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By email: Clement.Perry@ofgem.gov.uk

Dear Clem

Helping customers make informed choices

Thank you for the opportunity to comment on Ofgem's proposals to ensure customers can make informed choices. This non-confidential response is submitted by Centrica on behalf of British Gas.

We support Ofgem's swift action to deprioritise the simpler choices rules such as the four-tariff cap and the restriction on discounts and bundles. We also welcome Ofgem's recognition that removing the simpler choices rules has consequential impacts on the information remedies.

We support Ofgem's move from relying on prescriptive rules towards more principles-based rules in the domestic retail market because it will unlock innovation and ensure that suppliers put customers at the heart of their businesses. We believe that Ofgem's proposals represent a good start, though believe Ofgem should go further, faster, and consider all options for the future of current prescriptive regulations that are under review.

Informed choices objective and tariff comparability principles

We agree that suppliers should make it as easy as possible for customers to make informed choices. We believe that Ofgem's proposed policy objective for comparability would be an effective narrow principle for suppliers to operate to. Indeed, the policy objective, combined with existing obligations like the Standards of Conduct (SOC) and consumer law, is all that is necessary to allow customers to make informed choices. On the basis of the evidence and justification provided, we believe it could run counter to the Principles of Good Regulation¹, in particular proportionality, to introduce the three more specific principles that underlie the policy objective.

We did not support the CMA's proposed comparability principle because it risked undermining innovation by placing undue restrictions on product design, leading to standardisation. We do not believe that Ofgem's drafting carries the same risks as the

¹ Principles of Good Regulation, Better Regulation Taskforce
<http://webarchive.nationalarchives.gov.uk/20100407162704/http://archive.cabinetoffice.gov.uk/brc/upload/assets/www.brc.gov.uk/principlesleaflet.pdf>

CMA's did because Ofgem's policy objective and principles do not refer to tariff "design" or "value for money". We urge Ofgem to remain alive to the risk of undermining innovation as the drafting process continues.

Sales and marketing principles

We agree that sales and marketing should be conducted in a "fair, honest, transparent, appropriate and professional manner" and lead to customers choosing tariffs that are appropriate for them. We believe that one of Ofgem's proposed principles – Principle 4 – is already covered by the SOC and we do not see any benefit from duplicating the SOC in other parts of the licence. Indeed, we believe that the SOC have been effective in promoting fairness and are well-embedded and understood in our organisation.

While we agree with Ofgem's policy intent, we also believe that Principle 5 is covered by the Consumer protection from Unfair Trading Regulations 2008 (the CPRs) so question the need to replicate these requirements in the supply licence. If Principle 5 is retained, we feel that Ofgem should be clearer about what it is worried about when it talks about "high pressure sales techniques" and should rather reflect the known and understood test under the CPRs.

Principle 6 should clarify that suppliers are free to discuss a range of tariffs and are under no obligation to recommend a product. It should also clarify that a supplier can only assess what is appropriate based on information provided by the customer.

Removing Retail Market Review (RMR) prescription

We support Ofgem's proposal to remove prescription around the Personal Projection calculation methodology, which will enable suppliers to determine how best to estimate cost information for their customers. A prescriptive methodology may not cater for future tariffs or customer preferences, so could either inhibit innovation or need to be constantly changed over time, creating inconsistency for customers and regulatory uncertainty for suppliers. Suppliers may create products that do not neatly fit within the Personal Projection methodology. For instance, it is questionable whether products which allow customers to purchase "blocks" of energy to be "drawn down" over time could be incorporated into any Personal Projection methodology in a meaningful way. It seems inconsistent for Ofgem to propose a principle for suppliers to provide "tools" to aid comparability but then to prescribe in detail those tools. Such prescription inhibits suppliers' ability to compete and innovate.

We believe that Ofgem has missed an opportunity to promote competition, unlock innovation and better protect customers by not exploring alternatives to the prescriptive Cheapest Tariff Messaging (CTM) and Tariff Information Label (TIL) requirements. We strongly urge Ofgem to consider all options for the future of the CTM as part of this consultation, even if the CTM is in scope of Ofgem's testing programme, for two main reasons:

- The CTM will become increasingly misleading to customers as tariffs become more innovative and different from each other, which itself could undermine the innovation that the CMA and Ofgem want to see.
- There is a risk that the CTM continues, as the CMA said, to "*create perverse incentives for suppliers not to offered [sic] discounted tariffs or to reduce the extent of discounting*"², even with the removal of the "available to all" rule.

² CMA Final Report, paragraph 12.392

CTM is unsuitable for a market with innovative and differentiated propositions

Ofgem is considering alternative ways to engage customers in a market that, following the removal of the “simpler choices” rules, enables suppliers to innovate, differentiate and target their products according to the preferences of different customer groups. It is not obvious that a prescriptive CTM is the most appropriate way to engage customers in this context. Even worse, it could become increasingly misleading.

For instance, suppliers are already offering static Time of Use (ToU) tariffs with free periods³, deals where customers can buy “blocks” of energy that they can draw down, “fixed bill” tariffs, and energy bundled with other services. We expect innovation, such as dynamic ToU tariffs, to be further enabled by technological developments such as smart metering.

As more innovative and differentiated products are introduced, it will become more difficult to be able to tell a customer with any degree of certainty which tariff will be “cheapest” for them. For example, the supplier won’t know how much energy the customer will consume and when (or, in the case of some dynamic ToU tariffs, even what the price will be and when). The CTM also risks disguising tariffs that customers may consider to be better value for money because the additional value, such as a free service, cannot be included in the headline energy price. We are concerned that suppliers will be increasingly forced to choose the “cheapest” tariff from tariffs that cannot be compared on a like-for-like basis, thus misleading customers.

To avoid these problems, suppliers may be discouraged from developing and introducing innovative products in the first place.

A principles-based approach would better enable suppliers to keep customers informed about alternative deals that they might value, without undermining innovation to the same extent.

The risk that the CTM continues to adversely impact on competition

The CMA considered that the CTM exacerbates the Adverse Effect on Competition (AEC) caused by the rule requiring tariffs to be available to new and existing customers. The CMA did not say that the “*perverse incentives for suppliers not to offer discounted tariffs or to reduce the extent of discounting*” created by the CTM rules would disappear once the “available to all” rule was removed.

Ofgem has proposed to maintain the current CTM requirements without exploring alternative options. Ofgem should recognise the potential ongoing risk that the current CTM poses to competition and conduct a thorough economic assessment of the risk against all alternative reform options during this consultation process. In practice, Ofgem should at least explore the following:

- a) Remove the CTM
- b) Adopt a principles-based approach to CTM
- c) Alter the prescriptive nature of the CTM, e.g. allow suppliers to show FTCs to customers on evergreen tariffs, allow suppliers to show the overall cheapest tariff that

³ British Gas’ HomeEnergy FreeTime

the customer is able to access, and to provide more flexibility around how, where and on which communications suppliers must provide the CTM.

In conducting its economic assessment of the reform options for CTM, Ofgem should be mindful that the CMA concluded that SLC 25A adversely effected competition as well as the “new and existing customers” rule. More generally, we believe that Ofgem should state that it has made a clear break from the policy thinking that underpinned these past interventions.

Rolling off fixed term contracts

We agree that customers rolling off Fixed Term Contracts should be able to be offered another FTC to roll onto, provided that the customer is able to exit this tariff at any time with no penalty. This increased flexibility should provide more room for suppliers to improve customer satisfaction. There is also need for reform of how this information is communicated, not just what tariff is offered. We believe Ofgem should review the prescription around bills, the annual summary, end of fixed term notices and unilateral disadvantageous price change letters. As we highlighted in our response to Ofgem’s Future of Retail Regulation (FRR) consultation in March 2016⁴, we believe that prescription in this area restricts suppliers from communicating with their customers in a way that promotes engagement. To allow suppliers to roll customers onto another FTC, Ofgem will need to make consequential amendments to the prescriptive rules concerning end of fixed term notices – this presents an excellent opportunity to undertake a more holistic review of SLC 22C.

Next steps

We will continue to engage openly with Ofgem on the transition to principles-based regulation. We look forward to responding to Ofgem’s next FRR consultation later this year, which we hope will propose to remove prescriptive rules for supplier communications. If you have any questions about this response or our thinking on FRR, please contact Thomas Lowe by calling 07769 548 906 or emailing Thomas.Lowe@centrica.com.

Yours sincerely

Alun Rees

Director, Retail Market Policy

Centrica

⁴ British Gas response to Ofgem Future of Retail Market Regulation consultation, March 2016
https://www.ofgem.gov.uk/system/files/docs/2016/06/british_gas_response.pdf

Appendix 1 – Centrica response to consultation questions

Question 1

- (a) Do you agree with the proposed requirement that any calculation by a supplier of the estimated annual cost figure should be internally consistent (ie calculated in the same way by any given supplier for all tariffs and for all customers over time)?**

We agree that Ofgem should remove prescription from the Personal Projection by removing the detailed Estimated Annual Costs methodology. The removal of prescription will enable suppliers to determine how best to estimate annual cost information for their customers. A prescriptive methodology may not cater for future tariffs or customer preferences, so could either inhibit innovation or need to be constantly changed over time, creating inconsistency for customers and regulatory uncertainty for suppliers.

Price Comparison Websites (PCWs) should have the same flexibility as suppliers to determine how the Personal Projection is calculated. Ofgem should accept that a PCW and a supplier may calculate the costs and associated savings differently for the same tariff. Provided the methodology used is clear and any differences are understood by the customer, there should not be a problem. We are not aware of any evidence from other markets, e.g. the telecommunications market, suggesting that quotation methodologies should be identical across all market players or require the regulator to determine a single market-wide methodology. However, should evidence emerge that inconsistency is creating a significant problem for customers, then Ofgem should review the regulations.

While we agree that the Personal Projection should be calculated in a manner that is internally consistent as far as possible, we believe that the calculation methodology may need to change over time. In a competitive market, new innovative tariffs may emerge that are not covered by the existing calculation methodology. In this situation, a supplier should be able to update its methodology to incorporate the new tariff or even calculate the customer's estimated spend using a different methodology. It is important that the customer is provided with information about expected costs that allows the customer to make an informed choice about the tariff.

Ofgem should consider whether the Personal Projection rules could be made more flexible in other ways, responding to customer preferences.

1. Duration. Ofgem should consider allowing for the provision of a monthly, quarterly or weekly figure, rather than just an annual figure. Ofgem does not appear to have considered the possibility of introducing greater flexibility over what duration is covered by the Personal Projection
2. Frequency. Suppliers should have greater flexibility to determine when the Personal Projection is provided. For instance, customers may not want to see the Personal Projection on every bill.
3. Dual fuel. Suppliers should have the flexibility to provide a combined view of gas and electricity costs in a single projection. Many customers purchase dual fuel products and then pay for both fuels through a single Direct Debit payment. These customers may prefer the provision of one dual fuel projection which is consistent with their payment experience, rather than two single fuel projections.

The Personal Projection is a tool designed to aid comparability and help customers make informed choices. If Ofgem introduces a principle like Principle 3 (which we think is

unnecessary), we are unclear why Ofgem would also need to retain any requirements around providing a Personal Projection.

(b) Are there any circumstances in which suppliers should have the flexibility to provide an estimated annual cost figure to customers based on different assumptions or methodologies? Please explain your answer.

Yes - we agree that there may be scenarios where a supplier should have the flexibility to update its methodology or to use a different methodology for a particular tariff. The overriding focus of the supplier should be providing information about expected costs that allows the customer to make an informed choice. Where possible, the calculation methodology adopted by the supplier should be able to handle a range of different tariff types. If a new tariff is created that cannot fit within the existing calculation methodology, then suppliers should be able to create a new methodology, which may differ to that used for other tariffs and for good reasons. For instance, deals where customers can buy “blocks” of energy that they can draw down might not suit an annual Personal Projection. The calculations should be explained to customers in a way that is clear, accurate and not misleading.

Question 2. Do you support our proposal to require that, in the absence of a prescribed methodology, the estimated annual cost must be personalised, transparent, fair and as accurate as possible, based on reasonable assumptions and all available data?

If Ofgem believes that Personal Projections should meet any criteria, then these criteria should be brought into the licence conditions. Otherwise, suppliers will not be aware of Ofgem’s expectations. “Estimated Annual Costs” should be retained as a defined term if Ofgem intends to “set out...expectations around how suppliers should calculate internally consistent estimated annual costs”⁵. Instead, these expectations should be brought into licence under the definition of Estimated Annual Costs.

We agree with Ofgem that Personal Projections should be:

- Personalised
- Transparent
- Based on reasonable assumptions

Ofgem also proposes that the Personal Projection should be “fair”, based on “all available data” and “as accurate as possible”. It is unclear that these terms are necessary or helpful to calculating estimated costs. In particular:

- 1) “Fair”. It is unclear what “fair” means in this context. Suppliers should comply with the SOC, which requires that information should be both “fair” and “clear, accurate and not misleading”. Including the term “fair” here is either unnecessary duplication of the SOC or introduces an alternative definition of the word “fair” which will increase regulatory uncertainty. We suggest that “fair” should be removed.
- 2) “All available data”. It is disproportionate to require suppliers to base their calculation on “all available data”. It is unclear how much information suppliers would be required to collect to ensure that “all data” had been used. Would Ofgem expect suppliers to use data that is in the public domain as well as information sought from customers? Suppliers could spend significant time collecting information from customers,

⁵ Pg.43 Helping Customers to Make Informed Choices consultation
https://www.ofgem.gov.uk/system/files/docs/2016/08/proposed_changes_to_rmr_clearer_and_sales_and_marketing_licence_conditions_august_2016.pdf

increasing call length and leading to customer dissatisfaction. The data used for the calculation should be relevant. We believe that the requirement for the calculation to be “as accurate as possible” and “based on reasonable assumptions” captures the need for relevancy.

- 3) “As accurate as possible”. The Personal Projection is an estimate of future costs. It is disproportionate to require suppliers to provide a Personal Projection that is “as accurate as possible” because the Projection is inevitably, based on estimates and “reasonable assumptions”, for example about a customer’s future consumption. Ofgem should be clear that suppliers may comply with the “as accurate as possible” requirement by using estimates.

The current definition of a Personal Projection requires that suppliers base the calculation on their “best estimate” of consumption. Ofgem is increasing prescription by suggesting that suppliers should take into account characteristics such as “age and size of the premises” or the “number and type of electrical or gas appliances”. Ofgem should leave it to suppliers to determine what information is required to determine a customer’s consumption.

Question 3. Do you support our suggestion that, at the end of a fixed-term contract, customers could be rolled onto another fixed-term (rather than evergreen) tariff, if the customer were able to exit this tariff with no penalty and at any time?

Yes. We believe that such an approach is more flexible and should provide more room for suppliers to improve customer satisfaction.

We would also highlight that:

- a) We do not believe that this Fixed Term Contract (FTC) should be considered a default tariff for the purposes of the Ofgem database. FTC customers are among the most highly engaged customers in the energy market.
- b) Limiting the application of exit fees for this FTC should be considered exceptional and a reflection of the perceived lack of choice exercised by the customer at the end of the initial fixed period. We believe that there is a continued legitimate place for exit fees for fixed term deals and that exit fees help suppliers to lower prices for customers and effectively manage hedging risk.

We urge Ofgem to reduce the prescription around what information is presented to customers on the end of fixed term notice. A number of the current prescriptive rules hamper engagement.

1. The volume of information on the roll-off letters could be simplified. The roll-off letters now contain a significant amount of information for customers to process, with information provided about the customer’s existing tariff, the cheapest relevant tariff, the cheapest alternative tariff and, if different, the cheapest evergreen tariff. The volume of information currently required makes it more difficult for suppliers to find innovative and interactive ways of presenting information to customers.
2. We believe that the best time to send this notification should be for suppliers to determine based on their customer insight. The time-frame for notifications to be sent to customers about their fixed term contract is currently prescribed (between 42-49 days before contract end).
3. We think that suppliers should be able to market new products to customers in their fixed term notifications. Prescriptive rules which prevent such marketing reduce competition. Moving to narrow principles should enable suppliers to market new products and recommend tariffs. Existing consumer law, e.g. the Consumer rights Act 2015, requires any contract terms given in a customer notice (such as a roll off

letter) to be prominent and transparent and the SOC sets parameters for how suppliers must provide the information. We consider that customers are adequately protected through these existing protections.

Ofgem's proposal to allow suppliers to roll customers onto another fixed term tariff presents an excellent opportunity to remove unnecessary prescription on end of fixed term notices because consequential amendments will need to be made to SLC 22C anyway.

Question 4. Do you agree with our overall approach to managing the consequential impacts on the Clearer Information tools arising from the removal of the relevant Simpler Tariff Choices rules?

We believe that Ofgem should be more ambitious in considering the future of the Clearer Information tools. We agree that Ofgem should make any immediate changes that are required to ensure that suppliers can take advantage of the removal of the Simpler Choices rules and remain compliant with the Clearer Information tools. However, Ofgem should go further and use this opportunity to review the policy intent and impact of the Clearer Information tools in the current market, consider whether those tools are fit for purpose as the market develops and consider alternative options.

Cheapest Tariff Messaging (CTM)

We provide views on the CTM in response to Question 5.

Personal Projection

We believe Ofgem could do more on the Personal Projection, as outlined in our response to Question 1. As the market evolves, an annual projection may become less relevant to customers. Customers may prefer to receive information about hourly, daily, weekly or monthly costs and may prefer to receive the Personal Projection on fewer pieces of correspondence. Suppliers should be able to respond accordingly. Suppliers should be able to provide information about their tariffs in their own format. For instance, suppliers should have flexibility to provide a combined view of gas and electricity costs in a single projection.

Ofgem proposes to remove S4.15(q) of Part 2 of Schedule 4 of SLC 31A. We believe this prescription should be retained. If suppliers possess the flexibility to design their own methodology for the Personal Projection, it is more important that suppliers explain how they have calculated the Projection to enable customers to make informed choices.

We seek clarification from Ofgem that it proposes to amend the Estimated Annual Cost section (Entry 15, Schedule 1, SLC 31B) of the Tariff Information Label alongside removing the Tariff Comparison Rate section (Entry 16, Schedule 1, SLC 31B).

Tariff Information Label (TIL)

We believe that it is unnecessary to retain prescription around the content and layout of the TIL. It seems inconsistent for Ofgem to propose a principle for suppliers to provide tools to aid comparability but then to prescribe in detail one of those tools. Retaining prescription around the TIL is not an effective means of "future-proofing the licence"⁶, one of Ofgem's aims with the changes. Such prescription inhibits suppliers' ability to compete and innovate by preventing them from adapting the TIL for innovative products or to improve the customer

⁶ Para 3.3, Page 20, Helping Customers to Make Informed Choices consultation

journey. Suppliers should determine, with reference to consumer legislation and customer research, what information is important to present to customers and in what format.

Tariff Comparison Rate (TCR)

We support Ofgem’s proposal to remove the TCR and believe that Ofgem has identified a persuasive set of reasons for removing this information tool. Suppliers should be free to develop their own ways to facilitate informed choices in line with the comparability policy objective.

Miscellaneous

We support the removal of SLC 22CA and SLC 22CB because these rules are now obsolete.

Question 5. Have we identified the right benefits and risks associated with our preferred approach to managing the impacts of removing the relevant Simpler Tariff Choices rules on each of the Clearer Information tools?

No. We do not believe that Ofgem has adequately considered the potential benefits of making more fundamental changes to the Clearer Information tools or the risks to competition of maintaining the CTM in its current form.

As stated in the covering letter, we believe that Ofgem has missed an opportunity to promote competition, unlock innovation and better protect customers by not exploring alternatives to the prescriptive CTM and TIL requirements.

We strongly urge Ofgem to consider all options for the future of the CTM as part of this consultation, even if the CTM is in scope of Ofgem’s testing programme, for two main reasons:

- The CTM will become increasingly misleading to customers as tariffs become more innovative and different from each other, which itself could undermine the innovation that the CMA and Ofgem want to see.
- There is a risk that the CTM continues, as the CMA said, to “*create perverse incentives for suppliers not to offer discounted tariffs or to reduce the extent of discounting*”⁷, even with the removal of the “available to all” rule.

CTM is unsuitable for a market with innovative and differentiated propositions

Ofgem is considering alternative ways to engage customers in a market that, following the removal of the “simpler choices” rules, enables suppliers to innovate, differentiate and target their products according to the preferences of different customer groups. It is not obvious that a prescriptive CTM is the most appropriate way to engage customers in this context. Even worse, it could become increasingly misleading.

For instance, suppliers are already offering static Time of Use (ToU) tariffs with free periods⁸, deals where customers can buy “blocks” of energy that they can draw down, “fixed bill” tariffs, and energy bundled with other services. We expect innovation, such as dynamic ToU tariffs, to be further enabled by technological developments such as smart metering.

⁷ CMA Final Report, paragraph 12.392

⁸ British Gas’ HomeEnergy FreeTime

As more innovative and differentiated products are introduced, it will become more difficult to be able to tell a customer with any degree of certainty which tariff will be “cheapest” for them, for example because the supplier won’t know how much energy the customer will consume and when (or, in the case of some dynamic ToU tariffs, even what the price will be and when). The CTM also risks disguising tariffs that customers may consider to be better value for money because the additional value, such as a free service, cannot be included in the headline energy price. We are concerned that suppliers will be increasingly forced to choose the “cheapest” tariff from tariffs that cannot be compared on a like-for-like basis, thus misleading customers.

To avoid these problems, suppliers may be discouraged from developing and introducing innovative products in the first place.

A principles-based approach would better enable suppliers to keep customers informed about alternative deals that they might value, without undermining innovation to the same extent.

The risk that the CTM continues to adversely impact on competition

The CMA considered that the CTM exacerbates the Adverse Effect on Competition (AEC) caused by the rule requiring tariffs to be available to new and existing customers. The CMA did not say that the “perverse incentives for suppliers not to offer discounted tariffs or to reduce the extent of discounting” created by the CTM rules would disappear once the “available to all” rule was removed.

Ofgem has proposed to maintain the current CTM requirements without exploring alternative options. Ofgem should recognise the potential ongoing risk that the current CTM poses to competition and conduct a thorough economic assessment of the risk against all alternative reform options during this consultation process. In practice, Ofgem should at least explore the following:

- a) Remove the CTM
- b) Adopt a principles-based approach to CTM
- c) Alter the prescriptive nature of the CTM, e.g. allow suppliers to show FTCs to customers on evergreen tariffs, allow suppliers to show the overall cheapest tariff that the customer is able to access, and to provide more flexibility around how, where and on which communications suppliers must provide the CTM.

In conducting its economic assessment of the reform options for CTM, Ofgem should be mindful that the CMA concluded that SLC 25A rule adversely effected competition as well as the “new and existing customers” rule.

In order to properly understand the effect of CTM on competition, Ofgem would need to model whether and to what extent the CTM impacts on different suppliers’ economic incentives to offer discounted tariffs to existing customers. At the very least, the model would need to use different assumptions for:

- The movement in forward wholesale prices (at least falling, rising and static)
- How many customers each supplier has (at least use proxies for one small, one medium and one large supplier operating in the market at the same time)

- How many customers each supplier has on different product types, and how these product types have been hedged

Question 6. Are there any potential unintended consequences associated with our proposed approach?

Yes.

There is a risk that by maintaining the CTM as proposed that it will continue to exacerbate an Adverse Effect on Competition (AEC) that the CMA perceived by creating perverse incentives on suppliers not to offer discounted products. There is also a risk that customers are unintentionally misled by the CTM because they require suppliers to inform customers of a definite “cheapest” tariff, when different customers see different tariffs as having the best value for them.

There is also a risk that Ofgem unintentionally inhibits innovation by maintaining prescriptive TIL requirements. Suppliers may only create products that comply with the prescriptive TIL and avoid products that do not neatly fit within the format created by Ofgem.

For further detail, please see our answer to Question 5.

Question 7. Do you agree that our proposed policy objective is the correct one? Please explain your answer.

Yes, we agree that suppliers should make it as easy as possible for customers to make informed choices. We believe that Ofgem’s proposed informed choices policy objective would be an effective narrow principle for suppliers to operate to and that no other principle is required. Ofgem’s focus should be to ensure customers make informed choices. It is therefore noticeable that only the policy objective explicitly refers to informed choices.

Ofgem refers to customer “characteristics” in the policy objective but uses customer “needs” in principles 3 and 6. Ofgem should use “characteristics” when drafting these principles because it is a less subjective term.

Question 8. Do you consider that the proposed principles are a sensible way of achieving our policy objective? Please explain your answer.

We agree with Ofgem that using narrow principles is an appropriate way to achieve positive customer outcomes in the areas of comparability and sales and marketing. We argued in our response to Ofgem’s FRR consultation in March 2016 that the transition to principles should be based on removing prescription or replacing prescription with well-defined narrow principles. ‘Narrow’ principles are more likely to deliver regulatory certainty than ‘broad’ principles because the principles apply to discrete policy areas and are targeted at a well-defined and identifiable market failure. The SOC are appropriate broad principles underpinning both narrow principles and any remaining prescription.

While we agree with Ofgem’s policy objective to ensure customers make informed choices, we are concerned by some elements of the principles proposed by Ofgem.

Principle	Comments
General comments on principles	<ol style="list-style-type: none"> 1. We believe that Ofgem’s policy objective to ensure customers make informed choices is all that is required. Suppliers can easily understand and interpret the policy objective, developing innovative ways of achieving the objective. In comparison, introducing multiple principles involves some implicit prescription (e.g. putting in place “information tools”), increases regulatory uncertainty (e.g. as suppliers need to understand interactions between the different principles) and seems risk-averse. 2. We believe that “informed choices” should be the basis of any comparability principles. If Ofgem decides to introduce the three comparability principles instead of relying on the policy objective, we note that none of these principles use the term “informed choices”, even though ensuring “informed choices” is Ofgem’s stated aim of the principles. 3. Many of the principles proposed overlap in some way with existing legal provisions (including the SOC). We provide examples of this overlap in Appendix 2. We believe that it would run counter to the Principles of Good Regulation to create licence obligations that already exist elsewhere. If Ofgem proceeds to create duplication nonetheless, it needs to avoid the risk that differences in the terminology used in drafting the principles and the law reduce regulatory certainty. To avoid this risk, Ofgem should use the same terminology and the principles should have the same scope as existing legal provisions. 4. Ofgem should consider how the narrow principles interact with broad principles such as the SOC. It is unclear how a narrow principle to provide “information, services and/or tools” interacts with the broad principle in the SOC to provide information that is “clear, accurate and not misleading”. 5. We believe that the comparability and sales and marketing principles should apply to PCWs as well as suppliers. There should be a consistent regulatory regime for PCWs and suppliers. 6. Ofgem should consider whether their principles are capable of adapting to an energy market where bundling is more prevalent. In future, the non-energy element of a product may have a greater cost than the energy element and differences in service and other features may become more important. Ofgem should ensure sufficient flexibility in its principles to future-proof the regime. 7. We believe that all principles – narrow or broad – should be subject to “all reasonable steps” or a similar due diligence defence. It is not appropriate to apply an absolute standard if suppliers are provided with the flexibility to achieve the standard in different ways. We do not agree with Ofgem changing the scope of the sales and marketing rules by failing to incorporate “all reasonable steps” within the proposed principles.

<p>1. The licensee must ensure that the terms and conditions of its Tariffs (including their structure) are clear and easily understandable.</p>	<p>This principle is not required if Ofgem introduces the policy objective as the sole narrow principle. We also believe that this principle is covered by the SOC and consumer law.</p> <p>However, should Ofgem be minded to retain this principle it should not deviate from the existing tests set out in consumer law. Furthermore, we believe this principle relates solely to supporting the policy objective of customers making an informed choice.</p> <p>Ofgem should also ensure that the principle does not unintentionally prevent suppliers from launching innovative tariffs if they are difficult for some consumers to understand, however well-explained.</p> <p>The term “understandable” is subjective and will vary widely between consumers. Ofgem should adjust the drafting of the principle to say that the terms and conditions of Tariffs (including their structure) “are clear and expressed in plain English”.</p>
<p>2. The licensee must ensure that its Tariffs are easily distinguishable from each other.</p>	<p>This principle is not required if Ofgem introduces the policy objective as the sole narrow principle.</p> <p>However, we would not have any major issues with this principle if Ofgem clarifies that the requirement for tariffs to be “easily distinguishable from each other” only applies to tariffs that are available. We do not believe that it would be proportionate for Ofgem to prevent a supplier from replacing a closed fixed tariff with a new fixed tariff.</p> <p>To address this risk, Ofgem should redraft the principle to say that “available Tariffs are easily distinguishable from other available Tariffs.”</p>
<p>3. The licensee must ensure that it puts in place information, services and/or tools to enable each Domestic Customer to easily compare and select which Tariff(s) within its offering is/are appropriate to their needs and preferences.</p>	<p>This principle is not required if Ofgem introduces the policy objective as the sole narrow principle.</p> <p>If, alternatively, Ofgem introduces a principle that enables suppliers to explore the use of their own “information, services and/or tools”, then the prescriptive rules around the Personal Projection, TIL and CTM are not needed. For instance, some customers may prefer to see a monthly estimate of their costs rather than an annual figure. Ofgem should use the introduction of this principle to remove prescription.</p> <p>We assume that suppliers should be able to take steps to understand the customer’s characteristics and preferences to reduce the number of tariffs talked through in detail during a sales call. It may not be practicable for a supplier to talk through in detail all of the products it offers because such an approach would reduce customer engagement by increasing the length of sales calls.</p>

	<p>Some elements of the principle could be drafted more clearly.</p> <p>a) We believe that Ofgem should consistently use the term “characteristics” rather than “needs” in drafting its principles. “Characteristics” is less subjective than needs. We note that “characteristics” is the term used in the informed choices policy objective.</p> <p>b) It is unclear whose “needs” – or “characteristics” – are being referred to in the principle. We suggest Ofgem replaces “their” with “a Domestic Customer’s” for clarity.</p> <p>By making these changes, the principle would read: “The licensee must ensure that it puts in place information, services and/or tools to enable each Domestic Customer to easily compare and select which Tariff(s) within its offering is/are appropriate to that Domestic Customer’s characteristics and preferences”.</p> <p>It is unclear why Ofgem does not require supplier representatives to provide “information, services and/or tools”. It is inconsistent for the SOC requirements to provide “clear, accurate and not misleading information” to apply to “representatives” but not a narrow principle outlining how that information is provided. Ofgem should either consistently refer to “representatives” in these principles or not refer to them at all.</p>
<p>4. The licensee must conduct its Domestic Customer sales and marketing activities in a fair, honest, transparent, appropriate and professional manner and must ensure that its Representatives do the same.</p>	<p>Principle 4 is duplication of the SOC and is therefore not required. If Ofgem decides to retain this principle when it duplicates the SOC, it should explain why.</p> <p>Suppliers should not be asked to comment on principles that overlap with the SOC at the same time as Ofgem is considering changes to the SOC, e.g. the FRR working paper⁹.</p>
<p>5. The licensee must not, and must ensure that its Representatives do not, mislead or otherwise use inappropriate tactics, including high pressure sales techniques, when selling or marketing to Domestic Customers.</p>	<p>We believe that this principle is covered by the Consumer protection from Unfair Trading Regulations so question the need to replicate these requirements in the supply licence.</p> <p>If Ofgem decides to retain this principle, it should explain whether it believes it replicates the Consumer protection from Unfair Trading Regulations, and if not what it adds. We believe that introducing duplicative requirements would run counter to the Principles of Good Regulation.</p> <p>If Principle 5 is retained, we feel that Ofgem should be clearer about what it is worried about when it talks about “high pressure sales techniques”. For instance, if a supplier</p>

⁹ Future of retail market regulation: Working paper on broad principles
https://www.ofgem.gov.uk/system/files/docs/2016/08/frr_working_paper_on_broad_principles_-_final.pdf

	<p>made a product available for a short period of time or with limited availability, would drawing the limited time or availability to the customer’s attention be considered a ‘high pressure sales technique’?</p> <p>If Principle 5 is retained, it should be subject to “all reasonable steps”.</p>
<p>6. The licensee must only recommend, and must ensure that its Representatives only recommend, to a Domestic Customer products or services which are appropriate to that Domestic Customer’s needs or preferences.</p>	<p>We agree that, where suppliers choose to recommend a tariff, it should not recommend a tariff that is inappropriate to the customer. However, we are concerned that the drafting of the principle may have unintended consequences.</p> <p>By introducing rules on “recommendations”, this principle extends the scope of the existing sales and marketing rules in SLC 25. It is unclear whether extending the scope of the rules is justified. Ofgem should provide more evidence of the risk it is trying to address and provide evidence that the risk can best be addressed through regulation.</p> <p>As drafted the principle is too absolute. It creates a test that relies on a subjective assessment of the customer’s needs, which suppliers therefore risk not being able to satisfy. It will be difficult to put into operation without a disproportionate affect on resources (for example from increased call handling). Ofgem should redraft the principle to make it clear that what is appropriate to a Domestic Customer’s needs or preferences must be based on information provided by that Domestic Customer.</p> <p>Ofgem should also redraft the principle to make clear that suppliers are not required to provide recommendations. Principle 6 will not apply to suppliers that do not make tariff recommendations. To the extent that a supplier does make a recommendation, it should not have an obligation to determine the best tariff for customers. Customers should be responsible for choosing the right tariff for them based on information provided by the supplier.</p> <p>We believe that this principle is inconsistent with Ofgem’s proposal to retain the CTM in its current prescriptive form. The principle requires that suppliers only recommend tariffs that are “appropriate to...Customer needs or preferences” but the CTM requires suppliers to highlight the “cheapest” tariff only, that may not be appropriate to customer preferences. The “alternative” CTM would particularly come into conflict with this principle.</p> <p>The comparability principles (1, 2 and 3) talk about “Tariffs”, while at least one Sales and Marketing principle, principle 6, refers to “products or services”. It is unclear why there is a difference in terminology. We would prefer Ofgem to use “products or services” because this is broader and more readily incorporates non-energy bundles and discounts.</p>

	As with principle 3, we believe that Ofgem should consistently use the term “characteristics” rather than “needs” in drafting its principles. “Characteristics” is less subjective than needs. We note that “characteristics” is the term used in the informed choices policy objective.
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Question 9. Are there any benefits, risks or potential unintended consequences associated with the proposed principles which we have omitted? If so, what are they and how could they be mitigated?

Yes.

Principle	Unintended consequences
1. The licensee must ensure that the terms and conditions of its Tariffs (including their structure) are clear and easily understandable.	As drafted, this principle may unintentionally prevent suppliers from launching innovative tariffs if they are difficult for some customers to understand, however well-explained. We propose alternative drafting in our response to Question 8.
2. The licensee must ensure that its Tariffs are easily distinguishable from each other.	As drafted, this principle may unintentionally constrain innovation by limiting suppliers from replacing an unavailable tariff with an available tariff with the same product features. We propose alternative drafting in our response to Question 8.
3. The licensee must ensure that it puts in place information, services and/or tools to enable each Domestic Customer to easily compare and select which Tariff(s) within its offering is/are appropriate to their needs and preferences.	We assume that this principle does not require suppliers to talk through all available tariffs during a sales call, which would increase the length of sales calls and reduce customer engagement.
4. The licensee must conduct its Domestic Customer sales and marketing activities in a fair, honest, transparent, appropriate and professional manner and must ensure that its Representatives do the same.	This principle duplicates the SOC and is therefore not required.
5. The licensee must not, and must ensure that its Representatives do not,	This principle risks creating regulatory uncertainty by confusing the current robust and clear consumer law regime on unfair and aggressive commercial practices under the

<p>mislead or otherwise use inappropriate tactics, including high pressure sales techniques, when selling or marketing to Domestic Customers.</p>	<p>Consumer protection from Unfair Trading Regulations 2008. We consider that the laws relating to mis-selling and aggressive selling should remain within that framework.</p> <p>Ofgem has not provided clarity on what is meant by “high pressure sales”. If Ofgem has particular concerns or examples of poor practice, Ofgem should make its minimum expectations clear to suppliers.</p>
<p>6. The licensee must only recommend, and must ensure that its Representatives only recommend, to a Domestic Customer products or services which are appropriate to that Domestic Customer’s needs or preferences.</p>	<p>As drafted, this principle could suggest that suppliers are required to provide recommendations. Suppliers should not have an obligation to determine the best tariff for customers. Customers are responsible for choosing the right tariff for them based on appropriate information provided by the supplier.</p>

Many of the principles proposed by Ofgem overlap in some way with existing consumer law protections, including those set out in the Consumer protection from Unfair Trading Regulations 2008 and the Consumer rights Act 2015. We provide examples of this overlap in Appendix 2. There is a risk that differences in the terminology used in drafting the principles and the law will reduce regulatory certainty. We are concerned that Ofgem has not explored whether the proposed principles duplicate or contradict existing law or the SOC. Suppliers may face a disproportionate burden if asked to look at, or face redress under, two different regimes when the intent of the principle and existing legal provisions may be the same. This creates unnecessary complexity and uncertainty. Consumer protection law has recently been overhauled, consolidated and enhanced to be consistent across sectors and is considered robust. We note that one of the aims of the recent overhaul of legislation was to counter the complexity and piecemeal development of consumer law protections.

If Ofgem proceeds to introduce the proposed principles, Ofgem should ensure the drafting of the principles is consistent with existing legislation, explain how the principles and the law will work in tandem, including in respect of enforcement and redress, and confirm that suppliers will not be held to two different tests simultaneously.

Question 10. Are these principles likely to result in differential impacts across different types of suppliers (eg large vs. small or medium suppliers)? Please explain your answer.

This is a difficult question for a supplier to answer. Ofgem, as the regulator, should satisfy itself through a high-quality IA that its proposals do not harm competition.

We can see no reason why Ofgem’s approach should disproportionately impact large or small suppliers and believe any differential impacts will be attributable to the culture of the supplier. The use of principles will benefit those suppliers that are best able to serve customers based on their characteristics and preferences.

Question 11. Do you think that we should introduce a principle about informed tariff choices?

Yes, provided that the first three principles proposed by Ofgem are removed. We believe that the informed choices policy objective is the only principle required to ensure customers can make informed choices. We believe the informed choices principle is a narrow principle because the applicability of informed choices is clearly limited to a narrowly defined part of the customer journey, i.e. choosing between products. It is unnecessary duplication to introduce both the informed choices policy objective and retain the three narrow principles. Ofgem should therefore either:

- a) Adopt the informed choices policy objective as a narrow principle (our preferred approach) or
- b) With appropriate amendments, retain the three narrow principles around informed choices

Question 12. Do you agree that we should expand the scope of SLC 25 to apply to all sales and marketing activities? Please explain your answer.

Yes. The principles are sufficiently adaptable to sales through any channel, including innovative channels that may not currently be used.

We believe that Ofgem should clarify whether suppliers will be responsible for the compliance of PCWs in relation to SLC 25. Ofgem notes that respondents to the FRR consultation called for Ofgem to “make changes to the arrangements for third party intermediaries (TPIs), in particular, reducing the risk to suppliers by making TPIs more accountable for how they interact with customers.”¹⁰ However, Ofgem does not provide clarity as to whether the comparability and sales and marketing principles will apply to PCWs. As we outline in our response to Question 8, we believe that these principles should apply to PCWs. If Ofgem introduced these principles into the Confidence Code, Ofgem should be careful to avoid unintentionally creating prescription through the auditing of accredited PCWs.

Question 13. Do you support our proposal to extend the requirement to keep records for two years to include telephone sales and marketing? If not, please explain why, including the scope of any potential increase in costs.

Not based on the evidence for the intervention that Ofgem has provided. Ofgem’s evidence base for extending the requirement to retain records of telephony sales does not appear to be sufficiently strong to warrant further prescription. Ofgem explains that it has recently seen instances where “records were not available when we wanted to review them to check compliance with the requirements in SLC 25”¹¹. As we appreciate that the lack of evidence may be the result of a supplier not recording calls, Ofgem’s IA should carefully explore the costs associated with extending the retention requirement to telephony sales. We currently retain a record of all calls for 18 months and are exploring what it would cost to extend this to two years. We believe that retaining calls for 18 months is reasonable. Retention for 18 months goes beyond the first anniversary of the product being sold, after which point there is limited chance of a complaint being raised about the sale.

Question 14. Do you agree with our rationale for not applying the requirement to keep records to include online sales? What would be the implications of extending the requirement to online sales (eg impact on PCWs, increased costs)?

¹⁰ Para 3.50, Pg. 29 “Helping Customers make Informed Choices” consultation

¹¹ Para 3.68, Pg. 32 “Helping customers Make Informed Choices” consultation

We agree that Ofgem should not extend the requirement to keep records to online sales though not necessarily because we agree with Ofgem's rationale. Ofgem should only introduce prescriptive rules when a sufficient body of evidence exists to support intervention. If Ofgem has received no evidence of problems or customer detriment arising from how online sales are conducted, then prescription to require retention of such sales records is not proportionate.

We believe that Ofgem's proposal to extend the requirement to keep records to telephony sales will impact on PCWs. A number of PCWs now conduct telephony sales. As long as suppliers and PCWs are unclear about whether a PCW is acting as a "representative" in this situation, suppliers may require PCWs to retain sales records for two years. While we believe that the same rules should apply to suppliers and PCWs, Ofgem should consider the costs to PCWs and the impact on competition. If Ofgem expects PCWs to retain a record of calls for 2 years, then this should be a direct requirement of the Confidence Code.

Question 15. Do you agree with our proposal to remove the prescription from SLC 25? Are there any other areas where you think prescription still needs to be retained to maintain consumer protection?

Yes, we agree with the proposal to remove prescription from SLC 25.

We disagree with Ofgem's suggestion that inadequate staff training could be considered an "aggravating factor" in an enforcement case¹². It is not appropriate for Ofgem to introduce aggravating factors that are so specific. Ofgem's aggravating factors for enforcement are broad, well-known and clear. If Ofgem has specific expectations of suppliers, e.g. to achieve a certain standard of staff training, then this standard should be set out prescriptively.

Question 16: Do you agree with the methodology we intend to employ in our impact assessment?

While it is welcome that Ofgem commits to produce an IA for these proposals, Ofgem should have published an IA alongside this initial consultation. There is very little systematic consideration of the extent or likelihood of risk in the consultation, nor systematic consideration of alternative proposals. The lack of an IA at this stage in the policy-making process makes it less likely that Ofgem will arrive at the regulatory reform option that will best protect the interests of customers.

We agree that Ofgem should publish an IA for these proposals. The primary focus of the IA analysis should be on the impact of Ofgem's proposals on competition, relative to a full range of alternative options. While we agree that the IA should consider customer engagement as an important component of a competitive market, we do not believe that Ofgem's proposed methodology focuses sufficient attention on the dynamic aspects of competition.

The IA should be consistent with Ofgem's published guidance on IAs¹³ and involve both quantitative and qualitative analysis. We suggest that Ofgem adopts the Government's IA template as best practice. Ofgem should confirm if the IA will be reviewed externally by the Regulatory Policy Committee and any costs or benefits counted towards the Business Impact Target.

¹² Para 3.57, Pg. 29 "Helping customers make informed choices"

¹³ Ofgem Impact Assessment Guidance

https://www.ofgem.gov.uk/sites/default/files/docs/2013/10/impact_assessment_guidance_0.pdf

We agree that Ofgem should consider its proposals against an option where “no other changes are made but those recommended by the CMA in its final report”¹⁴. We believe that the IA should go further and explore alternative regulatory options. For instance, Ofgem should analyse whether prescriptive rules around the TIL and CTM should be removed or replaced by principles.

As we set out in our answer to Question 5, Ofgem’s analysis should focus on how the CTM affects suppliers’ incentives to offer cheaper products and how it will impact on customer trust in a market where there is greater product innovation and differentiation. The IA should explore the following options:

- a) Remove the CTM
- b) Adopt a principles-based approach to CTM
- c) Alter the prescriptive nature of the CTM, e.g. allow suppliers to show FTCs to customers on evergreen tariffs, allow suppliers to show the overall cheapest tariff that the customer is able to access, and to provide more flexibility around how, where and on which communications suppliers must provide the CTM.

Question 17: Have we captured all expected key impacts? If not, what else should we include in our impact assessment?

No. As we set out in our answer to Question 16, we consider that the IA should focus more on the effect that Ofgem’s changes will have on competition, including the dynamic aspects of competition.

The Ofgem IA should also consider the following impacts, all of which can be found in Question 8:

Change	Key impacts
Introduce principles to support informed choices	Introducing multiple narrow principles may increase regulatory uncertainty, diverge from existing legal provisions and increase compliance costs. As an alternative, Ofgem should explore introducing the informed choices policy objective as the sole narrow principle. The current drafting of principle 1 could unintentionally limit supplier innovation by preventing suppliers from launching innovative tariffs if they are difficult for some customers to understand, however well-explained.
Introduce principles for sales and marketing	Introducing multiple narrow principles may increase regulatory uncertainty, diverge from existing legal provisions and increase compliance costs. Ofgem should remove principle 4 which duplicates the SoC and clarify the scope of principle 5, e.g. by confirming which sales techniques are covered by high pressure sales.
Retain CTM	Retaining prescriptive rules may mean the CTM continues to have an AEC, even after the removal of the “available to all” rule. Ofgem should consider alternative options for CTM, including its removal and its replacement with a principle.

¹⁴ Para 1.8, Pg. 53 “Helping customers make informed choices”

Personal Projection calculations	Requiring that the Personal Projection be provided as an annual figure may limit innovation. Customers may prefer to receive information about hourly, daily, weekly or monthly estimated costs. Ofgem should explore options to increase flexibility for how and when the Personal Projection is provided. The inconsistencies in approach proposed for PCWs and suppliers need to be fully assessed.
Retain TIL	Retaining prescriptive rules may mean the TIL cannot adapt to the changing energy market. Ofgem should consider dropping the requirement to provide the TIL and allow suppliers to develop their own “information, services and/or tools” under principle 3.

Question 18: What costs do you expect to incur as result of the proposed changes (both to the RMR package and to SLC 25)? Please provide a description and a range, if possible.

It is difficult for us to outline the costs that may arise from the removal of prescriptive RMR rules and the introduction of principles. At this stage of the policy-making process, we have not yet undertaken a full impact assessment of the proposals. We also note that the industry – suppliers and Ofgem – faces a significant volume of change following the recommendations of the CMA Final Report.

We believe that the benefits of removing prescription and introducing principles will ultimately outweigh the costs. However, we consider that Ofgem’s proposals may result in the following costs:

Removing RMR prescription

- Removing the TCR will require changes to computer systems, updating a range of pieces of correspondence, updating our website and briefing and training agents. We have begun the process to quantify the costs associated with these changes.
- It is difficult to quantify the cost of developing our own Personal Projection methodology calculation at this stage of the policy-making process. While we have considered how we might adapt Ofgem’s methodology in response to new products, further work would be required to develop our own methodology. Updating the methodology will involve changes to systems, revised explanations of the Personal Projection on correspondence and agent training.
- There will be some costs involved in updating the format of the TIL.
- We may need to engage with PCWs to explain the changes we make in response to Ofgem’s proposals. For instance, we may try to find ways of explaining differences in the Personal Projection calculation offered by PCWs and by suppliers. Any engagement will involve costs.

Introducing principles

- When Ofgem introduces a principle, we will need to consider to what extent our business practices are already consistent with the principle. While we believe that we treat customers fairly and expect our processes to be consistent with any principles

that Ofgem introduces, reviewing our current customer journeys will take time and will involve a cost.

- A review of our processes may demonstrate areas where we want to change our approach to better align with the principle introduced by Ofgem. Such improvement work will involve a cost. We are at an early stage of reviewing whether such improvement work is required or what areas are affected. It is likely that the costs of ensuring consistency will vary according to the principle. It may be more costly for us to achieve consistency with narrow principles that affect a number of parts of our business.

Question 19: What benefits (including avoided costs) do you expect to realise as a result of the proposed changes? Please provide a description and a range, if possible.

Similar to our answer to Question 18, it is difficult for us to outline the benefits that may arise from the removal of prescriptive RMR rules and the introduction of principles. At this stage of the policy-making process, we have not yet undertaken a full impact assessment of the proposals. However, we believe that Ofgem's proposals may offer the following benefits:

Removing RMR prescription

- Removing the requirement to provide the TCR will make sales calls simpler for customers, reduce the amount of information to provide to customers and facilitate shorter sales calls. Removing the TCR from the bill and annual summary will mean those pieces of correspondence become shorter, providing some additional space and reducing the amount of information customers need to take in.
- Allowing suppliers to determine their own methodology for the Personal Projection may mean we need to spend less time explaining the Personal Projection than we would if the current methodology was retained after the simpler choices rules are removed.

Introducing principles

It is not possible at this early stage of the policy process to say what benefits might result from the introduction of principles. When Ofgem introduces a principle, we will need to consider to what extent our business practices are already consistent with the principle. While we believe that we treat customers fairly and expect our processes to be consistent with any principles that Ofgem introduces, reviewing our current customer journeys will take time. We expect that most benefits from principles will not start to occur until a number of months after the principles have been introduced.

In general, we believe that the flexibility of principles promotes competition by enabling suppliers to innovate and places more responsibility on suppliers to consider outcomes and not apply a "tick box" approach to regulatory obligations.

Question 20. Do you think there are any other indicators we can use to monitor the impact of changes to the RMR rules on customers?

We recognise the importance of Ofgem monitoring the domestic retail market. We provided our views on how monitoring of principles can work in our response to Ofgem's FRR consultation in March 2016¹⁵. We believe that Ofgem can adopt a similar approach to monitoring the impact of changes to the RMR rules as for monitoring principles.

¹⁵ British Gas response to Ofgem Future of Retail Market Regulation consultation, March 2016
https://www.ofgem.gov.uk/system/files/docs/2016/06/british_gas_response.pdf

We agree with Ofgem that monitoring of principles should be risk-based, targeted and proportionate. In a principles-based regime, we suggest that Ofgem monitoring should concentrate more on understanding regulated businesses rather than the narrower question of whether firms are complying with prescriptive rules. Regular meetings between the supplier and Ofgem would help the regulator understand how suppliers operate.

We also believe that any changes to monitoring should be cost-effective and avoid unnecessary additional costs to suppliers and customers. Ofgem should aim to impose no overall additional cost burden on regulated firms for monitoring in future. Ofgem already receives significant volumes of information from suppliers. This information is qualitative and quantitative, covering both supplier policies and data. As prescriptive rules, including the RMR rules, are replaced by principles, Ofgem should review what data it receives from suppliers and rationalise regular data requests wherever possible. We would expect the coordination of regular and ad hoc monitoring to improve following these reviews.

Question 21. Are there any other sources of information we could use to provide us with an early indication of potential issues with sales and marketing activities?

We provided our views on alternative sources of information for monitoring principles work in our response to Ofgem's FRR consultation in March 2016¹⁶. We recognise that using data provided by third parties such as Citizens Advice and the Ombudsman may play an important role in monitoring the domestic energy market. However, we caution against relying too heavily on such organisations. Both organisations are more likely to receive data about specific instances where suppliers could do more for their customers, which may present a misleading picture of how well suppliers are achieving customer outcomes more widely.

¹⁶ British Gas response to Ofgem Future of Retail Market Regulation consultation, March 2016

Appendix 2 – Comparison of principles to existing legal provisions

Most of the principles proposed by Ofgem for comparability and sales and marketing are already covered by existing legal provisions. We explain in our answers to Questions 8 and 9 our concerns about the duplication between the principles and the law and the lack of clarity that could arise if terms differ between the two regimes. This appendix provides examples of where the principles and the law overlap most conspicuously. If Ofgem proceeds to introduce the proposed principles, Ofgem should ensure the drafting of the principles is consistent with existing legal provisions, explain how the principles and the law will work in tandem and confirm that suppliers will not be held to two different tests simultaneously.

Principle proposed by Ofgem	Existing legal provisions
<p>1. The licensee must ensure that the terms and conditions of its Tariffs (including their structure) are clear and easily understandable</p>	<p><u>Comparison with obligations that are the same or very similar to the Consumer contracts (information, Cancellation and Additional Charges) Regulations 2013</u></p> <p><i>Information to be provided before making an on-premises contract</i> 9(1) ... the trader must give or make available ... information described in Schedule 1 [Note: includes key terms like price and duration] in a clear and comprehensible manner, if that information is not already apparent from the context.</p> <p><i>Information to be provided before making an off-premises contract</i> 10(1) ... the trader must give the customer the information listed in Schedule 2 [Note: includes long list of key terms like price and duration] in a clear and comprehensible manner</p> <p><i>Information to be provided before making a distance contract</i> 13(1) ... the trader must give or make available ...the information listed in Schedule 2 in a clear and comprehensible manner, and in a way appropriate to the means of distance communication used</p> <p><u>Comparison with obligations that are the same or very similar to the Consumer rights Act 2015</u></p> <p>68 (1) A trader must ensure that a written term of a customer contract, or a customer notice in writing, is transparent. (2) A customer notice is transparent for the purposes of subsection (1) if it is expressed in plain and intelligible language and it is legible.</p> <p>There are also similarities with SoC:</p>

	<p>25C.4 (b) (ii) The SofC are that: the licensee and any Representative provide information (whether in Writing or orally) to each Domestic Customer which: is communicated (and, if provided in Writing, drafted) in plain and intelligible language</p> <p>25C.4 The SofC are that: (a) the licensee and any Representative behave and carry out any actions in a Fair, honest, transparent, appropriate and professional manner</p>
<p>2. The licensee must ensure that its Tariffs are easily distinguishable from each other</p>	<p>Not applicable</p>
<p>3. The licensee must ensure that it puts in place information, services and/or tools to enable each Domestic Customer to easily compare and select which Tariff(s) within its offering is/are appropriate to their needs and preferences</p>	<p>SLC 25C already requires that suppliers provide information which is appropriate. It is unclear what information would be considered different in principle 3 compared to information provided under SLC 25C.</p>
<p>4. The licensee must conduct its Domestic Customer sales and marketing activities in a fair, honest, transparent, appropriate and professional manner and must ensure that its Representatives do the same</p>	<p>This principle is already fully covered by SLC 25C:</p> <p>25C.4 The SOC are that: (a) the licensee and any Representative behave and carry out any actions in a Fair, honest, transparent, appropriate and professional manner</p> <p><u>Comparison with obligations that are the same or very similar to the Consumer protection from Unfair Trading Regulations 2008</u></p> <p>Part 2, 3 (1) Unfair commercial practices are prohibited. (3) A commercial practice is unfair if - (a) it contravenes the requirements of professional diligence; and (b) it materially distorts or is likely to materially distort the economic behaviour of the average customer with regard to the product</p>

	<p>3 (4) A commercial practice is unfair if - (a) it is a misleading action under the provisions of regulation 5; (b) it is a misleading omission under the provisions of regulation 6; (c) it is aggressive under the provisions of regulation 7; or (d) it is listed in Schedule 1</p>
<p>5. The licensee must not, and must ensure that its Representatives do not, mislead or otherwise use inappropriate tactics, including high pressure sales techniques, when selling or marketing to Domestic Customers.</p>	<p><u>Comparison with obligations that are the same or very similar to the Consumer protection from Unfair Trading Regulations 2008</u></p> <p>Part 2, 3 (4) A commercial practice is unfair if - (a) it is a misleading action under the provisions of regulation 5; (b) it is a misleading omission under the provisions of regulation 6; (c) it is aggressive under the provisions of regulation 7; or (d) it is listed in Schedule 1</p> <p>There are also elements already covered in SLC 25C:</p> <p>25C.4 The SOC are that: (a) the licensee and any Representative behave and carry out any actions in a Fair, honest, transparent, appropriate and professional manner</p> <p>25C.4 (b) (i) The SOC are that: the licensee and any Representative provide information (whether in Writing or orally) to each Domestic Customer which: is complete, accurate and not misleading (in terms of the information provided or omitted)</p>
<p>6. The licensee must only recommend, and must ensure that its Representatives only recommend, to a Domestic Customer products or services which are appropriate to that Domestic Customer's needs or preferences</p>	<p>SLC 25C requires that information provided to customers relates to products or services which are appropriate to the customer. Principle 6 is unnecessary as it is a duplication of the current SOC.</p>