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The future of retail market regulation

SSE is pleased to enclose its response to the above consultation. We have provided a response to the specific questions posed as part of the consultation within the attached annex. In addition to this response, SSE is also submitting a supporting paper entitled 'Principles-Based Regulation'. Where a response to a particular question is contained within this additional paper, we have referred to the particular section in question.

Creating a regulatory framework which supports effective competition and innovation

The 'Simpler, Clearer, Fairer' objectives, which were at the heart of the RMR reforms, are still relevant in the context of Future Retail Regulation. These objectives should also underpin Ofgem's approach towards principles-based regulation (PBR). Instead of prescriptive rules, these objectives should be translated to principles which are designed to put the customer at the heart of supply regulation. SSE is supportive of a customer-centric approach, which ties in with our wider ethos of seeking to treat customers like family. SSE view the proposed introduction of Principles-Based Regulation (PBR) as a positive step by Ofgem, which has the potential to deliver improvements for customers by focusing more on outcomes, rather than meeting prescribed formats.

SSE has reviewed the Gas and Electricity Supply Licences with a view to assessing which licence conditions could be replaced with a more principled approach and those where more prescriptive rules would be either advantageous or necessary. The outcome of this review is contained within SSE's supporting discussion paper 'Principles-Based Regulation'. The

licence conditions have been split into two categories, SLCs suitable for PBR and SLCs not suitable for PBR.

To illustrate SSE thought's in relation to a good example of a PBR licence condition, an alternative to SLC 22C is provided below. SSE has found this licence condition to be one of the most unnecessarily prescriptive licence conditions introduced under RMR. In general, SSE is concerned that aspects of the domestic energy supply licence require an overly complex volume of information to be delivered to consumers. In SSE's opinion PBR provides significant scope for innovation around customer engagement. By enabling suppliers to develop optimum approaches to customer communication, PBR offers the potential to deliver improvements for customers.

Ofgem's regulatory approach to PBR licence conditions should incorporate the following elements:

- (i) Licence conditions should be as clear and simple as possible.
- (ii) Ofgem's expected customer outcomes should be clearly specified.
- (iii) Certain aspects of "baseline" customer service and information provision should be either prescribed in the licence or contained in regulatory guidance (if deemed appropriate). This is necessary for two reasons: first for the purposes of consumer protection; and, second, for the purposes of regulatory certainty for the supplier.
- (iv) Licence conditions should only prescribe elements that are necessary to meet the objectives referred to in (ii) above. All other aspects should be left to the supplier to tailor their approach in accordance with overarching principles, and meeting any overarching outcomes.

Ofgem's enforcement approach needs to develop with PBR

Ofgem's recent approach to enforcement has focussed on the 'dissuasive' method of levying large penalties for non-compliance. Whilst this is effective in the current prescriptive regulatory framework, SSE does not agree that a dissuasive enforcement regime is necessarily appropriate for PBR. Instead, a compliance-based enforcement model would appear to be more suitable where positive consumer outcomes will be achieved through collaborative and transparent engagement between industry and Ofgem.

Effective PBR demands that there is close engagement between the Ofgem and licensee based on mutual trust. In order for a licensee to effectively go beyond the requirements laid out in licence, the regulatory expectations, outcomes and goals must be clearly

communicated by Ofgem. In order for suppliers to confidently deliver positive outcomes, any trust gained must not be abused by either party. SSE is advocating a 'two staged' enforcement regime that involves structured dialogue between Ofgem and suppliers, enabling a "without prejudice" exchange of views on what behaviours constitute compliance. Whilst we appreciate that Ofgem already regularly deals with minor instances of non-compliance using this approach, there is currently a lack of transparency of when this approach would be employed in practice and whether, assuming issues can be successfully dealt with through informal compliance dialogue, this might still result in formal enforcement measures.

Conclusion

SSE concludes the following is necessary to successfully implement and see lasting benefits from the introduction of PBR:

- A fair and appropriate enforcement process with opportunities for dialogue with Ofgem.
- Providing suppliers with the flexibility to determine the best approach to meeting a principle or outcome, coupled with an open dialogue with Ofgem
- Those licence conditions that govern a supplier's relationship with consumers would be most suited for PBR.
- PBR does not mean the end for prescriptive rules and Ofgem/industry needs to carefully consider where appropriate prescription should remain.
- Ofgem should adopt the phased approach towards implementation as suggested within the Future of Retail Market Regulation consultation document.

SSE wants to work with Ofgem to develop an effective framework and is providing an additional paper designed to compliment this response. The paper provides an overview of how SSE considers the PBR framework will need to develop in order to ensure competitive diversity, innovation and, ultimately, benefits for consumers.

Please do not hesitate to get in touch should you wish to discuss this further.

Kind regards,

Steven Findlay
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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?

PBR does not necessarily mean the end of detailed rules: it is SSE's view that not all of the supply licence conditions can be adequately covered by PBR and the licence should be a mix of PBR and prescriptive rules. There are strong arguments for saying that a tiered approach to rule design should be adopted. Principles need an underpinning of more detailed rules in some areas and detailed rules in turn need the support and coverage of principles to thwart strategies which seek to exploit gaps and inconsistencies in these detailed provisions¹.

SSE has reviewed the Gas and Electricity Supply Licences with a view to assessing which licence conditions could be replaced with a more principled approach and those where more prescriptive rules would be either advantageous or necessary.

The outcome from the review is within SSE's supporting discussion paper 'Principles-Based Regulation'. The licence conditions have been split into two categories, SLCs suitable for PBR and SLCs not suitable for PBR.

SLCs suitable for PBR

PBR approach is best for areas where there is a distinct relationship between supplier and the customer. This allows suppliers to determine what is most valid for serving their customers and what makes most commercial sense, keeping in mind reputational risk. From SSE's perspective, prescriptive RMR communication requirements would be ideal for PBR.

- The areas SSE identify as being suitable for PBR would give suppliers further scope to improve competitive diversity and innovation; and
- Providing flexibility to suppliers will bring benefits for customers too.

SLCs not suitable for PBR

Detailed rules would still be best to explain the relationship between licensees and Ofgem.

- This approach gives detail to the arena that suppliers work in but draws the line between what they are required to do within that environment.

¹ J Black Rules and Regulators (Oxford : Oxford University Press 1997) 'Using Rules Effectively'

- There are mechanisms Ofgem are responsible for such as ‘supplier of last resort’ which could be quite technical in how they are executed so it makes sense to have sufficient details of how this would be done.
- Ofgem also need to be able to request information from suppliers and this is best given in specific terms.

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.

The nature of SLC 25C governs all interactions that SSE has with its gas and electricity consumers². The very nature of this condition means that it is gradually forming the basis for all decision making within our customer-facing retail business.

Whilst SSE is not opposed to supplementing the treating customers fairly principles with other broad principles³, we believe that the new principles should focus on specific consumer outcomes (such as communications, selling, vulnerability etc) as opposed to being generic enough to sit across multiple areas of policy. SSE would therefore advocate the introduction of narrow/thematic principle that applies to specific policy areas. For example:

- Sales and Marketing;
- Vulnerability (akin to the recent changes to the Priority Services Register)
- Debt Management (including disconnection)
- Billing (including Metering)
- Supplier Communications (including communications relating to the end of fixed terms, price increases etc).

² SSE will soon submit a Standards of Conduct Progress report for Ofgem.

³ SSE notes the Competition and Markets Authority to proposal introduce an additional standard of conduct into SLC 25C that would require suppliers to have regard in the design of tariffs to the ease with which customers can compare value-for-money with other tariffs.

SLC 25C will act as an overarching obligation that continues to govern all interactions, with the supporting fairness test.⁴

The broad principles, as noted on page 16 of Ofgem's consultation document, are not focussed on consumer outcomes. This would appear to be an additional layer of obligation with no real benefit for consumers. Suppliers should be expected to demonstrate each of these as minimum within a PBR framework.

Ofgem notes the following:

Constructive engagement with the regulator – SSE would expect this to be to a key proponent of any principles-based regulation regime. Any supplier that fails to appropriately engage with the regulator will find itself facing more scrutiny from Ofgem and, potentially, at greater risk of investigation or enforcement. We do not consider this proposal to deliver any additional benefit for consumers. In addition, the inclusion of such a principle could imply that suppliers should give Ofgem regular updates of their plans, or risk facing enforcement action.

Good record-keeping – Compliance with the regulatory framework should be the responsibility of each individual supplier. Each supplier should be expected to evidence and demonstrate where a particular process or business decision has been taken with the aim of delivering positive consumer outcomes. Good record-keeping will automatically form part of this as any failure to demonstrate an adherence to a particular principle is likely to lead to further investigation or enforcement action.

Board-level assurance around embedding of principles – SSE takes its responsibility in relation to compliance with the domestic energy supply licence extremely seriously. Therefore, the introduction of a principles-based regime would potentially overlap existing company law upon which provides a framework and incentive for suppliers to follow good practice with regards to board-level assurances.

SSE would expect each supplier to appoint a member of senior management as responsible for the delivery of each principle (be it narrow or broad).

Not putting consumer outcomes at risk – Ofgem's PBR regime will ensure positive consumer outcomes without the need to introduce a broad principle requiring that suppliers do not put consumer outcomes at risk. As stated previously, the nature of SLC 25C requires a

⁴ When considering whether a breach of the SoC has occurred, SSE continues to advocate the use of the 'Wednesbury reasonable test' as opposed to Ofgem's current approach which considers whether a 'reasonable person intent on complying with the SoC, would have acted in the way a supplier did in its interactions with consumers'.

licensee to ensure that their actions or omissions do not give rise to the likelihood of detriment to a domestic customer. SSE believes that this licence condition is enough to ensure that consumer outcomes are not put at risk through the actions of the licensee. Indeed, if a supplier was to put consumer outcomes at risk under another principles-based licence condition it would find itself at risk of compliance issues or possibly enforcement as well as associated reputational damage.

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

SSE would advocate the use of narrow principles across the broad policy areas set out within our response to Q2. Ofgem's Standards of Conduct (or SLC25C) will act as a broad principle upon which to underpin all interaction with consumers, with each narrow principle aimed at achieving a specific outcome.

For example, any supplier communication will need to ensure it meets the requirements of SLC 25C through the delivery of information that is complete, accurate and not misleading. The supporting narrow principle would then require suppliers to deliver certain elements of information to suit the specific circumstance, for example an Annual Statement or Price Increase Notification. Ofgem would prescribe the different elements of information that must be included (i.e. tariff information, estimated annual cost) with suppliers being left to decide how best to deliver information in a manner that secures positive consumer outcomes⁵.

Within Chapter 5 of the consultation, Ofgem propose to use a phased approach towards implementation. SSE believes that a phased approach should also be adopted when moving towards broad principles. It would seem prudent to allow for the development of an outcome based regime through the initial use of narrow principles allowing suppliers to demonstrate a substantial culture change and adoption of PBR before moving towards more broad principles. There is a slight risk that moving immediately towards broad principles risks that suppliers (large and small) do not embrace PBR in the nature upon which it was intended leading to issues for consumers.

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

⁵ SSE is currently assessing the outcome of the CMA's investigation in more detail and will provide Ofgem with further thoughts in due course.

SSE does not agree that consumer protection should be incorporated into the domestic energy supply licence. Ofgem, and other regulators, already hold powers through which to enforce consumer protection legislation. If Ofgem incorporated consumer protection into the licence it would merely duplicate an already existing set of requirements that suppliers need to comply with.

The Consumer Rights Act ('CRA') has amended the Enterprise Act 2002, to widen the scope of the measures that regulators (such as Ofgem) take in respect of a breach. SSE believes that Ofgem already has a wide range of measures in relation to redress, compliance and information gathering which can be utilised and applied on a case by case basis.

In addition to an application for injunction, the specific remedies available to Ofgem under the CRA include:

- Requesting a supplier pays consumer redress;
- Advertising or notifying consumers of their right to redress (as well as other measures implemented to rectify the situation);
- Appointing a compliance officer;
- Undertaking internal spot-checks etc.

Granting Ofgem additional powers under the proposed PBR licence conditions could lead to suppliers being penalised twice for the same breach under two separate regimes (i.e. SLCs and CRA). In addition, other regulators could bring sanctions against an energy supplier under the CRA with Ofgem bringing separate sanctions under the SLCs. This could lead to an inconsistency in interpretation of the rules between regulators as well as the sanctions that are imposed.

The SLCs already provide for general principles in which to protect consumers, such as the Standards of Conduct. Accordingly, given the increased remedies available to Ofgem under the CRA, it makes little sense to incorporate consumer protection legislation into the energy supply licences to further increase Ofgem's enforcement rights. Other non-sectoral regulators such as the Competition and Markets Authority and Trading Standards are already effective in promoting consumer rights and protection under the appropriate legislation.

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

The regulatory framework for protecting vulnerable customers should be flexible enough to accommodate those customers that are either in a transient (i.e. divorce, loss of family member) or static (i.e. blind, physically disabled) vulnerable situation.

SSE believes the introduction of a narrow principle requiring suppliers to make all reasonable adjustments, across all processes to suit the needs of the customer and their particular situation will provide enough protection to ensure positive consumer outcomes across all interactions with their supplier. The use of a narrow principle will allow Ofgem to outline regulatory objectives and values (i.e. meeting the needs of all vulnerable customers during any interaction), allow licensees to devise their own systems for serving such principles and encourage innovation to tackle particular issues and ensure that those customers remain part of the competitive market.

However, in certain circumstances, regardless of the type of vulnerability, suppliers should be expected to adhere to a minimum set of requirements. For example, the requirement under SLC 27.10 and 27.11 where the licensee must not disconnect a customer where it has reason to believe the customer meets certain criteria (i.e. pensionable age or lives with someone under the age of 18 etc). It is important to ensure a minimum level of protection for those in the most vulnerable situations.

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

Yes, SSE agrees with the proposed approach to guidance. We do not wish to see a number of additional rules introduced through the 'back door'. For example, whilst the financial service industry is regulated through a relatively low number of broad principles, the Financial Conduct Authority Handbook contains a vast amount of guidance that regulated firms are expected to adhere to.

However, in the absence of written guidance, Ofgem's proposal to enhance one-to-one engagement with suppliers will become increasingly important. During the redevelopment of a particular process or procedure, SSE might undertake a market-based trial in reaction to consumer feedback or complaints. The information gleaned from a trial might identify an alternative approach to delivering a procedure that result in better outcomes for consumers.

Clearly, SSE would wish to engage with Ofgem throughout this process to discuss findings, outputs and SSE's decision-making process. Ofgem note that engagement encompasses the

testing of a radically new idea. Therefore Ofgem must be in a position to react to supplier requests in a timely manner whether this is a request for guidance or feedback as not to delay the implementation of positive consumer outcomes. SSE appreciates that the onus will be on licensees to achieve positive consumer outcomes. However, in reality, and certainly in the early stages of principles-based development, it is likely that suppliers will look to Ofgem for an increased level of support and guidance (not in the 'written' format).

SSE has expanded further on this within its response to Chapter 3.

Chapter 3: Operating the rulebook: engagement and monitoring activities

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

Effective PBR demands that there be close engagement between the regulator and licensee based on mutual trust. In order for a licensee to effectively go beyond the requirements laid out in licence, the regulatory expectations, outcomes and goals must be clearly communicated by Ofgem.

Instead of taking actions to secure compliance with prescriptive requirements, PBR involves the development of trust and cooperation to identify means of meeting the goals enshrined in principles. Suppliers will increasingly respond to the threat of compliance issues or enforcement by seeking guidance from Ofgem, and there is a risk that Ofgem will seek to offer prescriptive guidance in order to overcome this.

Whilst SSE appreciates and agrees with Ofgem that written guidance should be avoided unless absolutely necessary, during the development of a particular principle (whether broad or narrow) the policy intent must be thoroughly understood by all to ensure the consumer outcomes are achieved. Whilst a licensee might choose to deliver compliance in a different manner to that of a competitor, there should be no ambiguity over the consumer outcome the principle is attempting to achieve.

Clearly, suppliers will be expected to engage with Ofgem throughout the development of a particular policy or legislative change. However, Ofgem has accepted the need for an enhanced engagement and monitoring programme to help aid understanding of the delivery of positive consumer outcomes. In order to ensure effective engagement Ofgem and suppliers will need to be reasonably flexible in arranging the necessary bilateral meetings, workshops etc.

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

As noted above, effective engagement between the licensee and regulator is paramount to ensuring the success of a PBR regime. SSE notes that some suppliers are requesting that a policy interpretation and advice function is introduced within Ofgem.

Whilst SSE agrees that fair and appropriate dialogue with the Ofgem will become increasingly important (particularly for new entrants), we do not agree with the proposal to introduce a policy interpretation function. This could lead to Ofgem inadvertently introducing de facto requirements through the provision of advice provided to a specific supplier or prospective new entrant. It is SSE's opinion that support is not required for new or prospective entrants over and above that available to existing or established suppliers. PBR is a new venture for the entire industry and additional support should not be provided solely to those entering the market. Indeed, one of the main benefits of introducing PBR is to shorten the energy supply licence and make it easier to understand.

Ofgem's desired outcome of a transition to PBR should be to facilitate greater innovation and competition. To promote this outcome, guidance or support must be flexible and allow for different suppliers to comply with Ofgem's principles in different ways. A supplier should be expected to be able to evidence that due process was followed when it made the business decision to take an action, and be able to demonstrate to Ofgem why the decision adheres to the relevant principle. This would apply equally to existing suppliers and new or prospective entrants.

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?

Monitoring and assessing the characteristics of the firms Ofgem is regulating will be a key challenge under a PBR framework. Whilst Ofgem is attempting to address this challenge through an updated engagement and compliance regime, it is important to devise a monitoring strategy for dealing with the different business models and approach towards servicing their customers that the respective licensees adopt. Suppliers, through the development of their own processes and procedures to meet consumer outcomes prescribed through PBR, will be required to satisfy themselves that the consumer outcomes set out in Ofgem's policy objectives are being achieved.

Ofgem's monitoring framework will need to be one that suppliers are able to report upon and provide information in a consistent manner. If Ofgem is unable to compare information

from different suppliers in a consistent format then it will be difficult to determine whether issues are industry-wide or confined to a particular supplier. SSE would therefore recommend that during development of each phased approach of PBR implementation the monitoring requirements should be consulted upon.

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.

SSE fully supports Ofgem's intention to expand engagement with suppliers to enhance their understanding of a particular business. The introduction of PBR will further develop the vast amount of different business models in the energy supply marketplace and in order to regulate effectively Ofgem will need to be in a position to understand the intricacies of each model.

It is unrealistic to expect a company to 'get things right first time every time' (insofar as suppliers will need to learn and develop processes to constantly improve the consumer outcome) therefore an effective engagement regime between Ofgem and industry will ensure that consumers are protected throughout the development of PBR.

SSE also agrees with Ofgem's intention to collaborate with Citizens Advice⁶ and the Ombudsman. Both organisations provide a vital service to consumers and will hold a lot of information relating to current market practices and consumer outcomes. In particular, the Ombudsman will hold a wealth of complaints data that the industry and Ofgem can use to drive further improvements under a PBR framework. Indeed, Ofgem has recognised the increasing role the Ombudsman has through the recent 'Review of Ombudsman Services: Energy'⁷

⁶ SSE notes the CMA's Provisional Finding for Citizens Advice to become a recognised provider of information and support to domestic electricity customers on restricted meters.

⁷ <https://www.ofgem.gov.uk/publications-and-updates/review-ombudsman-services-energy>

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?

SSE agrees with Ofgem's view that there should be much greater onus on suppliers, up to and including senior management, to work out and understand what is fair for consumers. Despite having made significant progress following the introduction of the Standards of Conduct, SSE accepts further cultural change across the industry is required to support and deliver innovation, competition etc and Ofgem's new approach towards engagement and compliance is paramount towards ensuring the success of PBR.

As noted within our response to Q7, instead of taking actions to secure compliance with prescriptive requirements, PBR involves the development of trust and cooperation to identify means of meeting the goals enshrined in principles. Suppliers will gradually respond to the threat of compliance issues or enforcement by increasingly seeking guidance from Ofgem. The more severe Ofgem's approach to enforcement becomes, the more likely it will become that industry requests more specific guidance on which to navigate PBR effectively.

This goes against Ofgem's stated intention of preventing rules being introduced through the back door. Whilst SSE appreciates that Ofgem will expect suppliers to have compliance discussions and adopt a policy of transparency to ensure confidence in a particular suppliers approach. In addition, Ofgem's dissuasive nature of enforcement will need to change with the concept of self-reporting.

In providing information to Ofgem, suppliers will need to have confidence that if a transparent approach has been adopted by a particular supplier, this will be reciprocated by Ofgem.

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.

PBR will allow suppliers flexibility in ensuring they deliver on outcomes, this flexibility will mean that suppliers have to take responsibility and ownership of the outcomes and demonstrate how they have considered the outcomes within their business decisions. Ofgem should aim to allow suppliers to take that responsibility with confidence, adopting an “educative and advisory” approach to supervision and enforcement.

SSE is advocating a ‘two-stage’ enforcement process under PBR. A ‘two-stage regime’ would involve an initial stage of informal dialogue between both parties that enables a ‘without prejudice’ exchange of views on what behaviours constitute compliance. Should Ofgem maintain that the behaviour is unacceptable subsequent to discussions, a reasonable timeframe should be agreed with the supplier to remedy what Ofgem considers to be a breach before they become liable for formal enforcement.

SSE is continuing to undertake further analysis and evaluation of different enforcement models across a variety of different industries. SSE would welcome further discussion with Ofgem in order to develop and implement a model that best protects consumers’ interests, whilst providing suppliers with an open and transparent approach to enforcement.

Please refer to Section 6 (‘Enforcement’) of SSE’s supplementary discussion paper entitled ‘Principles-Based Regulation’ submitted alongside this consultation response.

Chapter 5: Managing the transition effectively

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

SSE wishes to be as transparent and open as possible in order to ensure effective engagement delivers the best possible regulatory regime to the benefit of consumers.

Clearly, a change of this nature will require much debate and discussion. Whilst responding to a consultation is appropriate and provides an opportunity for stakeholders to air their views on a particular subject, SSE believes that bilateral meetings and industry workshops will be important in ensuring the best outcome for consumers, Ofgem and industry.

Please refer to Section 3 ('what does Principles-Based Regulation mean to SSE?') of SSE's supplementary discussion paper entitled 'Principles-Based Regulation' submitted alongside this consultation response for more information.

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

Yes, SSE agrees with Ofgem's proposed approach.

The suggested 'big bang' approach will bring a whole host of additional risk as PBR is a significant change for the industry and should be managed in phased and controlled manner.

SSE is supportive Ofgem's view that a gradual approach will potentially delay progress and risk losing momentum.

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.

SSE is strongly recommending that Ofgem prioritise those areas of the licence relating to information requirements as part of a 'sale', bills, annual statements, end of fixed term letters, Tariff Comparison Rates and Tariff Information Labels. We consider this area to hold the most potential space for innovation that could lead to delivering better consumer outcomes⁸.

Whilst SSE agrees with Ofgem's proposal to explore the potential reform of licence obligations relating to sales and marketing (or SLC 25) we do not believe that this will deliver immediate positive outcomes. SSE has completed a high-level impact assessment of the potential benefits delivered through a principles-based approach under SLC 25 and note that the differences to practical delivery of a sale are unlikely to change dramatically. However,

⁸ SSE notes the CMA's Provisional Finding contains a recommendation to remove certain elements of SLC 22A and SLC 22B.

using SLC 25 as a test case will allow suppliers to develop an appropriate internal culture and regime more adapted to the use of principles. It will also allow Ofgem to embed their new approach to engagement and compliance.

In order to fully achieve a positive outcome for consumers, SSE believes that the approach under which information is delivered to consumers through a 'sale' or other regulatory notifications/communications should be reviewed in order to see real benefit for consumers.

Given the prescriptive requirements to provide detailed information, consumers may feel that they have been given too much information on the sales call and yet may still not fully comprehend their rights or details of their tariff. The customer journey through SSE's existing sales process for switching tariff within a supplier is long and involves the provision to customers of a considerable amount of information. In order to comply with all relevant regulations, SSE's sales call is on average 20 minutes long and provides the customer with arguably, more information than can be reasonably assimilated in a telephone call. It may also inadvertently convey the impression that switching energy provider is as risky and significant as say, a major financial services purchase, rather than as straightforward as, say, taking out a mobile phone contract, and thereby deters customers. It should be noted that much of these customer interactions are already covered by existing consumer protection legislation and it is therefore worth revisiting the need for the requirements to provide information in a specific format to consumers.

Whilst SSE supports Ofgem's intention to review SLC 25, without a more thorough review of the information requirements it is unlikely consumers will begin to see any real benefit through the delivery of better services and more engaging information. SSE would therefore recommend that those licence conditions requiring the provision of information during a 'sale' are reviewed to ensure that suppliers are delivering the most pertinent information allowing customers to make informed decisions.

In addition to the above, and as part of the overall review of regulatory communications, SSE would welcome a review of the information currently required on bills and annual statements. The annual statement and billing requirements were heavily affected as a result of Ofgem's prescriptive content requirements following the RMR. Pre-RMR a total of three pages in the supply licence set out the requirements of both of these documents. Post-RMR, there are nine pages of requirements for bills and 16 pages of requirements for annual summaries – an eightfold increase in the level of prescription of both content and layout of these documents. In addition, the licence conditions contain a significant number of complex requirements relating to Tariff Comparison Rates, Tariff Information Labels and End of Fixed Term Notices ('TCR', 'TIL' and 'EOFT' respectively).

SSE has long argued that the bill contains too much information. An approach that provides suppliers with greater flexibility is likely to result in communications being designed in a way that is more effectively targeted towards our consumers' wants and needs. For example, a bill could be used to communicate the essential information that customers want, whilst leaving the annual summary (as the title would suggest) to be a pivotal document used to communicate important regulatory information to the customer. Greater flexibility under PBR, for communications as a whole, would allow suppliers to react more quickly to their customers' needs and enable suppliers to produce more consumer centric documents and information.

The recent Ofgem open letter entitled 'Improving consumer communications and the value of trials'⁹ notes that Ofgem is currently reviewing the regulatory requirements that apply to customer communications. SSE would recommend that the work currently being undertaken is brought under the wider PBR spectrum and considered as part of a wider review into how the information requirements could become principles-based¹⁰.

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.

At this stage, SSE does not hold specific costs and benefits of regulation via principles as opposed to prescription. However, the cost saving to our business is not SSE's priority through the introduction of PBR. SSE firmly believes that the introduction of PBR will ultimately deliver better consumer outcomes by fostering a more innovative and competitive marketplace.

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)?

⁹ <https://www.ofgem.gov.uk/publications-and-updates/effective-billing-and-information>

¹⁰ SSE also notes the CMA's Provisional Finding recommending that Ofgem establish an ongoing programme to identify, test and implement appropriate changes to the energy supply licence. SSE would welcome further discussions with Ofgem to understand how this would work in practice.

Yes. SSE does not believe additional principles are needed for regulating sales and marketing activities. Ofgem has noted within the consultation document that enforcement action to date would suggest that the existing overarching principles provide a robust means of protection for domestic consumers. In addition, much of the prescriptive requirements contained within SLC 25.3 to SLC 25.17 are duplicated under consumer protection legislation (albeit the format of delivery is not prescribed) and SSE believes this provides a significant additional layer of protection for consumers. However, as noted within our response to question four, we do not believe that consumer protection legislation should be incorporated into SLC 25.

Suppliers will also be required to consider their obligations under the Standards of Conduct and ensure that all of the information provided does not significantly favour the interests of the licensee such that this gives rise to potential detriment for consumers. In doing so, suppliers will need to be comfortable that all customers are making well informed switching decisions based on information that is complete and accurate, does not mislead and be otherwise fair.

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

As noted within question 17, SSE believes that the wider regulatory framework will provide the necessary consumer protection required to safeguard well informed switching decisions are taken by consumers.

Within the consultation document, Ofgem note that SLC25.10 regarding the retention of comparison information might need to be retained. Whilst SSE does not necessarily disagree, as per our response to question two, we would question whether Ofgem needs to introduce a principle that requires a supplier to hold specific records. This information is also required for improving complaint handling and introducing business improvement. Each supplier should be expected to evidence and demonstrate where a particular process or business decision has been taken with the aim of delivering positive consumer outcomes. Good record-keeping will automatically form part of this as any failure to demonstrate an adherence to a particular principle is likely to lead to further investigation or enforcement action.

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



The introduction of a risk-based approach towards enforcement combined with self-reporting guidance will give suppliers a clear indication of the type of information and issues that Ofgem would expect to be reported. This would allow Ofgem to focus resource, time and effort on the material issues causing consumer detriment. SSE believes this is the most effective approach to managing enforcement within a PBR regime.

The reporting requirements for SLC 25 should be consistent with those considered under other PBR licence conditions. The framework for reporting should be focussed with a common understanding between Ofgem and SSE as to why a particular item of information is being provided and the specific consumer outcome it is intending to measure. Ofgem has already stated its intention to work closely with Citizens Advice and the Ombudsman to closely scrutinise complaint data and this could be used as a potential measure.