



OVO Energy's response to Ofgem's recent consultations in relation to reforming retail regulation in the energy industry

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1. Introduction

1.1. OVO welcomes the opportunity to respond to Ofgem's recent consultations in relation to reforming retail regulation in the energy industry. As our views and approach to these consultations and the issues they cover overlap, in this response we are responding to all of the following:

- (a) Statutory consultation on the removal of certain RMR Simpler Tariff Choices rules, published 3 August 2016 (**RMR Removal Consultation**);
- (b) Helping consumers make informed choices – proposed changes to rules around tariff comparability and marketing consultation, published 3 August 2016 (**Informed Choices Consultation**);
- (c) Confidence Code Review 2016, published 3 August 2016 (**Confidence Code Review**); and
- (d) Future of retail market regulation: Working paper on broad principles, published 18 August 2016 (**Working Paper**),

(collectively, the **Consultations**).

1.2. We commend Ofgem on the active steps it is taking to address the issues identified in the current retail energy market following the conclusion of the CMA's investigation. OVO has been highly vocal about the limitations of the current regulatory framework and therefore welcomes this opportunity to comment on Ofgem's proposed approach to principles-based regulation as it continues to evolve.

1.3. Broadly, we have three key observations in relation to Ofgem's approach as outlined in the Consultations:

- (a) The approach set out in the Consultations appears to focus on reform at a **micro, not macro level** - i.e., looking at specific areas of the licence, without first identifying broad outcomes to be achieved and principles which should apply *across the market*. Our concern is that by taking this approach, a disconnect will emerge between the narrow sets of principles defined for specific licence areas and the broad principles Ofgem intends to apply across

the board. Instead, OVO recommends taking a “top-down”, holistic approach, where Ofgem first outlines its vision of what a properly functioning retail market should look like, then identifies what customer outcomes it wants suppliers to achieve across the market, before formulating any principles (whether broad or narrow). Without this approach, OVO is concerned that we will simply replicate RMR and other previous attempts at regulatory reform where issues were addressed in isolation, with the result being once again a focus only on the rules to follow, not the outcomes to deliver.

- (b) In our view, the existing criteria for the “**fairness test**” set out in the Working Paper does not encourage suppliers to procure a positive outcome for customers. Preventing customer detriment or a supplier favouring its own interests may be important elements to consider, but once again those tests reflect a narrow, micro-level approach which risks failing to capture all potential outcomes for customers which suppliers should be aiming to achieve in acting fairly.
- (c) There appears to be **duplication** between the proposed Standards of Conduct (**SoC**) and the new area-specific principles proposed by Ofgem, as set out in the Informed Choices Consultation. OVO recognises that there will be instances where sub-principles or specific prescriptive rules are required. However, in OVO’s opinion, such sub-principles or rules should be introduced only where the problem being addressed by those principles or rules cannot already be addressed by one of the SoCs.

1.4. In light of our observations, OVO recommends applying the top-down, outcomes-based approach to regulatory reform outlined in OVO’s March FRR Response¹ as follows:

- Under the three pillars of **Protect, Engage** and **Innovate**², identify and address the five key problems that currently exist in the market, which in

¹ OVO’s response to Ofgem’s consultation on the future of retail energy regulation, dated 11 March 2016.

² See section 3.2(c) of OVO’s response to Ofgem’s consultation on the future of retail energy regulation, dated 11 March 2016 which explores the concept of the Pillars in more detail.

OVO's view are: **disengagement, overcharging, mis-selling, systems/processes** and **vulnerability** (the "why").

- Formulate positive customer outcomes that respond to and resolve each of the identified areas directly (the "what").
- Using the SoCs as the starting point, formulate principles in a way that directly achieve the outcomes (the "how").

1.5. In the following sections of this response we expand on our **"why, what, how" approach** outlined above.

- (a) In section 2, we set out the step-by-step application of this approach in order to define the problems, formulate the outcomes to address the problems, and design the principles to achieve the outcomes;
- (b) In section 3, we apply this approach to Ofgem's proposed principles for tariff comparability and marketing set out in the Informed Choices Consultation;
- (c) In section 4, we apply this approach to Ofgem's proposed vulnerability principle set out in the Working Paper;
- (d) In section 5, we outline how OVO believes enforcement can be conducted in relation to our proposed outcomes and principles; and
- (e) In the Annex, we answer specific questions raised in the Consultations which are not covered in the main sections of our response.

1.6. As with the OVO March FRR Response, we would like to reiterate that we are not presenting our recommendations in this response as a final, perfect model for future retail regulation. Instead, the thinking behind our model is constantly evolving. We do believe, however, that our approach is a useful start in re-aligning the future retail regulation work towards achieving the right outcomes for consumers and ensuring the industry as a whole learns the lessons from past regulatory reforms.

2. The “why, what, how” approach - proposed outcomes and principles

- 2.1. In OVO’s opinion, rules which govern a market set standards of **behaviour** in the market. However, the rules do not set a **direction** for the market, regardless of whether those rules are principles-based or prescriptive. Setting the direction is essential to delivering a single, consistent **vision** for what a well functioning retail market looks like.³
- 2.2. OVO’s view is that the direction for the market is ultimately set by the outcomes which the market aims to deliver for customers, and the outcomes are in turn designed to address problems in the market. It is only after this direction is set - i.e., the problems clearly articulated and the outcomes formulated in response - that the ‘rules’ can be designed.
- 2.3. The purpose of this section 2 is to explain how the “why, what, how” approach can be used to establish outcomes and principles, and therefore the direction needed to ensure that the intended behaviour is achieved.

Step 1 - Identify the problems in the current market

- 2.4. The first step is to outline the key problems we identify as currently existing in the market - i.e., “why” we need direction and behaviour to change. OVO believes that there are five key problems:
- (a) **Overcharging.** According to the CMA, the vast majority of Big Six and larger independent supplier customers could have made savings from switching suppliers, tariffs and payment methods.⁴ In particular, customers of the Big Six who are on high default variable tariffs and paying by standard credit could have saved an average of 23% of their bill by switching supplier, tariff and

³ See section 4.1 and 4.2 of OVO’s response to Ofgem’s consultation on the future of retail energy regulation, dated 11 March 2016 which explores the concept of the Vision for the retail market.

⁴ Paragraph 2.155 of the CMA’s Final Report in the Energy Market Investigation, dated 24 June 2016.

payment method.⁵ This shows that a large proportion of energy customers are being overcharged as they are not on the best tariffs available to them.

- (b) **Disengagement.** The CMA's findings confirmed that a large number of energy customers lack understanding of, and engagement in, the market.⁶
- (c) **Mis-selling.** The CMA's findings suggested that energy customers are being subjected to mis-selling or other detrimental sales tactics.⁷
- (d) **Systems.** In our experience, supplier and industry systems and processes are not performing as well as they should in a number of areas and are in need of upgrading. An example of this is the recent industry-wide mis-match discovered between imperial and metric gas meters of certain customers.
- (e) **Vulnerability.** It is arguable that, in the context of an essential utility, vulnerable customers are not being adequately protected. For example, customers on prepayment meters (often some of the most vulnerable customers) have far more limited options in the market in terms of tariffs and suppliers.⁸

2.5. The result of these problems is that customers are not sufficiently **Protected** and **Engaged**, nor are suppliers given sufficient scope to **Innovate** for the benefit of their customers.

Step 2 - Describe the outcomes

2.6. Now that we have identified the "why", the next step in our approach to regulatory reform is to formulate outcomes that directly address the identified problems - i.e., "what" we want to achieve in response to the problems.

2.7. We acknowledge that Ofgem has identified customer outcomes it wishes to deliver in previous consultations on principles-based regulation - specifically lower bills, reduced environmental damage, improved reliability and safety, improved quality

⁵ Paragraph 2.156 of the CMA's Final Report in the Energy Market Investigation, dated 24 June 2016.

⁶ Paragraph 8.104 of the CMA's Final Report in the Energy Market Investigation, dated 24 June 2016.

⁷ Paragraph 10.119(c) of the CMA's Final Report in the Energy Market Investigation, dated 24 June 2016 which notes that the most common breaches of supply licence conditions have historically related to mis-selling and complaints handling.

⁸ CMA press release, dated 10 March 2016 (<https://www.gov.uk/government/news/cma-sets-out-energy-market-changes>).

of service, and benefits to society as a whole.⁹ These outcomes are commendable, but in our view are more aspirational than attainable because they are not measurable or directly within suppliers' control to achieve. Also, there is not a sufficient direct, causal link between the outcomes and the proposed principles, probably because the principles were not designed specifically to achieve the outcomes.

- 2.8. Therefore, we recommend that Ofgem adopts the following five outcomes which are measurable, attainable and directly address stated problems in the market:

Table 1: Problems vs Outcomes

No.	Problem	Outcome
1	Overcharging	Tariffs are fairly priced.
2	Disengagement	Customers understand all aspects of their interaction with their supplier.
3	Mis-selling	Customers are empowered to choose tariffs that are appropriate for them.
4	Systems	Customers are not negatively impacted by failures in systems or processes.
5	Vulnerability	Vulnerable customers receive higher levels of protection and service.

Taking each outcome in turn, we explain in the following paragraphs the purpose of each outcome and provide further detail on the problem it seeks to address.

Outcome 1 - Tariffs are fairly priced

- 2.9. Outcome 1 recognises the existing problem with customers being overcharged in the energy market.¹⁰ The purpose of this outcome is to challenge suppliers to continually ensure that their tariffs are priced in a manner that fairly reflects their underlying costs. To deliver this outcome a supplier would have to demonstrate

⁹ Paragraph 1.4 of Ofgem's "Future of Retail Regulation" consultation dated 18 December 2015.

¹⁰ See our comments in section 2.4(a) of this response in relation to the CMA's findings in relation to overcharging.

that any difference in the price of their tariffs can be attributed to the different operating costs associated with offering those tariffs.

Outcome 2 - Customers understand all aspects of their interaction with a supplier

- 2.10. Outcome 2 once again recognises the potential for an information asymmetry and therefore requires suppliers to ensure that at all times their customers are fully aware of all aspects of their supply - e.g., how much energy they are using, what their expected bill will be, what help and assistance the supplier can provide in the event something goes wrong and what options are available to the customer to make a complaint.

Outcome 3 - Customers are empowered to choose tariffs that are appropriate for them

- 2.11. Outcome 3 recognises that suppliers will invariably be more informed than their customers. This information asymmetry has previously led to negative outcomes for customers, such as instances of mis-selling and overcharging. Outcome 3 therefore puts the onus on suppliers to take responsibility for ensuring customers have all the information they need to make informed choices about their tariffs.

Outcome 4 - Customers are not negatively impacted by failures in systems or processes

- 2.12. Outcome 4 recognises that systems and process failures by individual suppliers and the wider industry can cause customer harm. Outcome 4 therefore requires suppliers to prevent or minimise customer harm in the event that a system or process fails. In addition, suppliers could deliver this outcome if they adequately compensated a customer that was inconvenienced or harmed by a system failure.

Outcome 5 - Vulnerable customers receive higher levels of protection and service

- 2.13. Outcome 5 specifically recognises that there are a considerable number of vulnerable customers in the energy market. The potential for harm is greater

amongst this group as these customers are generally more susceptible to debt, may be energy dependent and/or may have less ready access to technology and communications options. Therefore, the purpose of Outcome 5 is to make suppliers directly accountable for delivering higher levels of protection and service for these customers.

2.14. It is important to note these outcomes are not set in stone. Ofgem can change and adapt them as circumstances in the market change - e.g., if there are new or different problems which arise from market innovation or technological developments which leads to the need to adapt current outcomes or introduce new outcomes.

Step 3 - Formulate the rules

2.15. Now that we have formulated the outcomes that address the problems (i.e., the “what”), the final step in our approach is to design the rules - i.e., “how” the outcomes will be achieved in order to address the problems.

2.16. OVO supports retaining the SoCs in their current form (relating to behaviour, information and process) and using them as a starting point for this final step, as they directly support most of the outcomes we have identified above in section 2.8. We have illustrated this in the following table:

Table 2A - Mapping existing SoCs to customer outcomes

SoC	Outcomes				
	1 (Fairly priced tariffs)	2 (Customers understand supply)	3 (Customers empowered to choose tariffs)	4 (No harm from systems/ processes)	5 (Vulnerable customers protected)
Behaviour	X	X	X		X
Information	X	X	X		X
Process		X		X	X

2.17. In addition to the existing SOCs, OVO proposes two new SoCs which broadly align with the additional principles Ofgem has considered in its Consultations:

- (a) An SoC in relation to the **design of tariffs**, which ensures that tariffs are both easily comparable and marketed appropriately. This aligns with the intention Ofgem outlined in its Informed Choices Consultation for principles relating to tariff comparability. This SoC specifically addresses the concern that in a more competitive and innovative market, suppliers may introduce increasingly complex tariffs. This SoC is intended to go further than the Behaviour SoC and Information SoC and requires suppliers to ensure the **distinction** between tariffs is easily recognisable to customers.
- (b) An SoC in relation to **vulnerable customers** to ensure they receive an additional level of protection. This aligns with Ofgem’s proposed principle in the Working Paper. Whilst the existing SoCs generally require suppliers to act in a way which is fair and beneficial for all customers (including for vulnerable customers), we agree that a specific SoC which places responsibility on suppliers to specifically act in a way to **protect** and **empower** vulnerable customers is necessary.

2.18. Taking the two new SoCs we can then build on Table 2A:

Table 2B - Mapping existing and new SoCs to customer outcomes

SoC	Customer outcomes				
	1 (Fairly priced tariffs)	2 (Customers understand supply)	3 (Customers empowered to choose tariffs)	4 (No harm from systems/ processes)	5 (Vulnerable customers protected)
Behaviour	X	X	X		X
Information	X	X	X		X
Process		X		X	X
Tariff design	X	X	X		X
Vulnerability	X	X	X	X	X

2.19. Finally, we can draw together all three elements of the “why, what, how” approach:

Table 3 - Problems, outcomes and SoCs

Problems	Outcomes	SoCs				
		Behaviour SoC	Information SoC	Process SoC	Tariff design SoC	Vulnerability SoC
Overcharging	Fairly priced tariffs					
Disengagement	Customers understand supply					
Mis-selling	Customers empowered to choose tariffs					
Systems	No harm from systems/processes					
Vulnerability	Vulnerable customers protected					

2.20. The combined set of five SoCs we have recommended would, in our view, adequately cover the vast majority of supplier activities currently regulated by the prescriptive licence conditions. We would recommend supplementing the SoCs with further narrow principles or prescriptive rules only in specific circumstances which are not addressed or which need further strengthening - e.g., the prescriptive requirement on suppliers to register vulnerable customers on the Priority Services Register.

2.21. We acknowledge that Ofgem has considered new SoC principles around tariff comparability and vulnerability in detail in its Consultations. In light of this, we respond in more detail to these proposals in sections 3 and 4. However, we believe it was important to first illustrate the inclusion of these SoCs as part of our “why, what, how” approach.

The fairness test

2.22. In retaining the SoCs, OVO’s concern with the “fairness test” criteria in its current form is that it prescribes what a supplier should *not* do, in a narrow way, instead of outlining what a supplier should achieve in a broad way. Customer detriment and

supplier advantage are important considerations in assessing compliance with the SoCs but making them the sole criteria will fail to take into account other relevant matters depending on the circumstances - e.g., it may be relevant to look at the purpose of the supplier's actions and whether the underlying intention was to ultimately improve outcomes for customers, or it might be appropriate to consider if the supplier has attempted to minimise any adverse outcomes for customers once it became aware of an issue.

- 2.23. Having such narrow, prescriptive criteria for determining "fairness" is also likely to perpetuate the current culture of compliance among many suppliers, being an avoidance or minimisation of risk or a 'tick-box' attitude, rather than being incentivised to achieve the right outcomes in a broad, holistic way.
- 2.24. Our recommendation therefore would be to retain the fairness test at a high level but to remove the prescriptive criteria relating to a supplier's actions or omissions - i.e., retain the wording of SLC 25C.2 but remove the wording in SLC 25C.3. Furthermore, we would recommend Ofgem consider whether a supplier has acted in a way which treats customers fairly by considering to what extent the customer outcomes we have identified in section 2.8 above have been achieved.
- 2.25. Now that we have completed the application of our "**why, what, how**" approach, we can turn to Ofgem's specific proposals for tariff comparability principles and a vulnerability principle. In the next sections we provide our observations in relation to Ofgem's approach to these two areas, drawing on our approach outlined above to provide further recommendations.

3. Tariff comparability and marketing

- 3.1. OVO fully supports Ofgem's goal to introduce reform which will allow customers to make informed choices about their energy supply. We believe tariff pricing, and sales and marketing are core to the functioning of the retail energy market, and if done properly, can ensure customers have the tools needed to make these informed choices.
- 3.2. However, our view is that introducing narrow principles for tariff comparability and marketing is not the most effective approach. Starting with specific areas of the licence without first identifying the broad outcomes Ofgem wants to achieve will lead to a disconnect between the rules that are ultimately produced, in whatever form, and the purpose they are trying to achieve. This we believe is a key lesson learned from RMR and other past attempts at regulatory reform.
- 3.3. Looking specifically at Ofgem's proposed narrow principles for tariff comparability and marketing, we are also concerned that there appears to be duplication between several of the narrow principles proposed by Ofgem and the overarching SoCs. This is likely to lead to further complexity for customers navigating the regulatory landscape, for suppliers with regard to the design of their tariffs and for Ofgem in regulating and enforcing the rules.
- 3.4. Taking a specific example of one of the narrow principles proposed by Ofgem, "*The licensee must ensure that the terms and conditions of its Tariffs (including their structure) are clear and easily understandable*", we believe the existing SoCs already achieve the same outcome in the following way:
 - (a) The **Behaviour SoC** requires suppliers to act in a fair, honest, transparent, appropriate and professional manner. To comply with this SoC in relation to tariff design, this would require a supplier to ensure its tariff terms and conditions or structures are clear and easy to understand, to ensure it is always acting in a fair and transparent manner.
 - (b) The **Information SoC** requires suppliers to provide information which is not misleading, is communicated in plain and intelligible language and is fair in

both content and presentation. Again, this would require a supplier to ensure that the terms and conditions or structures relating to its tariffs are presented in a clear, simple and not misleading way. Doing this will ensure the presentation of information is fair.

- 3.5. Therefore, as we outlined in section 2.17(a) above, we recommend only one additional SoC be introduced which relates to tariff design. We believe this principle should sit at the top of the regulatory framework - alongside the other key SoCs which govern how market participants should conduct themselves. This SoC would not need to individually deal with sales and marketing practices as the Behaviour and Information SoCs can do this - e.g., by requiring suppliers to act in a fair and professional manner and to ensure they provide complete, accurate and not misleading information which is presented in a clear and fair way.

Proposed SoC for tariff design

- 3.6. We propose the following SoC as an example of a principle for tariff design (**Tariff Design SoC**):

"The Supplier must ensure its products and services marketed and sold in the retail energy market are:

- (a) *easily distinguishable; and*
- (b) *designed to meet the needs of identified consumer groups, and targeted accordingly."*

- 3.7. This proposed SoC would ensure that a supplier is not be able to offer multiple tariffs without there being clear distinguishing features between each tariff type - e.g., in relation to multiple fixed term tariffs, a meaningful difference between the lengths of their terms. It goes further than the Information SoC and requires suppliers to ensure the **distinction** between tariffs is readily obvious to customers so that they are not confused by multiple similar tariffs (one of the issues which led to the past RMR four tariff rule). It is intended to cater specifically for a more

competitive and innovative market, where suppliers may introduce increasingly complex tariffs which customers may have trouble differentiating.

- 3.8. We believe our proposed approach of a single SoC relating to tariff design, coupled with the existing SoCs, is the appropriate framework for principles relating tariff design and sales and marketing. It is not only an easier framework for suppliers to navigate, but it is also simpler for Ofgem to monitor and enforce.

4. Vulnerability principle

- 4.1. OVO is strongly supportive of the introduction of a broad vulnerability principle. We agree that this proposal will address one of the key issues identified by the CMA in its investigation into the retail energy market - that the market is not working well for a large number of consumers, many of whom are likely to be vulnerable.

Vulnerability SoC

- 4.2. We broadly support Ofgem's proposal for the content of the vulnerability principle - that is, ensuring suppliers both **identify** and **respond** to vulnerability. Taking what Ofgem has proposed, OVO's suggestion for a SoC for vulnerability is: *"The Supplier must consistently **identify** and **address** customer vulnerabilities, and should have special regard to customers in vulnerable situations"* (**Vulnerability SoC**).
- 4.3. As we have outlined in section 2 of our response, we envisage that this Vulnerability SoC would sit alongside and complement the other broad SoCs. For example, the Vulnerability SoC combined with the Information SoC would ensure that vulnerable customers are protected, empowered with clear and accurate information and therefore not disadvantaged due to their vulnerabilities. This would therefore achieve Ofgem's stated vulnerability objective, without the need for a complex regulatory structure.
- 4.4. Our concern with Ofgem's proposed vulnerability principle is that it goes beyond this and adds additional prescription where it is not necessary. Ofgem has proposed to include an objective, two standards and a "reasonable steps" requirement. Our view is this is unnecessarily complex. In particular, prescribing that the test for SoC compliance should be whether "all reasonable steps" have been taken incorrectly focuses on supplier behaviour, instead of focusing on whether customers have benefited, and therefore whether customer outcomes have been achieved.
- 4.5. The vulnerability principle, which would become an SoC, is all that is required, and compliance with this would be assessed in light of whether the supplier has acted

fairly¹¹ and whether vulnerable customers have benefited from the supplier's actions.

Market coverage

- 4.6. Ofgem has noted in the Working Paper that its proposed vulnerability principle will cover all activities of a supplier, including circumstances where a charge may be applied to a customer by that supplier, except for the pricing of tariffs. In this context we wish to highlight Outcome 1 we have proposed which does address pricing for all customers, as we believe that suppliers should be required always to price fairly and transparently (whether for vulnerable customers or otherwise) in order to address the problem of overcharging in the market.

¹¹ As outlined in section 2.24, we support retention of an element of the fairness test - that is, assessing whether a supplier has acted in a way which treats customers fairly by considering to what extent the customer outcomes have been achieved.

5. Enforcement

- 5.1. As we have outlined in both our response to the CMA's provisional decision on remedies¹² and the OVO March FRR Response, a radical shift is required in how Ofgem approaches enforcement in a principles-based world.
- 5.2. In short, Ofgem's focus for enforcement needs to be on the end result - e.g. did the supplier succeed in delivering better outcomes for the customer? Is it in line with the identified outcomes for a properly functioning retail market?
- 5.3. Ofgem will also need to look holistically and substantively at the supplier's behaviour and culture, including its decision-making process and whether there has been a genuine effort and intention to achieve the customer outcomes.
- 5.4. As we have previously noted in the OVO March FRR Response, we are of the view that this constructive approach is the opposite to the current tick-box approach to compliance. It is therefore much more likely to encourage - or ultimately force - long term change in supplier behaviour and culture. Additionally, this is the approach to enforcement that the majority of regulatory bodies that operate under principles-based regulation take.¹³
- 5.5. As part of our approach, we would envisage the enforcement process to involve escalating stages as follows:
- (a) Ofgem would operate a "red flags" system which would prompt it to engage in dialogue with a supplier when certain actions or behaviours are identified which gives rise to potential concern. Examples of red flags may include:
- Increases in the overall volume of complaints from previous years or increases in particular area(s) of complaint;
 - The introduction of a number of multiple similar types of tariffs in a short period of time which seem to offer the same/similar benefits

¹² Section 6.15 of OVO's response to the CMA's provisional decision on remedies, dated 7 April 2016.

¹³ See for example our discussion of the Information Commissioner's Office approach to enforcement in section 5.30 of the OVO March FRR Response.

and/or terms (e.g., issuing five new fixed term tariffs in a one-month window); and

- Decreased rate of customer churn at contract end (e.g., more customers rolling over from fixed to variable tariffs).

(b) The supplier would be given an opportunity to respond to Ofgem and explain its actions, practices and/or processes.

(c) Ofgem would take a holistic look at the supplier's actions, practices and/or processes and consider to what extent the supplier achieved the outcomes, whilst also considering the supplier's overall behaviour and culture. This would include determining whether the supplier exhibited a genuine intention and effort to fulfil the underlying spirit and intention of the outcomes and rules, even if the end result was unsuccessful.

(d) If Ofgem **is satisfied** overall that the supplier's behaviour evidenced an intention to achieve the outcomes, and to a large extent the outcomes were achieved, Ofgem and the supplier may develop a correction process focusing on how the supplier can improve its achievement of the outcomes and better act in accordance with the SoCs.

(e) If Ofgem **is not satisfied** that the outcomes have been achieved, then it is considered a breach and Ofgem may impose more direct, stipulated measures.

5.6. We are hopeful that our approach clearly shows how monitoring and enforcement could move from a reactive process to a more proactive one. This process would rely on open dialogue between suppliers and Ofgem, and ultimately allow for more open discussion around potential process improvements and challenges faced by suppliers.

6. OVO's answers to the Consultation questions

Informed Choices Consultation

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)?

(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.

We support the principle that customers need to be able to compare their estimated annual costs easily between a supplier's various tariff offerings, and also between different suppliers. However, as we move to a market which has more tariffs (and increasingly complex tariffs), it will become more and more difficult to define a "consistent" method for calculating estimated annual costs.

As noted by Ofgem in the Informed Choices Consultation,¹⁴ loosening the rules around estimated annual costs will allow greater innovation for suppliers in deciding how best to present annual costs to customers. We believe that this aligns with the approach we've set out in our response, which is to encourage suppliers to act in a way that ultimately achieves the customer outcomes in the most efficient way.

We believe that the existing SoCs (specifically the Information SoC and the Behaviour SoC) will encourage suppliers to give consumers complete, accurate, not misleading information about their estimated annual costs without needing to prescribe **how** this is done. Ensuring suppliers are focusing on the outcome that customers understand all aspects of their supply will encourage the right behaviour when suppliers are formulating the estimated annual costs calculation. It should be up to the supplier to provide the right information along with an estimated annual cost to ensure a customer understands how this figure is calculated.

Additionally, the retention of Tariff Information Labels will also assist in giving customers a consistent view of the cost of a supplier's tariff against its other tariffs, or tariffs of other suppliers.

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?

We fully support this proposal, for the reasons set out above in our answer to Question 1. However, in line with our proposal for how achievement of the SoCs should be assessed,

¹⁴ Paragraph 2.22 of the Informed Choices Consultation.

the test should be whether the estimated annual costs information was presented in such a way as to achieve the relevant customer outcomes (e.g., customers understand all aspects of their supply).

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

We support this suggestion, provided that rolling the customer onto another fixed-term contract delivers the customer outcomes we have identified in our response (e.g. it is fairly priced, appropriate to the customer, the customer understands the tariff and the fact that they have rolled onto it and they have clear information about their options).

We also support Ofgem’s proposal that the fixed term tariff should be a cheaper option than allowing the customer to roll onto a standard variable tariff with higher rates, with no exit fees to leave. Again, this would also achieve the outcome that the customer is on a fairly priced tariff.

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 do not have any specific comments on this.

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?

We do not have any specific comments on this.

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

We do not have any specific comments on this.

Question 7: Do you agree that our proposed policy objective around ‘informed choices’ is the correct one? Please explain your answer.

We fully support Ofgem’s policy objective relating to informed choices - that is, customers are able to make informed tariff choices. This aligns with our proposed customer outcome that “customers are empowered to choose tariffs appropriate to them” and also our suggested Tariff Design SoC.

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

As outlined in our full response to the Consultations, our view is that a single principle

which relates to tariff design would achieve the policy objective of customers being able to make informed choices. Our concerns with Ofgem's approach and the proposed principles are set out in section 3 of this response.

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?

We set out in fully in section 3 of our response our concerns in relation to the duplication between the proposed principles and the existing SoCs.

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.

It is likely that a more flexible regulatory environment may favour the bigger players in the industry, as they generally have greater economies of scale and can capitalise on this new flexibility more quickly than smaller suppliers (e.g., by more rapidly launching new tariffs). Having said that, OVO fully supports a move to a more flexible regulatory environment regardless of this potential impact.

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

OVO strongly supports the introduction of principles which support informed tariff choices and we commend Ofgem for its consideration of this. As set out in our response, our preference is that this be turned into a customer outcome - e.g. customers are empowered to choose tariffs appropriate to them - with SoCs which encourage suppliers to act in a way that achieves this outcome.

We have therefore recommended in our full response the introduction of a Tariff Design SoC which will encourage suppliers to make sure its tariffs are easily distinguishable. The existing Information SoC will also encourage suppliers to present information in a clear and simple way which will ensure consumers understand their options and can make appropriate 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.

OVO supports the proposal that SoCs relating to sales and marketing should apply to all activities, not just telephone and door to door selling. Suppliers should act in accordance with the SoCs at all times and in all interactions with customers, regardless of the channel in which that interaction occurs.

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.

OVO generally supports this proposal. OVO recognises that moving to principles-based regulation will mean Ofgem needs the ability to collect additional data from suppliers to understand whether they are delivering customer outcomes and acting in accordance with the SoCs.

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)?

Yes, OVO broadly supports Ofgem’s rationale of not applying the record-keeping requirements to online sales. Our view is online sales is an area of lower risk than telephone and face to face sales, because it is automated and the customer journey is easily trackable.

In relation to PCWs, we believe reform directly related to how PCWs display supplier information is a more relevant way to ensure customers are protected when interacting through a PCW (e.g., through the Confidence Code Review).

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, as outlined in our full response above and in the OVO March FRR Response, OVO supports removing prescription across the regulatory regime. SLC 25 is just one example of prescription which does not focus on customer outcomes but instead focuses on tick box compliance with rules.

We do recognise that to achieve some customer outcomes, it might be necessary to retain elements of prescriptive rules, particularly where de minimis standards are required to protect vulnerable customers. In the OVO March FRR Response we outlined an example of this in the context of warrant charges - for these sorts of charges, there could be prescriptive rules to ensure suppliers publish charges on their website or clearly identify which charges are not straight pass-through third party costs.¹⁵

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

We do not have any specific comments on this.

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

¹⁵ Paragraph 5.5, OVO March FRR Response.

We do not have any specific comments on this.

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.

We do not have any specific comments on this.

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

We do not have any specific comments on this.

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

We support Ofgem's approach to monitoring the impact of de-enforcement of certain RMR rules. We believe it is the correct approach for Ofgem to actively monitor supplier behaviour to ensure it is consistent with the CMA's proposed new principle around tariff comparability.

We also recommend Ofgem monitor activity in light of the existing Behaviour SoC and Information SoC, to determine whether the customer outcomes we have outlined in our main response above are being achieved. In its open letter¹⁶, Ofgem noted that it still expected suppliers to consider the risk of causing detriment to consumers (including those in vulnerable situations) and take appropriate steps to address this. We urge Ofgem to encourage suppliers to go a step further and ensure their actions result in positive outcomes for consumers.

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 support Ofgem's proposed additional sources of information to monitor sales and marketing activities. Particularly, we agree local housing associations and local authorities may be a good source of information in relation to mis-selling. Vulnerable customers are also more likely to be resident in housing association areas, so we encourage any steps which may lead to early intervention to prevent harm to this customer segment.

¹⁶ Ofgem's open letter regarding the CMA's provisional remedies and the removal of certain RMR "Simpler Choices" rules dated 14 April 2016.

Confidence Code Review

Question 1: Do you agree that we should implement the proposed removal of some of the changes we made to strengthen the WoM requirement in the 2015 Code review? If not, please:

- explain why;
- suggest and explain any alternative proposals

OVO initially opposed the CMA's proposal to relax certain aspects of the Confidence Code and in particular, the WoM requirement. Given the CMA's decision in its Final Report¹⁷ to remove the WoM requirement, we think that Ofgem's proposals to return the Confidence Code to the state it was prior to the 2015 changes is the best compromise available.

Question 2: With reference to Table 2, do you agree with our rationale, and proposed policy changes around the partial default view? If not, please:

- explain why;
- suggest and explain any alternative proposals

Subject to our comments in question 1, we support Ofgem's rationale and proposal on the partial default view. The key for OVO is that PCWs are required to maintain messaging which explains the partial view, and are tested on this messaging. This will ensure customers clearly and easily understand what they are seeing on a PCW site.

Question 3: With reference to Table 2, do you agree with our rationale, and proposed policy changes around the WoM filter choice? If not, please:

- explain why;
- suggest and explain any alternative proposals

Subject to our comments in question 1, we support this proposal

Question 4: With reference to Table 2, do you agree with our rationale, and proposed policy changes around the WoM filter wording/testing? If not, please:

- explain why;
- suggest and explain any alternative proposals

Subject to our comments in question 1, we support this proposal. As outlined in our response to question 2, ensuring PCWs provide clear and consistent messaging explaining default and filter views is critical to ensuring consumers are not misled by PCW sites.

Question 5: Do you agree that sites should test the prominence, clarity and intelligibility of their messaging with consumers and that Ofgem should monitor this? If not, please:

- explain why;

¹⁷ Competitions & Markets Authority - Energy Market Investigation Final Report dated 24 June 2016.

- **suggest and explain any alternative proposals**

Yes, for the reasons set out in the above responses.

Question 6: With reference to Table 3, do you agree that the proposed Code wording reflects our proposals? If not, please:

- **explain why;**
- **suggest and explain any alternative proposals**

We do not have any specific comments on this.

Question 7: Do you agree with our rationale, and proposed policy changes around the removal of Personal Projection? If not, please:

- **explain why;**
- **suggest and explain any alternative proposals**

Yes, OVO broadly supports this proposal.

Question 8: Do you agree with our rationale, and proposed policy changes about including the pre-2015 code content on factors an accredited price comparison website should and should not include when deriving a consumer's estimated annual costs? If not, please:

- **explain why**
- **suggest and explain any alternative proposals**

Yes, OVO broadly supports this proposal as it aligns with our views on how best to approach calculating estimated annual costs (see our response to question 1 of the Informed Choices Consultation).

Question 9: With reference to Table 4, do you agree that the proposed Code wording reflects our proposals? If not, please:

- **explain why**
- **suggest and explain any alternative proposals**

We do not have any specific comments on this.

Question 10: Do you agree with our assessment that no changes are required to the TIL references within the Code?

Yes, OVO agrees with this.

Question 11: Do you agree that these initiatives are out of scope for this review and that we should monitor their progress to be aware of potential impacts in the future of these initiatives?

Yes, OVO agrees with this.

Question 12: Do you believe there are any other initiatives we should be keeping abreast of to ensure a joined-up approach to our policy development work?

We do not have any specific comments on this.