other sector where industry participants have consumer protection law added to the specific industry rules and we do not see that the energy retail sector is a “special” case in this respect. The main reason for doing this appears to be to allow Ofgem to impose financial penalties on suppliers in areas where it currently cannot do so. However, it is not clear to us that this is necessary – or that the sanctions currently available to Ofgem are insufficient.

If Ofgem does proceed with this option, it should be implemented by means of a simple obligation to comply with the relevant sections of the legislation, rather than paraphrasing or transposing the text of the legislation. The latter approach runs the risk that obligations take on a slightly different meaning in the different contexts, adding to regulatory complexity.

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

In its proposals for a revised Priority Services Register, Ofgem has already set out an approach to protecting vulnerable consumers that includes elements of principles as well as retaining a level of prescription. We believe this is a good example of the blended approach that we have highlighted will often be required and we think this will be a successful model for other licence condition amendments to follow in the early stages of moving to a principles based regulatory framework. We think this approach will ensure at least a guaranteed level of service and protection is delivered to those customers most in need across all suppliers, while allowing each supplier to develop more innovative solutions to providing support to their own customers, based on their specific needs. Without retaining a minimum standard, there could, particularly in the early stages, be concerns that protections for vulnerable consumers could reduce where there is a commercial incentive for a supplier not to take

action. If such a situation were to arise, it should be identified and resolved through the monitoring and compliance framework, and potentially through enforcement activity if required, however we have concerns that the impact on customers presents a greater risk in this area than in other areas of the licence.

Once a more principles based framework is established and embedded within both suppliers and the regulator, we would be supportive of reassessing whether there is a need to retain prescription in relation to the protection of vulnerable customers, or whether moving completely to a principles approach would provide appropriate protection for such across all suppliers in the market.

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

We agree with Ofgem's statement that there is a risk that guidance could become "prescription by the back door" and we believe guidance should be used sparingly. We would suggest that guidance could usefully take the form of:

- more detail and transparency in the reporting of closed enforcement cases, providing suppliers with better understanding of Ofgem's intent and expectations in particular areas;
- open letters based on observation of a particular activity in the market whether good or bad practice;
- clarification of how Ofgem would assess a potential breach of a licence condition, for example the "reasonable person test" set out in Ofgem's decision to implement SLC 25C (Standards of Conduct)¹ – it would be helpful if such guidance was itself part of the licence drafting rather than separate guidance.

We welcome Ofgem's recognition in the consultation that there may be multiple ways for suppliers to deliver positive outcomes for consumers and that Ofgem itself needs to be "comfortable" with this. This in itself should mean that there is less need for guidance from Ofgem on how to implement regulatory obligations. If Ofgem recognises that alternative options are valid, and suppliers can provide contemporaneous evidence that demonstrates that their chosen approach was taken to achieve the correct consumer outcome, then suppliers should become more comfortable with the principles based regulatory framework and seek less guidance from Ofgem.

We are supportive of Ofgem's proposal to have a single well sign-posted place for any guidance. We think this is very helpful and should include all relevant documentation including the licence conditions and links to policy documents.

Operating the rulebook: engagement and monitoring activities

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

We welcome Ofgem's recognition that engagement with suppliers needs to evolve from current practices within a principles based regulatory framework. In particular, it will be very

¹ <https://www.ofgem.gov.uk/sites/default/files/docs/2013/06/implementation-domestic-standards-conduct-decision-make-licence-modifications.pdf>

useful to have constructive conversations with key stakeholders during the implementation of amended or new obligations, and welcome Ofgem's statement in the consultation document that Ofgem will provide "targeted advice" in response to supplier questions. We believe this will be particularly important during the early stages as all parties adapt to the new framework, and will support the building of trust between suppliers and the regulator.

We believe engagement should take place at a both a bilateral and industry level to best identify and resolve issues, and share good practice across industry.

Bilateral Engagement

- regular engagement between suppliers and Ofgem to discuss current industry priorities;
- ability for suppliers to directly contact Ofgem to discuss interpretation of licence requirements, raise compliance issues or raise challenges in relation to innovative product or service offerings.

Industry Engagement

- regular industry wide "sharing" sessions, for example enforcement conferences or challenge panels, to allow sharing of experience and good practice.

We welcome Ofgem's intention to explore how best to support the safe testing of innovative new products and services and look forward to engaging with Ofgem's Innovation Plan.

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

Those suppliers who have recently entered the market will be better placed to provide views on whether additional support is required.

We would however note that while we recognise that new entrants may have additional needs beyond those of companies well established in the energy retail market, good engagement practice by Ofgem is likely to be beneficial both for customers and all types of suppliers. For example: -

- As suggested in the consultation document, having a single source of all obligations including links to relevant guidance and policy documents would help all suppliers to understand the full extent of their obligations rather than having to source those themselves from multiple locations.
- Increased engagement between Ofgem and suppliers will also be very important under a more principles based regulatory framework, as this will allow all suppliers to discuss their approach to compliance at an earlier stage.
- The provision of targeted advice during these interactions will also support all suppliers in better understanding policy intent and Ofgem's expectations.

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?

Within a prescriptive regulatory framework monitoring is more likely to take the form of quantitative reporting than within a principles based framework. We agree with Ofgem that there will be a need for suppliers and Ofgem to adjust their approaches to monitoring to take account of alternative ways for suppliers to achieve the same consumer outcome.

This does not mean there will be no role for quantitative reporting by suppliers (whether internal/external or on a regular basis or as part of a bespoke information request) and we believe that a number of consumer outcomes will still be best measured on the basis of a quantitative measurement, whether the regulatory obligation is prescriptive or principles based. In particular, we agree that assessment of complaints information will provide insight into whether supplier practices are delivering the desired consumer outcomes, while we think it will be important to continue to report on a number of existing metrics, for example the time taken to switch customers to a new supplier. We would note however that the current level of obligations on suppliers both through regular reporting and information requests can be significant, and any additional quantitative reporting should not add to the burden. As part of any revision of the licence in a particular area, Ofgem should also consider current reporting requirements and assess whether any existing reporting could and should be removed within the revised framework.

We are supportive of increased bilateral engagement between Ofgem and suppliers. This will support a better understanding of supplier practices and approaches, which will be important in a principles based framework, where a number of different approaches can meet the same consumer outcome. Any increase in engagement will likely require an increase in resource from both parties, and therefore Ofgem's approach to monitoring of supplier practices should be based on a targeted and transparent risk based approach.

We are supportive of Ofgem taking alternative approaches in relation to monitoring, again subject to this being applied across all suppliers, or via a transparent risk based approach. We have already noted our concern around the impact of an increase in information requests without the removal of some current reporting obligations. We agree that the Standards of Conduct (SOC) Challenge Panel was a useful tool in assessing how suppliers have implemented the SOC, and agree that a similar format could be considered for other principles based regulations to support identification and sharing of good practice.

We note Ofgem's desire that increased levels of self-reporting are undertaken by suppliers and we are supportive of this where issues are significant and are causing harm to consumers on an ongoing basis. It is inevitable however that there will be smaller issues, affecting perhaps individual or particularly small groups of customers, that will be identified and resolved quickly by suppliers. In such cases we believe it is reasonable that suppliers should not necessarily notify Ofgem as appropriate actions have been taken to resolve the issue and rectify any consumer detriment.

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 have set out in our responses to earlier questions that we are supportive of an increase in engagement between suppliers and Ofgem, undertaken in a risk based and proportionate manner. We have also stated that we welcome Ofgem's intent to provide more targeted advice to suppliers as part of this engagement as this will support the aim of ensuring suppliers better understand Ofgem's rules.

We are also supportive of Ofgem engaging closely with the Citizens Advice Service and with the Ombudsman Services: Energy. However, this engagement should be in addition to both those parties continuing to engage directly with suppliers as this will support suppliers in their own monitoring activities.

Operating the rulebook: compliance and enforcement

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

As we set out earlier in this response, within a principles based regulatory framework there will be alternative ways of achieving a desired outcome, and this is recognised by Ofgem within the consultation document. This needs to be recognised by all parts of Ofgem, including within the compliance activities, and needs to be a key part of the increased engagement suggested as required within a principles based regulatory framework.

We welcome Ofgem's stated intent that where suppliers can demonstrate that they have made evidence based decisions and implemented appropriate monitoring, and taken action where issues are identified then fewer compliance cases will proceed to the enforcement stage. The proposed increased engagement between suppliers and Ofgem should provide for the opportunity for suppliers to put things right without the issue necessarily proceeding to enforcement. In relation to self-reporting by suppliers, while we are supportive of this, as noted above, we would highlight that that for "smaller" issues suppliers will need to be trusted by Ofgem to implement a reasonable resolution without necessarily notifying Ofgem, as long as resolution involves taking account of any detriment to customers as well as ensuring the issue will not happen again.

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 welcome Ofgem's view that fewer compliance cases will progress to enforcement within the revised regulatory framework, and we are supportive of the increased engagement between suppliers and the regulator which is suggested will support this, but would note as set out previously that this should be undertaken using a targeted risk-based approach.

We would ask that this greater engagement also translates into any enforcement activity rather than solely within general engagement and compliance areas. Ofgem's recognition that under a principles based approach there are alternative ways of doing things that will achieve the same consumer outcome is welcomed, and this needs to be understood across all parts of Ofgem including the enforcement team. This will naturally require greater engagement to allow suppliers to explain and justify their approach in particular areas.

We welcome the intention to provide greater visibility of previous enforcement cases, and would be keen that this includes how any penalty has been assessed, including understanding the impact of the mitigating and aggravating factors set out in Ofgem's enforcement guidelines.

While we recognise Ofgem's view that the current enforcement approach remains suitable for a principles based framework, we believe during the transition suppliers and Ofgem are likely to be making significant changes to policies and processes and therefore it is appropriate that both compliance and enforcement activities are understanding of the impact that this level of change could have during this time.

Managing the transition effectively

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

We are comfortable with Ofgem's level of engagement in this area, and have particularly welcomed the opportunity to engage at a number of levels. The wider stakeholder workshops have been helpful in sharing understanding and views on this issue between suppliers, Ofgem, consumer groups and other interested parties including academic experts and those from other industries with experience of principles based regulation. Engaging with Ofgem bilaterally has also been helpful in sharing views on how the revised regulatory framework would operate.

At this stage, we are comfortable to continue with the same approach to engagement, and also will continue to support Energy UK's Principles Based Regulation working group. As implementation draws closer, more frequent bilateral meetings may be appropriate to discuss our detailed approach to some licence conditions.

We believe there is a role for industry working groups in specific areas as the work programme progresses and we are keen to be involved in these.

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

We agree that a phased approach to implementation is the right approach, and would suggest that it may be appropriate to group similar licence conditions together to ensure changes are made in the most efficient manner.

The proposed regulatory framework will require significant cultural and organisational changes for suppliers and Ofgem, and a “big bang switchover” could put consumer outcomes at risk. Where changes are required across many areas of the licence conditions at the same time, a significant level of resource and time will be required by both suppliers and Ofgem to ensure amendments are planned for and implemented appropriately.

We would have concerns that neither suppliers nor Ofgem are currently resourced for a very rapid switchover, and do not believe it would be reasonable or proportionate to increase resource over this time, given that a longer phased approach could deliver the same outcomes. We also believe that there is benefit in a phased approach as learnings will be made in initial changes that can be included in later changes in other licence areas.

We also agree with Ofgem’s assessment that taking too slow an approach to implementing changes could lose momentum, and result in a less coherent regulatory framework.

Question 15: Which areas of the licences 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 set out our views on prioritising SLC 25 later in our response, and have also set out our views in Question 5 in relation to vulnerability.

We agree with Ofgem that priority should be given where there is evidence of prescriptive rules causing problems, or where market developments are leading to new risks to consumers. Subject to the conclusions of the CMA’s market investigation, we suggest the following areas may merit prioritisation:

- SLC 22A and SLC 22B. The tariff rules set out in each of these licence conditions and introduced as part of Ofgem’s Retail Market Review (RMR) have had unintended consequences in relation to the tariffs offered to customers, and also significantly constrained innovation. A principle could be introduced that would allow suppliers to offer tariffs and other services that meet the needs of their customers, while also ensuring that customers can clearly compare those tariffs and services across the market.
- SLC 23A, SLC 22C and SLC 31A. We believe the significant level of prescription within these conditions has led to complex communications where many customers find it challenging to understand the purpose of the communication itself. We believe a principle could be introduced that would allow suppliers to tailor communications to specific customer groups and better meet their needs, whether through the information provided, or the format it is provided in. A level of prescription may need to be retained, for example to ensure a consistency across suppliers where a calculation is involved.
- SLC 40. We believe the requirement to offer an In-Home Display (IHD) to customers unduly constrains innovation in a fast moving technological market. We believe a

principle would provide for more flexibility in how information is provided to customers and better meet customer needs, while still ensuring that the required information is provided to customers.

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.

It is difficult to comment in any detail on the costs and benefits of a principles based regulatory framework, as there are still many unknowns in relation to how Ofgem intend to implement and operationalise the revised framework. However we would suggest that costs and benefits may arise in the following areas.

Possible areas of increased cost

- Where there are alternative ways to achieving the same outcome, suppliers may need to undertake additional consumer research activity to current levels to fully understand the right approach for their own customer base which will increase costs.
- Similarly, where prescription is removed, suppliers will need to document decision making to evidence that policies and processes will meet the overarching principle which will add to resource during implementation of any amended or new requirements.
- Monitoring and compliance activity will need to be expanded to ensure that policies and processes continue to be appropriate on an ongoing basis, particularly as the market evolves.
- We expect that Ofgem's intention to engage with suppliers more regularly will require increased resource to support

Benefits

- Principles will give suppliers greater flexibility in the way that they achieve the desired consumer outcome, allowing them to comply with their obligations more efficiently and at lower cost.
- Principles will facilitate the emergence of innovative products and services which might otherwise have been prevented by prescriptive rules, leading to wider consumer benefits.

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)?

If SLC 25 is to be made principles based, it will be important to ensure that robust monitoring and compliance arrangements are in place from the time the changes come into effect, to ensure there is no reduction in consumer protection in this area. We set out our views on monitoring and compliance in Question 19.

Although SLCs 25.1 and 25.2 are appropriate as narrow principles, we believe they may have been made redundant by the broad principles in SLC 25C (Standards of Conduct). Specifically, it appears that the obligations in SLCs 25C.4 and 25C.5 cover the objectives in SLC 25.1 and 25.2 (a detailed analysis is set out in Annex 2). If so, we believe this would be a good opportunity to rationalise the licence.

We think there may be a need for an additional narrow principle, to the effect that customers must be given sufficient information to allow them to assess their chosen tariff and understand the impact of their choice. A principle along these lines could allow some of the prescriptive rules to be removed.

We would therefore suggest SLC25 could be amended as follows:

25.1 The objective of this licence condition (the “Objective”) is to ensure that:
~~(a) all information which the licensee or any Representative provides (whether in Writing, by electronic display or orally) to Domestic Customers in the course of the licensee’s Marketing Activities and/or its Telesales Activities is sufficient to allow the Domestic Customer to understand the impact on them of their chosen product, and its suitability for their own circumstances is complete and accurate, is capable of being easily understood by Domestic Customers, does not relate to products which are inappropriate to the Domestic Customer to whom it is directed, does not mislead the Domestic Customer to whom it is directed and is otherwise fair both in terms of its content and in terms of how it is presented (with more important information being given appropriate prominence); and the licensee’s Marketing Activities and Telesales Activities and all contact by the licensee or a Representative with, and the behaviour of the licensee and any Representative towards, a Domestic Customer in the course of the licensee’s Marketing Activities and/or Telesales Activities are conducted in a fair, transparent, appropriate and professional manner.~~

~~25.2 The licensee shall take all reasonable steps:
(a) to secure the achievement of the Objective; and
(b) to avoid doing anything which jeopardises its ability to achieve the Objective.~~

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

Existing licence obligations, notably SLC23.1 (requirement to take all reasonable steps to make the customer aware of the Principal Terms of a contract prior to them entering into it) and SLC 25C (Standards of Conduct) together with the requirements of the Consumer Contract Regulations 2013 should be sufficient in most areas to ensure that activities in Telesales and Marketing activities are undertaken in an appropriate manner and that consumer outcomes are met.

There may be some merit in having additional requirements for a standardised approach to quotes and comparisons, to ensure consistency for consumers across all parties within the market including TPIs, but this could be achieved by the additional narrow principle set out in our response to Question 17 in combination with definitions set out in SLC 1.

We also believe there is a strong case for a new prescriptive rule to create a “safe harbour” exemption for suppliers dealing with third party intermediaries (TPIs), in cases where TPIs are seeking to sell on behalf of multiple suppliers. The licence conditions currently hold suppliers responsible for the actions of a TPI acting on their behalf, and suppliers therefore seek to ensure that a TPI complies with their internal sales and marketing standards – which

may differ from one supplier to the next. This means that a multi-party TPI may have to employ different processes to satisfy each supplier – or individual suppliers may have to deviate from their normal standards of compliance, neither of which may be practicable. Removal of prescription within SLC 25 may exacerbate this issue as supplier practices (and expectations of the TPI) diverge.

Our proposed “safe-harbour” exemption would exempt a supplier from enforcement action in respect of any contravention by the TPI, provided that the TPI was accredited under the appropriate Code of Conduct (Confidence Code for domestic TPIs) and the contravention was not as a result of any action or omission by the supplier. We would be happy to engage further with Ofgem on this, but would note that when this was discussed with Ofgem and relevant industry stakeholders in a workshop in April 2015, there was almost unanimous support that it would meet supplier and TPI concerns in this area, and support better consumer outcomes.

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

As noted in our response to Question 17, it is important that robust monitoring and compliance processes are in place prior to removing prescription from the current SLC 25 requirements.

We are supportive of a challenge panel format to provide assurance of the approach being taken by suppliers and to share good practice within industry. Such bilateral engagement would also support suppliers in understanding how Ofgem intend to amend their approach to compliance.

After implementation, we believe Ofgem should continue to engage with suppliers and third parties on a bilateral basis to understand how they are implementing the revised obligations, and believe this would be a more appropriate point to undertake a challenge panel in this area, as all parties will be much more open to sharing their current practices.

**ScottishPower
March 2016**

COMPARISON OF SLC 25 and SLC 25C

Requirements for Marketing and Telesales Activities	Standards of Conduct Requirements
25.1 (a) all information which the licensee or any Representative provides	25C.4 The Standards of Conduct are that: (b) the licensee and any Representative provide information (whether in Writing or orally) to each Domestic Customer which:
- is complete and accurate,	(i) is complete, accurate and not misleading (in terms of the information provided or omitted);
- is capable of being easily understood by Domestic Customers,	(ii) is communicated (and, if provided in Writing, drafted) in plain and intelligible language;
- does not relate to products which are inappropriate to the Domestic Customer to whom it is directed,	(iii) relates to products or services which are appropriate to the Domestic Customer to whom it is directed; and
- does not mislead the Domestic Customer to whom it is directed, and	(i) is complete, accurate and not misleading (in terms of the information provided or omitted);
- is otherwise fair both in terms of its content and in terms of how it is presented (with more important information being given appropriate prominence)	(iv) is otherwise Fair both in terms of its content and in terms of how it is presented (with more important information being given appropriate prominence);
25.1 (b) the licensee's Marketing Activities and Telesales Activities and all contact by the licensee or a Representative with, and the behaviour of the licensee and any Representative towards, a Domestic Customer in the course of the licensee's Marketing Activities and/or Telesales Activities are conducted in a fair, transparent, appropriate and professional manner.	25C.4 (a) the licensee and any Representative behave and carry out any actions in a Fair, honest, transparent, appropriate and professional manner
25.2 The licensee shall take all reasonable steps: a) to secure the achievement of the Objective; and b) to avoid doing anything which jeopardises its ability to achieve the Objective.	25C.5. The licensee must take all reasonable steps to achieve the Standards of Conduct and ensure that it interprets and applies the Standards of Conduct in a manner consistent with the Customer Objective.