

Monday, 03 October 2016

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By email only

Dear Clem,

Re: Helping consumers make informed choices – proposed changes to rules around tariff comparability and marketing

Thank you for the opportunity to comment on the above consultation. Utilita Energy Ltd (Utilita) is generally supportive of the proposals in the consultation. We believe that the approach taken is consistent and will lead to improvements for customers.

We have identified some areas of concern or potential inconsistency which we have set out below. Unfortunately, due to the number of simultaneous consultations on the CMA remedies between Ofgem and the CMA and the limited time to respond, we have not been able to respond as fully as we would wish. We have also not been able to address the initial IA as we would wish to do or been able to provide material on costs to inform. We have reproduced the questions below and have noted 'no information' on questions we have not answered reflecting this prioritisation.

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 generally agree that a consistent and transparent approach is required both between customers and over time. However, there is some variation between groups of customers and this has been recognised in the consultation document as it underpins the proposal.

We therefore suggest that the requirement should be for internal consistency within customers of a particular type. Examples might include where a supplier can clearly show variations in customer groups within the portfolio – for example Economy 7 customers or electricity only customers. It may

be that refining the method of estimating annual consumption may lead to more accurate results for such groups and hence be beneficial to customers.

To ensure this does not lead to unintentional or unnecessary complexity, it may be sensible to include a provision whereby such variations need to be justified by the supplier and transparent to the customer. We believe that the principles alone should be sufficient, once the requirement is clear. We would expect the principles to ensure (for example) that where suppliers did choose to use more than one methodology of estimation, they communicated this, and the rationale, appropriately to customers.

We are concerned that this proposal may lead to some confusion for customers when using PCWs. Suppliers are licensed and, under their principles, will be required to do their best to provide good information to customers.

PCWs are not so constrained and this may lead to a broad variation in the estimation methodologies used. As going forward there may be more tariffs where the benefits may vary by consumption, we believe this may lead to poorer outcomes for customers in some circumstances. The comparison of supplier tariffs would be internally consistent, but via PCWs this would not necessarily be so. We suggest that requirements on PCWs may be needed to ensure the customer is extremely clear on the basis by which a comparison has been made if they have not entered their own consumption figure.

(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 – please see above.

We would also suggest that suppliers may need to vary estimated annual costs if customers advise them of expected changes to consumption and ask for advice or support – perhaps on selecting a new tariff. This may involve non-standard approaches specific to the customer, and the arrangements need to provide for such reasonable flexibility.

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 are generally supportive of the approach, but in our view this should be all data which is reasonably available to the supplier. The current requirement is too onerous. Clearly suppliers would be expected to use information they have and which is reasonably available to them, but data may be available (to the customer) and not have been given to the supplier, or the customer may have opted out of data collection and hence data may be technically 'available' but not collected/stored.

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 are not sure of the merit of this proposal. If a customer is to be placed on a fixed term contract, it seems reasonable that this should either be a choice or provided for in the contract.

The benefits of a fixed term contract generally accrue from the supplier being able to predict in advance the requirements and hence offer a price reflecting this predictability. If the supplier may not require the usual terms of a fixed term contract, the benefit may be minimal. The contract is to all intents a variable contract and may be priced accordingly.

It may be that a better approach would be to allow an approach similar to that in SLC7A, and to allow a limited notice period.

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?

Utilita supports this approach, we agree that the TCR should be removed and other licence conditions adjusted accordingly.

We also note that we believe the TCR is actively confusing to customers as some customers believe that this is a chargeable unit rate. Removal will be beneficial to customers.

We support the inclusion of additional points on the TIL to reflect other changes and allowing adjustment to remove blank lines. However, we believe that all TILs should retain information on the term, type of contract, termination fees etc.

Ofgem has correctly identified in paragraphs 2.31 and 2.32 the risks to the CTM associated with allowing acquisition tariffs, and in particular, that such tariffs are not available to existing customers. As this is the case, an acquisition tariff would not be captured by the CTM. While this is a consequence of other remedies, it may be difficult for customers to understand. It may be that the CTM should be adjusted to include a statement that the supplier offers cheaper acquisition tariffs in these circumstances, though this would not be needed where the supplier did not offer acquisition tariffs. In combination with the existing messaging, this would remind the customer to consider other options.

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?

Not answered

Question 6

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

Not answered.

Question 7

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

Utilita supports the policy objective, it is clear and achieves the desired outcome. We support the move to principles based regulation as it places responsibility on the supplier for ensuring the customer is treated fairly.

The requirement to ensure that customers can make informed choices about a supplier's tariffs while not prescribing rules for how the comparison should take place, allows for responsible innovation by suppliers and communication in a way which suits their customers.

As noted above, PCWs are not licensed in the same way as suppliers, and hence it will be essential to ensure that they are also constrained by the same principle and understand clearly what is being offered and on what basis.

Question 8

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

We believe in general that the principles are an appropriate way forward. They recognise that suppliers want to offer a service to their customers that suits them. The example given in 3.41 concerning the customer who may have moved house and knows their preferred tariff is a good one. The approach allows for a tailored response to customers.

We have minor concerns on principle 6, but this may only be a question of interpretation. We would like additional clarity on the use of the term 'recommend'. If the principle is construed to apply only where a supplier makes a specific recommendation to a customer that tariff X or product Y is suitable for them, then we believe the drafting is reasonable.

The corollary to this approach would be that if the customer makes a choice themselves based on information available, the principle would not apply. This would be consistent with a customer being able to make a selection via a PCW without additional advice. The other principles of transparency and clarity etc. would still apply and require the supplier to make appropriate information available so the customer could make the choice, but the supplier would not then have the responsibility of having made a recommendation.

We would welcome confirmation that this interpretation is correct.

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?

Not answered

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.

We believe that the principles will have a variable impact in respect of the resources available to suppliers to operate a principles based approach.

It will be important to ensure that Ofgem enforces effectively against these principles and the quality of implementation. Ofgem has done significant work on its approach to enforcement and has previously reported in conference its use of a mixture of formal and informal methods. We welcome

this combined approach, which allows for constructive engagement with suppliers balanced with speedy action where required to protect consumers.

Question 11

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

In our view the ability of consumers to make informed tariff choices should be viewed as an outcome of the application of principles, rather than a principle in its own right.

We suggest that it should be set out above the principles in the revised licence condition rather than included within them. The approach should mirror that of 25C where the Customer Objective is set out, followed by additional provisions. This is clear and easy to understand.

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, with the increased activity through online channels, it is important that good quality information is available to customers using those routes as well. However, it must be recognised that suppliers may be less able to control context and manage the flow of required information through these routes, and hence the requirements must be in terms of 'all reasonable steps' to ensure that customers are able to access the necessary information to make an informed choice.

This continues to place a responsibility on the supplier to make information available, but recognises the customer choice.

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.

We support this approach.

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)?

We do not agree with this proposal. If sales have been conducted through online or PCW routes, we consider that records should be kept in the same way as for any other sales. PCWs must carry the same responsibilities for record keeping, managing customers' data and using it only for permitted purposes as do suppliers. While the customer is making their tariff choice via the PCW, the PCW is temporarily in the supplier role for the limited purposes of making the sale and must be obligated to keep appropriate records.

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?

While we agree with the removal of prescription generally, we believe that the intent underlying the requirement for management arrangements should be retained. We would suggest that it should be framed as a principle that requires the Licensee to be able to demonstrate that in complying with the principles, there is appropriate management oversight and support.

We agree that the key must be the outcome for consumers and that this should include management arrangements by definition. However, if poor outcomes for consumers occur and enforcement is necessary, there must be a clear principle of management responsibility for that failure.

We also agree with the removal of the requirement to always provide comparisons for PPM customers and to rely on the other principles, in particular principle 6 (see comments above). However, it may be appropriate to consider whether a point should be included which requires suppliers to recognise explicitly that some customers may need additional support in making choices or managing their supply. In our experience, this can be the case with prepayment customers and can be an important distinction in serving them well.

Questions on draft Impact Assessment (see also Appendix 3)

Question 16 – 21 - Not answered

We hope these comments have been useful and would be happy to discuss any points raised in more detail.

Yours sincerely,

By email

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