

Standards of Conduct for suppliers in the retail energy market

Consultation

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Overview:

The domestic and non-domestic Standards of Conduct (the Standards) lie at the heart of our retail market regulatory framework. These principles-based licence conditions require that suppliers behave, provide information and carry out customer service processes in a manner that ensures customers are treated fairly. Such requirements intend to not only improve consumer outcomes and facilitate innovation but also to boost trust and engagement levels. As part of their Energy Market Investigation, the Competition and Markets Authority concluded that consumer engagement remained a substantial problem in the retail energy markets and that this was having an adverse effect on competition.

This policy consultation proposes amendments to the tests and thresholds within the domestic and non-domestic Standards so that they have a sharper focus on consumer outcomes. For the domestic Standards only, we are also proposing to add broad principles that require suppliers to enable consumers to make informed choices and to have special regard for consumers in vulnerable situations. These changes will ensure the Standards remain fit-for-purpose as the market enters a period of significant change.

Key to protecting consumers from risks that could emerge in the market will be our ability to spot problems early. This policy consultation also outlines a proposal to amend standard licence condition 5 so that our information gathering powers enable us to monitor the market more effectively.

Context

Ofgem's 2014 Strategy stated our intention to rely more on principles, and less on detailed prescriptive rules, when seeking to ensure suppliers are delivering good outcomes for consumers. Principles will give suppliers more freedom to innovate, while ensuring they are thinking hard about whether their actions are benefiting consumers.

In the proposed 2017-18 Ofgem Forward Work Programme (FWP), we reaffirm our ambition to rely more on principles in the supply licence. In particular, the FWP highlights our commitment to make amendments to the principles contained within the existing Standards of Conduct, as well as our commitment to add a broad vulnerability principle to the supply licence that requires suppliers to have a special regard for these consumers. This policy consultation sets out the licence changes we propose in order to fulfil these commitments.

Associated documents

[Findings from the 2016 Challenge Panel](#) (January 2017)

[Enabling consumers to make informed choices – statutory consultation](#) (January 2017)

[Forward Work Programme 2017-18](#) (December 2016)

[Enforcement Guidelines](#) (updated September 2016)

[Working Paper on Broad Principles](#) (August 2016)

[Helping consumers make informed choices – proposed changes to rules around tariff comparability and sales and marketing](#) (August 2016)

[Future of retail market regulation – update on the way forward](#) (June 2016)

[Future of retail market regulation consultation](#) (December 2015)

[Our Strategy](#) (December 2014)

[Consumer Vulnerability Strategy](#) (July 2013)

[Implementation of the domestic Standards of Conduct – decision to make licence modifications](#) (June 2013)

[Implementation of the Retail Market Review non-domestic proposals – decision to make licence modifications](#) (June 2013)

Standard conditions of the [electricity supply licence](#) and [gas supply licence](#) (current)

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Executive Summary

Our ambition is to create a retail energy market¹ where competition constrains prices, drives efficiency and delivers the quality of service and products that customers need and expect from an essential service. As part of this, we expect all suppliers to identify, take into account, and respond appropriately to the individual circumstances of customers in vulnerable situations.

One of our initiatives for delivering a better functioning retail market is our commitment, over time, to rely more on enforceable principles rather than detailed rules about how suppliers should run their businesses. We think this will better protect consumers' interests by:

- allowing more room for suppliers to compete and innovate;
- providing effective consumer protection in an evolving market; and
- putting responsibility firmly on suppliers to deliver good consumer outcomes.

We already require suppliers to comply with the principles-based domestic and non-domestic Standards of Conduct. "The Standards" require that suppliers achieve the objective of "treating customers fairly". To do this, they must comply with a set of broad principles relating to their behaviour towards customers, how they provide them with information and the customer service they offer. We refer to these as "broad principles" because they are sufficiently generic to apply across a range of supplier activities. Such principles-based requirements are intended to not only improve consumer outcomes and facilitate innovation, but also boost trust and levels of consumer engagement in the market.

Standards of Conduct proposals

We are proposing amendments to the domestic and non-domestic Standards to ensure they are better able to deliver their policy intent as the market enters a period of significant change. The specific changes we are proposing are to:

- Focus the definition of "unfair" used in the domestic and non-domestic Standards on the outcomes experienced by customers, and not the outcomes for suppliers;
- Remove the "all reasonable steps" compliance threshold and instead focus on whether a supplier is achieving the outcomes expected under the domestic and non-domestic Standards.
- Add a broad principle to the domestic Standards that requires suppliers to help customers make informed choices about their energy supply. This change would supplement our proposed "narrow principles" that specifically relate to how a supplier should help consumers make informed decisions about tariffs that are

¹ In this document we use the terms "market" and "markets" as shorthand for referring to different segments of the energy sector. For the avoidance of doubt, these terms are not intended to describe or otherwise suggest the approach that may be taken by Ofgem for the purposes of market definition in competition law investigations.

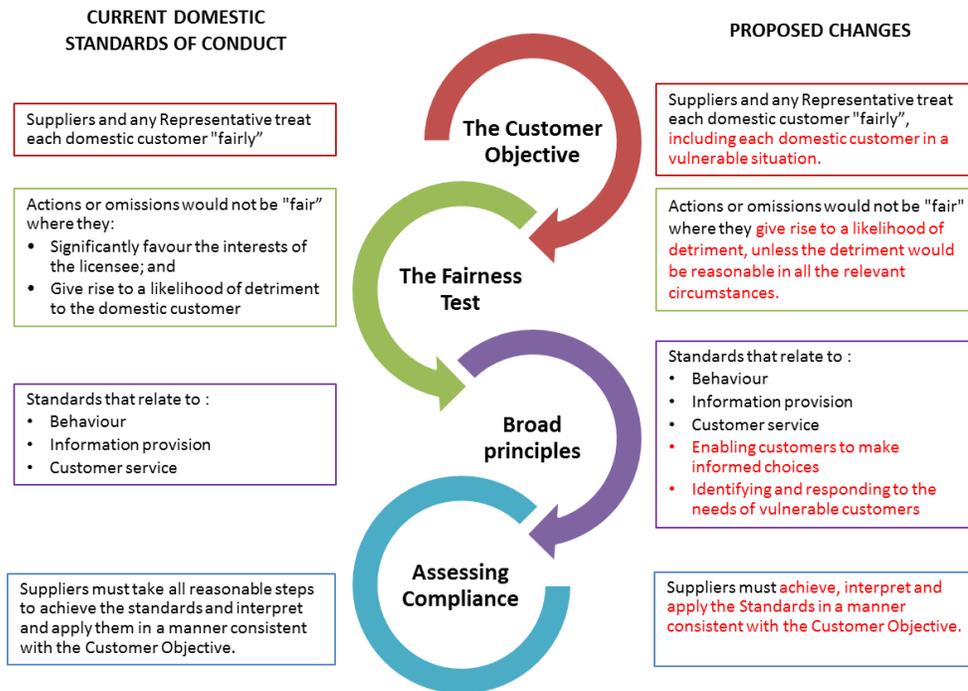
Standards of Conduct for suppliers in the retail energy market

being sold or marketed to them (a statutory consultation on these principles has been published alongside this policy consultation)².

- Add a broad vulnerability principle to the domestic Standards that clarifies to suppliers that to uphold their obligation to treat all domestic customers fairly, they need to make an extra effort to identify and respond to the needs of customers who are in vulnerable situations.

Figure 1 illustrates how these proposals would alter the current domestic Standards. We envisage these changes will provide greater scope for us to continue removing prescription from the supply licence, will emphasise the need for suppliers to ensure good consumer outcomes and will better enable us to take swift action, including compliance action, where we see clear evidence of systemic failings that are putting consumers at risk.

Figure 1 – Proposed changes to the domestic Standards of Conduct



Standard licence condition (SLC) 5 proposal

We are also proposing to amend SLC 5 so that our information gathering powers are in line with those of other regulators with a market monitoring function.³ These changes will enable us to monitor the market more effectively as we move to a principles-based world.

² Ofgem (2017) [Statutory consultation: enabling consumers to make informed choices](#).

³ Ofgem has separate statutory powers to request information. Further details are set out in chapter 4.

Supporting the transition to principles

In applying the proposed broad principles within our Standards, we will continue to apply the rules proportionately, in line with our Enforcement Guidelines and Better Regulation duties. We are also continuing to make sure that our own internal culture and processes evolve in order to support the move to a greater reliance on principles. Progress we have made so far includes:

- We have been improving the way we monitor the market so we are better able to spot and react quickly to poor supplier conduct. As part of this, we have established arrangements with Citizens Advice and the Ombudsman to ensure we are making better use of the information we collect.
- We are engaging more with suppliers, particularly new entrants or those that are trying to do innovative things, to help them understand our expectations and apply them to possible new policies, processes or products. This constructive engagement will also help suppliers with the culture change they need to make in order to consistently put customer needs at the heart of their business.
- We are continuing to review the way we work with suppliers to ensure compliance and may publish further guidelines on our approach. We consider we already have a strong track record of managing technical or minor instances of non-compliance proportionately, while remaining ready to take tough action where needed.

We will continue adapting our operating approach throughout 2017-18. We are keen to hear from stakeholders on what more we could do to make the transition to a greater reliance on principles a success for energy consumers and suppliers.

Next steps

Proposed changes to the Standards should better enable us to remove unnecessary prescriptive rules from the licence. We have already removed a significant amount of prescription that was blocking tariff innovation. In conjunction with this policy consultation, we have also released a statutory consultation on the removal of detailed prescriptive rules relating to sales and marketing activities.

In 2017-18 we will review the prescriptive rules relating to supplier communications with customers (eg bills, annual statements and end of fixed term notices) and will consult on the removal of rules which may be blocking innovation that could improve the way suppliers engage customers. We will also continue to investigate how the licence and associated guidance can be made more user-friendly.

We would like to hear your views on the issues raised in this document, particularly on the questions we ask at the start of each chapter. Please send your responses to futureretailregulation@ofgem.gov.uk by **13 March 2017**.

We will be engaging with stakeholders through workshops and bilateral meetings during the consultation period. Please get in touch if you would like to discuss the proposals in this document.

1. Introduction

- 1.1. The retail energy sector is entering a period of significant change. The smart meter rollout is underway and we are seeing technologies emerge that will help businesses and householders to better control the energy they use. We are also seeing growth in new business models competing in the sector.
- 1.2. In seeking to achieve our principal objective of protecting the interests of existing and future energy consumers, we must ensure all consumers are able to benefit from these changes whilst being effectively protected from risk. In short, we want a retail market where competition constrains prices, drives efficiency and delivers the quality of service and products that consumers need, including those who are vulnerable. To support the achievement of these aims, we will be relying more on principles, and less on detailed prescriptive rules. This regulatory approach will achieve the following objectives:⁴
 - **Promote innovation and competition that will lead to benefits for consumers.** Relying more on principles will enable us to remove prescriptive rules which might stop suppliers from innovating and present a barrier to new entrants.
 - **Provide effective consumer protection in an evolving market.** Our experiences show that loopholes can sometimes be found in detailed prescriptive rules. They can also become less effective over time as circumstances change. The extent of change expected in the retail energy market means that it will not be sustainable to manage new risks by continuously adding or amending prescriptive rules.
 - **Putting responsibility firmly on suppliers to deliver good consumer outcomes.** Under prescriptive rules, there is a risk that suppliers are too focused on “ticking boxes” rather than on what’s right for consumers. We want suppliers to embrace and embed a consumer-centric culture.

The Standards of Conduct

- 1.3. The introduction of the domestic and non-domestic Standards of Conduct (“The Standards”) as enforceable licence conditions in 2013 was a major step on the road to relying more on principles. The broad principles contained in these licence conditions require that suppliers behave, provide information and carry out customer service processes in a manner that ensures customers are treated fairly.⁵ “Broad principles” are high-level rules that sit across multiple policy areas. We released a working paper setting out our preliminary thinking on broad principles in August 2016.⁶

⁴ These objectives closely align with our [Regulatory Stances](#). Removing unnecessary prescriptive rules so suppliers have greater flexibility also aligns with the intentions of the Ofgem [Innovation Link](#).

⁵ Standard Licence Condition (SLC) 7B (non-domestic Standards) and 25C (domestic Standards) can be found in both the [electricity](#) and [gas](#) supply licences (see appendices 2 and 4 for these current SLCs).

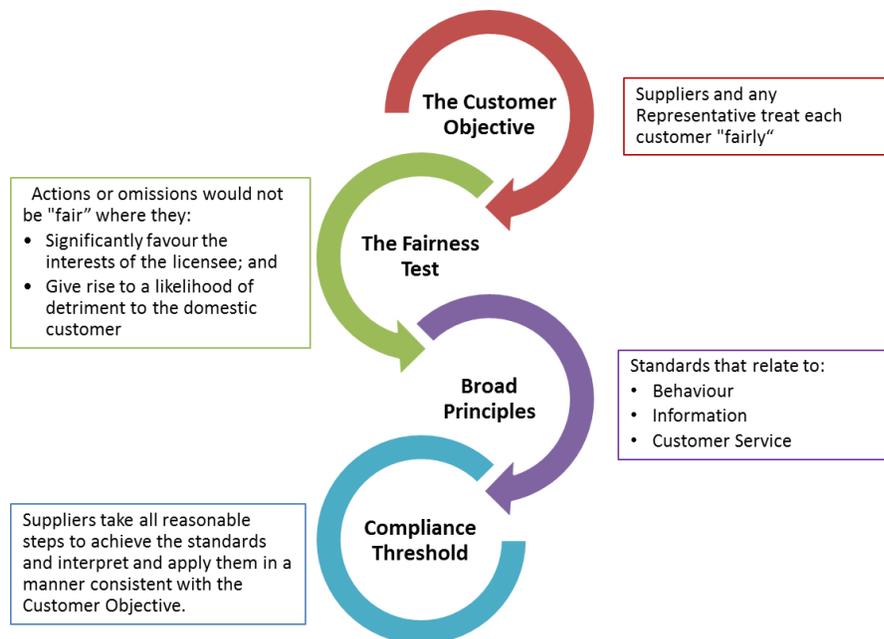
⁶ Ofgem (2016) [Broad principles working paper](#).

- 1.4. The broad principles contained within the Standards are a strong starting point in terms of setting out our overarching expectations of supplier conduct towards consumers. Such requirements intend to not only improve consumer outcomes and facilitate innovation, but also to boost trust and engagement levels. However, in order for us to progress with removing significant amounts of prescriptive rules from the licence we need to ensure the Standards will be able to achieve their policy intent into the future. This consultation proposes amendments to the Standards so they communicate our expectations of suppliers more clearly and can continue to provide effective consumer protection in an evolving market.

How the current Standards work

- 1.5. The current elements of the domestic Standards are set out in Figure 2. When applying the Standards we would look at the actions or omissions by a licensee that may be non-compliant and identify the broad principle(s) that is relevant. We would then consider whether the actions and/or omissions of the licensee meet our *Fairness Test* definition of unfair (eg, did it significantly favour the interests of the licensee and give rise to a likelihood of detriment to the customer). If the identified actions or omissions were unfair, we would then consider whether the licensee nonetheless took *all reasonable steps* to achieve the Standards. If the licensee did not take *all reasonable steps* then a breach can be considered to have occurred.

Figure 2 – Current domestic Standards of Conduct



Proposed amendments to the Standards

- 1.6. Our proposals to amend the domestic and non-domestic Standards of Conduct would mean these licence conditions have a sharper focus on the consumer

outcomes we expect suppliers to achieve. The changes would also better enable us to take swift corrective action where we see clear evidence of failings, particularly systemic failings, that are putting consumers at risk. These changes will help to ensure the Standards are able to continue to deliver their aim of securing improved consumer trust and engagement, while enabling us to remove more prescription from the licence.

- 1.7. **Chapter 2** sets out the following proposed changes to the Standards:
- amend the *Fairness Test* in the domestic and non-domestic Standards so that it focusses on a likelihood of consumer detriment which would not be “reasonable in all the relevant circumstances.”
 - remove the *all reasonable steps* requirement from the compliance threshold in the domestic and non-domestic Standards.
 - add a broad “informed choices” principle to the domestic Standards only. This principle would work alongside the narrow sales, marketing and tariff comparison principles we have proposed in a statutory consultation.⁷
- 1.8. We are also seeking stakeholder views on whether the current “Treating Customers Fairly” statement licence obligations are proving effective at increasing consumer awareness about suppliers’ responsibilities under the Standards. We set out our thinking on this issue at the end of **Chapter 2**.
- 1.9. **Chapter 3** outlines our proposal to amend the Customer Objective and add a broad vulnerability principle to the domestic Standards only. These amendments will set a clear requirement for suppliers to identify and respond to the needs of domestic customers in vulnerable situations.

Supporting the transition to principles

- 1.10. **Chapter 4** discusses a proposed amendment to standard licence condition 5 that will bring our information gathering powers into line with those held by other sectoral regulators with a market monitoring function. This change will make us better able to ask questions about suppliers’ approach to compliance.
- 1.11. In **Chapter 5** we set out our next steps as we move to rely more on principles. We outline how we have been adapting our operating approach so we are effectively facilitating this transition and we identify the next area of prescriptive rules we will be prioritising for reform. As we remove prescription we will also be considering how we can make the licence, and the various sources of guidance that go alongside it, more user-friendly and accessible.
- 1.12. **This consultation closes on 13 March 2017.** We welcome your views.

⁷ Ofgem (2017) [Statutory consultation: enabling consumers to make informed choices](#).

2. Ensuring the Standards of Conduct remain fit-for-purpose

Chapter Summary

This chapter outlines a number of key changes we are proposing to make to the domestic and non-domestic Standards of Conduct (the “Standards”). These proposals represent our developed position on themes initially outlined in our August working paper, to which respondents may also wish to refer.⁸

We are proposing to change the *Fairness Test* and compliance threshold within the domestic and non-domestic Standards. This will ensure these licence conditions are more sharply focused on consumer outcomes, and less focussed on supplier outcomes or inputs.

We are also proposing to introduce a broad “informed choices” principle into the domestic Standards that will help ensure consumers can make informed decisions about their energy supply. This principle will work alongside narrow sales, marketing and tariff principles we have proposed in a separate statutory consultation.⁹

This chapter also sets out our position on guidance relating to the Standards and seeks evidence on the “Treating Customers Fairly” statement.

Question 1: Do you agree with our proposal to retain a *Fairness Test* for all the broad principles within the domestic Standards of Conduct? If you don’t agree, please provide an explanation in support of your answer.

Question 2: Do you agree with our proposed wording for a revised *Fairness Test*: “the licensee or any Representative would not be regarded as treating a Domestic Customer/Micro Business Consumer Fairly if their actions or omissions give rise to a likelihood of detriment to the Domestic Customer/Micro Business Consumer, unless the detriment would be reasonable in all the relevant circumstances”?

Question 3: Do you agree that the changes to the *Fairness Test* should be made to the non-domestic Standards of Conduct at the same time as the domestic Standards of Conduct?

Question 4: Do you agree with our proposal to remove the *all reasonable steps* threshold from the domestic Standards of Conduct? If you don’t agree, please provide an explanation in support of your answer.

Question 5: Do you agree that *all reasonable steps* should be removed from the non-domestic Standards of Conduct at the same time as the domestic Standards of Conduct?

⁸ Ofgem (2016) [Working paper on broad principles](#), pp. 5-11.

⁹ Ofgem (2017) [Statutory consultation: enabling consumers to make informed choices](#).

Question 6: Do you support our proposal to introduce a broad “informed choices” principle into the domestic Standards of Conduct?

Question 7: Do you agree with the proposed drafting of the broad “informed choices” principle we have set out?

Question 8: What, if any, additional guidance on the domestic and non-domestic Standards of Conduct do you consider would be helpful in light of the changes we are proposing?

Question 9: Do you consider that the “Treating Customers Fairly” statement has a valuable role to play and should be retained as an obligation in the domestic and non-domestic Standards of Conduct? Please provide an explanation for your answer.

- 2.1. At the heart of the Standards of Conduct (the Standards) is the Customer Objective that customers should be treated fairly.¹⁰ Customers need to be assured that they will receive fair treatment if they are to engage confidently in the market. The findings of our 2008 Energy Supply Markets Probe and subsequent Retail Markets Review demonstrated that low levels of consumer trust were having an impact on engagement and competition. Ofgem subsequently introduced the Standards as enforceable licence conditions, with the aim of rebuilding consumer trust and ensuring customers are treated fairly.
- 2.2. Our 2014 Challenge Panel Report found that suppliers were on the road to implementing the Standards of Conduct but had yet to embed them fully.¹¹ Since then, Ofgem has taken enforcement action under both the domestic and non-domestic Standards, and found breaches of both. The Competition and Markets Authority’s recent Energy Market Investigation report found that substantial numbers of customers remain disengaged from energy markets.¹²
- 2.3. We are proposing changes to the Standards which will ensure they can continue to secure improvements in the fair treatment of consumers, while also enabling suppliers to unlock the opportunities presented by innovation. We want the supply licence to stay clear, effective and be ready for tomorrow’s market. At the heart of the supply licence are the Standards of Conduct and their core principle that energy customers should be treated fairly.

Amending the “Fairness Test”

- 2.4. While the concept of fairness is often clear-cut, there are some occasions when it may be less obvious whether a customer has been treated fairly. In view of this, and with the aim of improving regulatory predictability, we introduced the

¹⁰ See Figure 2 on p. 8.

¹¹ Ofgem (2014) [Findings from the 2014 Challenge Panel](#).

¹² CMA (2016) [Energy Market Investigation Final Report](#), p.22, pp. 30-37.

domestic and non-domestic Standards of Conduct licence conditions with a *Fairness Test* built in.

- 2.5. If it appears that one of the broad principles within the Standards has not been met, the *Fairness Test* is applied to understand whether the customer has been treated unfairly. At present, the test includes an assessment of two key elements which are set out below.

Current standard licence condition

25C.3 *For the purposes of this condition, the licensee or any Representative would not be regarded as treating a Domestic Customer fairly if their actions or omissions:*

- (a) significantly favour the interests of the licensee; and*
- (b) give rise to a likelihood of detriment to the Domestic Customer.*

- 2.6. The *Fairness Test* is based on the *Unfair Terms in Consumer Contracts Regulations 1999*¹³ and draws on established principles surrounding fairness. In particular, the concept of “significantly favour” was based on how this legislation defines fairness by making reference to “a significant imbalance in the parties’ rights and obligations”. In the Standards of Conduct, this means that if a supplier’s or Representative’s action or omission significantly favours the supplier, and gives rise to a likelihood of detriment to customers, then this is unfair.
- 2.7. We have applied this test of fairness successfully since the introduction of the Standards, however we think the *Fairness Test* should be adapted to stay relevant as the licence, and the energy markets, evolve. As part of our aim to ensure the Standards stay fit for purpose, we are seeking to make the Standards more focused on consumer outcomes, which aligns with our aims to ensure suppliers are actively thinking about what is good for consumers. We also want the Standards to be clearer to understand at first glance, including for consumers and newer market participants, and think a simpler test would achieve this. For example, by making it clearer on the face of the rule that the Standards can be breached when a likelihood of detriment is caused to consumers, even if the overall outcome for the supplier is a “net loss”.¹⁴

Working paper engagement

- 2.8. Our August 2016 working paper signalled that we were considering what changes are most appropriate for the *Fairness Test*.¹⁵ We said we would explore whether alternative wording such as “non-trivial advantage” could replace “significantly favour”. Some stakeholders did not support this. Some

¹³ Unfair contract terms provisions are now contained in the [Consumer Rights Act 2015](#).

¹⁴ Ofgem (2016) [Working paper on broad principles](#), p. 8.

¹⁵ Ofgem (2016) [Working paper on broad principles](#), pp. 7-9.

smaller suppliers felt that the wording used in the *Fairness Test* and the strict interpretation of it was less important than whether consumers perceive there has been unfair treatment. Some suppliers also considered that the reputational harm created by perceived unfair conduct would be likely to make their customers switch away, irrespective of the wording in the Standards.

Other options

- 2.9. We have considered whether there is any need to retain a *Fairness Test* in the Standards, or whether it amounts to unnecessary duplication. The broad principles within the Standards set out some basic expectations - for example, that a customer is given information which is "complete, accurate and not misleading."¹⁶ If this standard is not met (ie, because a customer is given incomplete, inaccurate, or misleading information) it appears clear that the customer will not have been treated fairly. The separate question of whether compliance or enforcement action should result would depend on the specific circumstances, including the likelihood of harm.¹⁷
- 2.10. In thinking about whether retaining a *Fairness Test* remains appropriate, we have given consideration to the general requirement to treat customers fairly which is set out in the "behaviour" broad principle (SLC 25C.4(a)). We consider that the *Fairness Test* may be helpful in clarifying our expectations on this point.¹⁸ We have also taken into account the wider changes we are proposing, including the removal of the *all reasonable steps* compliance threshold from the Standards. We recognise that making these changes may mean suppliers would welcome the ongoing certainty provided by retaining a *Fairness Test* across the Standards.

Our proposal

- 2.11. In view of these considerations and stakeholder feedback to date, we intend to retain a *Fairness Test* across all of the broad principles contained within the Standards. However, we continue to think that the current test should be changed. In particular, we consider that "fairness" could be expressed in a way which is clearer at first glance and more focused on consumer outcomes.¹⁹ We still firmly believe that any supplier who fails to comply with the Standards, and is significantly favoured in some way by disadvantaging their customers, would be acting unfairly. However, in this circumstance we think the key measure of unfairness is the effect on the customer, not the supplier.

¹⁶ See Standard Licence Condition (SLC) 25C.4(i).

¹⁷ In accordance with prioritisation criteria in our published [Enforcement Guidelines](#), non-compliances which give rise to risk of harm are more likely to be viewed as serious matters.

¹⁸ SLC 25C4(a) requires "the licensee and any Representative to carry out actions in a Fair, honest, transparent, appropriate and professional manner".

¹⁹ For example, that it is not necessary for a supplier to achieve a "net gain" for there to be significant favouring of their interests.

- 2.12. With this in mind we propose to change the “significantly favour” element of the *Fairness Test*, and re-focus the test on whether an action or omission gives rise to a likelihood of detriment which would be unreasonable in all the relevant circumstances (see fully revised *Fairness Test* below).²⁰

Proposed drafting

25C.3 For the purposes of this condition, the licensee or any Representative would not be regarded as treating a Domestic Customer Fairly if their actions or omissions **give rise to a likelihood of detriment to the Domestic Customer, unless the detriment would be reasonable in all the relevant circumstances.**

- 2.13. The question of whether a supplier has benefitted from not complying continues to be relevant when we decide how serious any wrongdoing is. We consider this, in accordance with our Enforcement Guidelines, prior to the opening of an enforcement case and subsequently when determining the amount of any penalty which may be appropriate.²¹

Rationale

- 2.14. We think the changes we are proposing will make the *Fairness Test* simpler and more consumer-centric. The revised test continues to recognise materiality, and acknowledges that there are some limited circumstances in which a likelihood of detriment may arise without unfairness to the consumer. The proposed introduction of “detriment which would be reasonable in all the relevant circumstances” continues to recognise suppliers’ rights to carry out legitimate commercial activities (such as charging customers for electricity or gas) in accordance with the supply licence and exercise their rights under statute or the licence (such as disconnection), where these activities are conducted in a lawful and proportionate way.

- 2.15. It’s relevant to note that the focus of this new test is on whether the nature of any detriment to the consumer is reasonable in all the relevant circumstances and **not** on whether a supplier has taken reasonable steps to avoid causing the likelihood of detriment.

Consequential deletion of “Fair”

- 2.16. The current *Fairness Test* acts to define the term “Fair” in the Standards, which appears in several places. As a result of the proposed change to the *Fairness*

²⁰ For proposed drafting of the *Fairness Test* in the non-domestic Standards see Appendix 5.

²¹ Ofgem (2014) [Statement of policy with respect to financial penalties and consumer redress](#), pp. 6-8.

Test we intend to remove the word "Fair" from the "information" broad principle²² as set out below.

Current standard licence condition

25C.4(b) *the licensee and any Representative provide information (whether in Writing or orally) to each Domestic Customer which:*

iv) is otherwise Fair both in terms of its content and in terms of how it is presented, (with more important information being given appropriate prominence)

Proposed drafting

25C.4(b) *the licensee and any Representative provide information (whether in Writing or orally) to each Domestic Customer which:*

*iv) in terms of its content and in terms of how it is presented, **does not create a material imbalance in the rights, obligations or interests of the licensee and the Domestic Customer in favour of the licensee.***

2.17. This proposed change does not represent a change in policy. The principle will continue to capture unfair contract terms and the misrepresentation of a supplier's or consumer's rights, obligations or interests under statute or the licence. This effect is currently embodied through our use of the term "significantly favour", which we propose to remove.²³ As a consequence of this change, the requirement to ensure "more important information is given sufficient prominence" would be moved to another position within the Standards. The proposed revisions to the domestic (SLC 25C) and non-domestic (SLC 7B) Standards of Conduct are set out in full at appendices 3 and 5 respectively.

Parallel changes to the non-domestic Standards of Conduct

2.18. Research suggests micro-business customers behave more like domestic customers than medium and large businesses.²⁴ Despite this, micro-business customers receive fewer protections under consumer law than domestic consumers. Consequently the supply licence provides an important framework of protection for micro-businesses, which can help improve trust and engagement levels.

2.19. Although our shift to rely more on principles is currently focused on domestic supply activities, we consider that the proposed changes to the *Fairness Test* should also be introduced in the non-domestic Standards. While the non-

²² See SLC 25C.4(b) in the [electricity](#) and [gas](#) supply licences..

²³ Our rationale for including protection from unfair terms within the Standards of Conduct is set out in our 2013 [Decision Document](#) (p.6).

²⁴ Ofgem (2011) [Retail market review: non-domestic proposals](#), pp. 32-39.

domestic Standards differ in scope to the domestic Standards²⁵ and operate differently in some areas,²⁶ they are structured in a very similar way and contain an identical *Fairness Test*. The proposed change from a *Fairness Test* based on whether the Licensee's action or omission "significantly favours" their interests, to a focus on whether detriment is "reasonable in all the relevant circumstances" should have the same substantive effect in the non-domestic Standards as in the domestic Standards.

- 2.20. We consider that the rationale for defining "unfair" based on consumer outcomes applies equally to micro-business consumers as it does to domestic consumers. We think that making changes in tandem to the domestic and non-domestic Standards will support consistency and be more straightforward for suppliers to apply, particularly for those that operate in both markets.

Question 1: Do you agree with our proposal to retain a *Fairness Test* for all the broad principles within the domestic Standards of Conduct? If you don't agree, please provide an explanation in support of your answer.

Question 2: Do you agree with our proposed wording for a revised *Fairness Test*: "the licensee or any Representative would not be regarded as treating a Domestic Customer/Micro Business Consumer Fairly if their actions or omissions give rise to a likelihood of detriment to the Domestic Customer/Micro Business Consumer, unless the detriment would be reasonable in all the relevant circumstances"?

Question 3: Do you agree that the changes to the *Fairness Test* should be made to the non-domestic Standards of Conduct at the same time as the domestic Standards of Conduct?

Removing all reasonable steps

- 2.21. The current domestic Standards require suppliers to take *all reasonable steps* to comply with the broad principles set out in SLC 25C.4.²⁷ If these broad principles are not upheld, it's for Ofgem to show that one or more reasonable steps weren't taken in order to establish that there has been a breach.

Current standard licence condition

25C.5. *The licensee must take all reasonable steps to achieve the Standards of Conduct and ensure that it interprets and applies the Standards of Conduct in a manner consistent with the Customer Objective.*

²⁵ The "Designated Activities" the non-domestic Standards apply to are set out in SLC 7B.12. In addition, the non-domestic Standards do not apply to Representatives.

²⁶ For example in respect of Objections under SLC14.2(a) which applies to non-domestic customers only. The non-domestic Standards of Conduct take precedence over this rule to ensure that suppliers may not rely on unfair contract terms to prevent non-domestic customers switching away.

²⁷ See Figure 2 on p. 8.

- 2.22. The *all reasonable steps* compliance threshold recognises that there can be more than one way to achieve relevant outcomes for consumers and avoids prescribing particular measures a supplier should take to achieve these outcomes. This means there is room for innovative approaches to delivering good results.
- 2.23. As currently drafted, the Standards place emphasis on Ofgem for setting out whether *all reasonable steps* have been taken. We signalled in our August 2016 working paper that we were considering whether this remained the right compliance threshold for the Standards in light of other changes we are making to the licence and the way we engage with suppliers.²⁸ We have continued to develop this thinking, taking into account informal feedback on the working paper and also our proposals to retain a *Fairness Test*. We think a greater focus on achieving the Standards, rather than the steps taken to achieve them, would be more likely to ensure positive effects for consumers while still enabling innovation.

Working paper engagement

- 2.24. The working paper set out our view that, if *all reasonable steps* was retained in the Standards, there would be merit in suppliers, and not Ofgem, being responsible for setting out the steps they have taken to comply. Under that approach, the licensee would not be in breach if it could demonstrate that it took *all reasonable steps* to achieve the Standards. We outlined our thinking that moving responsibility to suppliers for showing evidence of the reasonable steps they have taken would better align with our aim for all suppliers to think early and actively about consumer outcomes.
- 2.25. Stakeholders had differing views regarding the need for *all reasonable steps* in the Standards. One supplier held the view that applying this threshold to the Standards incorrectly focused the licence condition on supplier behaviour instead of the consumer outcome, as well as making the obligation unnecessarily complex. Other stakeholders strongly opposed suggestions that *all reasonable steps* be removed from the Standards. They considered that some form of due diligence test should be applied to principles, given that suppliers cannot always control the actions of their agents or employees.
- 2.26. We have also considered that even if the initial responsibility for demonstrating all reasonable steps was moved to the supplier, it may ultimately fall to Ofgem to set out one or more reasonable steps which may not have been taken.

²⁸ Ofgem (2016) [Working paper on broad principles](#), pp. 9-10.

Our proposal

2.27. We take the view that placing responsibility for showing *all reasonable steps* with suppliers would not be the most effective option for amending the threshold in the Standards. We consider that removing *all reasonable steps* will better meet our aims by ensuring the Standards require the achievement of good consumer outcomes. Reducing the emphasis on *how* suppliers achieve good outcomes gives wide scope for suppliers to take different approaches to meeting specific customer needs. This proposed change will mean that in order to be compliant, licensees must ensure they are achieving, interpreting and applying the Standards in a manner which is consistent with the Customer Objective.

Proposed drafting

25C.5. *The licensee must achieve, interpret and apply the Standards of Conduct in a manner consistent with the Customer Objective.*

Rationale

2.28. We think our proposal is appropriate both in light of the wider changes we intend to make to the licence through removing prescription and also our approach to compliance with principles (under which we foresee increased emphasis on early engagement).

2.29. While our proposals do not signal a change in our approach to enforcement, we consider removing the *all reasonable steps* threshold in the Standards is a proportionate step in light of persistent low levels of consumer trust and engagement.²⁹ Removing *all reasonable steps* would shift the focus of the Standards more firmly on to consumer outcomes, rather than the internal processes of a supplier. This means suppliers will need to ensure that compliance measures are not only present, but also adequate and effective at securing the required outcomes.

2.30. The broad principles in the Standards set expectations that a competent, responsible supplier, and their representatives, should feel confident in achieving. We also consider that these principles reflect the standard of treatment which all customers might reasonably expect to receive from any supplier. Achieving these principles is critical if we are to improve levels of consumer trust and engagement in the retail energy markets.

2.31. We recognise that things may sometimes go wrong, and our proposals are neither designed nor intended to result in enforcement action every time we see a negative consumer outcome.

²⁹ CMA (2016) [Energy Market Investigation Final Report](#), p.22, pp. 30-37.

Applying the Standards proportionately

- 2.32. Our proposal to remove *all reasonable steps* from the Standards is set against a backdrop of safeguards within our Enforcement Guidelines that outline how we will apply the Standards proportionately. The guidelines set out criteria for opening enforcement investigations based on the level of harm to consumers and takes account of the action by the company causing the breach. For example, we are more likely to escalate cases where non-compliance appears reckless or intentional. We will also have regard to the positive actions a supplier has taken to prevent harm and secure compliance.
- 2.33. The Enforcement Guidelines contain a specific section on how we will enforce the Standards and state that when assessing how serious an issue is, and consequently whether it is likely to be opened as a case, “we will consider whether a reasonable person, intent on complying with the Standards of Conduct, would have acted in the way the supplier did in its interactions with consumers.”³⁰ We will also continue to consider the steps a supplier has taken to put things right promptly if they do go wrong.
- 2.34. As stated at paragraph 2.29, removing *all reasonable steps* from the Standards is not intended to signal a change in our approach to enforcement. Similarly, the changes we are proposing to the thresholds in the Standards do not represent a “raising of the bar” in terms of what is required to comply with existing prescriptive rules in the licence. Instead, we envisage it will allow us to be more agile in how we respond to emerging problems and will ensure that, if we do need to intervene, we can focus on securing good consumer outcomes promptly.
- 2.35. In addition to our general duties to have regard to proportionality and other Better Regulation principles, we have a strong track record of enforcing against more serious issues. This, together with the approach set out in our published Enforcement Guidelines, should provide licensees with assurance that we will deal with small or minor breaches proportionately. Our guidelines provide that one of our criteria for deciding whether to open an investigation is the seriousness of consumer harm. As such, it is unlikely that we would open an investigation on the basis of isolated consumer complaints. It is important to stress, however, that the Enforcement Guidelines make clear we will not rule out investigating instances of particular detriment affecting individuals or small groups, especially if those affected are in vulnerable situations.
- 2.36. As set out in our 2017-18 Forward Work Programme, in light of our move to rely more on principles, we intend to review our strategy to achieving the right outcomes for consumers through compliance. We intend to publish guidelines

³⁰ Ofgem (2016) [Enforcement Guidelines](#), p. 10-11.

on our approach in order to give clarity and certainty on our vision and approach to Compliance and Enforcement, and our priorities in these areas.³¹

Parallel changes to the non-domestic Standards of Conduct

2.37. We think it is preferable to have consistent compliance thresholds in the domestic and non-domestic Standards. We therefore propose to remove the *all reasonable steps* threshold from these licence conditions in parallel. While we note that the non-domestic Standards are not identical to the domestic Standards (see paragraph 2.19) both conditions are aligned in their aim to ensure customers are treated fairly.

2.38. We consider that our reasoning for removing all reasonable steps from the domestic Standards also applies to the non-domestic Standards. This is consistent with our proposal in paragraphs 2.18 -2.20 to make changes to the *Fairness Test* in the non-domestic Standards at the same time as changes to the domestic Standards.

Question 4: Do you agree with our proposal to remove the *all reasonable steps* threshold from the domestic Standards of Conduct? If you don't agree, please provide an explanation in support of your answer.

Question 5: Do you agree that *all reasonable steps* should be removed from the non-domestic Standards of Conduct at the same time as the domestic Standards of Conduct?

Broad "informed choices" principle

Previous engagement

2.39. In August 2016 we published a policy consultation³² which proposed to remove a significant amount of prescription from the domestic sales and marketing rules in SLC 25. The consultation also set out our policy objective that "consumers are able to make informed choices by understanding which of a supplier's tariffs offers the best value to them based on their characteristics and preferences."

2.40. Most stakeholders were supportive of this objective being included in the supply licence as a principle. Suppliers mostly felt it would be appropriate as a substitute for narrower principles, while consumer groups generally felt it could complement these well by outlining what the narrow principles were intended to achieve.

³¹ Ofgem (2016) [Forward Work Programme 2017-18](#), pp. 25-26.

³² Ofgem (2016) [Helping consumers make informed choices – proposed changes to rules around tariff comparability and marketing](#).

2.41. Following this policy consultation, our broad principles working paper signalled that we were considering whether 'consumers making informed choices' should apply to a wider range of consumer interactions beyond choosing tariffs or sales and marketing issues and may therefore be appropriate to include in the domestic Standards as a broad enforceable principle.³³

Our proposal

2.42. We note that the information broad principle³⁴ in the domestic Standards already requires that licensees provide information that "relates to products or services which are appropriate to the Domestic Customer to whom it is directed." However, given that informed, engaged consumers are central to a well-functioning market, we feel it is appropriate to include an additional principle in the Standards to emphasise that we expect licensees to go further to enable customers to make informed choices relating to their energy supply.

Proposed Drafting

25C.4(v) *The licensee and any Representative provide information (whether in Writing or orally) to each Domestic Customer which: **is sufficient to enable the Domestic Customer to make informed choices about their supply of gas and/or electricity by the licensee.***

2.43. In a separate statutory consultation we have set out our proposals to remove the majority of the existing prescription in SLC 25 and introduce five narrow, enforceable principles to help protect consumers from mis-selling and ensure that they are able to make informed tariff choices.³⁵ We envisage these narrow principles in SLC 25 will work in conjunction with a broad principle in the domestic Standards to provide appropriate protection for consumers regarding the energy choices they make.

Rationale

2.44. Consumers' ability to make informed tariff choices is of fundamental importance to the effective functioning of the retail market. The remedies recommended by the CMA following their Energy Market Investigation included the introduction of a principle in this space.³⁶ We consider that customers should also be able to make informed choices about a range of products and/or services their energy suppliers may provide, as well as the tariff itself. For example, factors such as customer service standards, ethics, privacy or environmental impacts may readily influence consumers' choices of products, services and supplier.

³³ Ofgem (2016) [Working paper on broad principles](#), p. 9.

³⁴ SLC 25C.4(b)(iii)

³⁵ Ofgem (2017) [Statutory consultation: enabling consumers to make informed choices](#).

³⁶ CMA (2016) [Energy Market Investigation Final Report](#), p. 57.

2.45. In view of this, we intend to introduce a broad enforceable “informed choices” principle into the domestic Standards. This broad principle would work to support the narrow principles we are proposing to introduce in SLC 25 and underpin our objective to ensure consumers can make informed choices regarding their supply of energy. This obligation goes beyond requiring that information is not misleading, and makes clear that consumers need to be proactively provided with enough information to ensure they can make informed decisions about their energy services. This will be a valuable step in helping to maintain a future-proof licence as the range of choices consumers face in the energy market continues to increase.

Question 6: Do you support our proposal to introduce a broad “informed choices” principle into the domestic Standards of Conduct?

Question 7: Do you agree with the proposed drafting of the broad “informed choices” principle we have set out?

Existing guidance

2.46. When we introduced the domestic and non-domestic Standards we published guidance which provides additional clarity on the terms “appropriate”, “honest and transparent”, “professional manner” and “plain and intelligible”.³⁷ These terms are unaffected by changes we are proposing and consequently we think this existing guidance remains a useful resource which we intend to retain unchanged. We do not consider that additional Standards of Conduct guidance is required in light of the proposals set out in this consultation but we welcome views of stakeholders on this.

2.47. In addition to our published guidance on interpreting the Standards, our Enforcement Guidelines also set out our approach to enforcing them. The guidelines will apply to all the principles in the Standards, including the proposed informed choices and vulnerability principles.³⁸ We intend to review our strategy and approach to securing the right consumer outcomes through compliance activity and subsequently to publish guidelines.

Question 8: What, if any, additional guidance on the Standards of Conduct do you consider would be helpful in light of the changes we are proposing?

³⁷ Ofgem (2013) [Implementation of Standards of Conduct – decision to make licence modifications](#), pp. 8-10.

³⁸ We may consider changes to the Enforcement Guidelines in light of our proposals on vulnerability and our developing approach to compliance.

Treating Customers Fairly statement

2.48. The Standards of Conduct licence conditions include an enforceable requirement for suppliers to publish a “Treating Customers Fairly” (TCF) statement and to update this statement annually. Suppliers must also provide a copy of the TCF statement to any person upon request, free of charge. This requirement was introduced to “help consumers understand what specific actions they can expect from a supplier in relation to the Standards of Conduct”. The TCF statement requirement applies in both the domestic and non-domestic Standards of Conduct.

Working paper engagement

2.49. In our August working paper we said we were considering how suppliers and customers are using TCF statements and whether they play a useful role in promoting consumer interests.³⁹ Respondents to the working paper welcomed our review of the statements.

Evidence

2.50. Our annual consumer survey asks consumers if they “recalled receiving any communication from their energy supplier(s) about their requirements to treat customers fairly”. Results from the past three years have shown that consumers’ recollection of receiving any Standards of Conduct communications is relatively low and has not risen.⁴⁰

2.51. We reviewed the TCF statements of a number of suppliers as part of our Challenge Panel on ensuring consumers can make informed choices.⁴¹ The quality of the statements varied considerably with a small number of suppliers using them as an opportunity to explain why customers should choose them and to make firm commitments about service levels. At the other end of the spectrum, some statements were brief and appeared to have been given limited consideration.

Proposed way forward

2.52. The statement’s intent of helping consumers understand what they can expect from a supplier, and raising consumer awareness of the Standards more generally, remains relevant. However, based on the evidence available to us we

³⁹ Ofgem (2016) [Working paper on broad principles](#), p. 10.

⁴⁰ Ofgem (2014) [Retail Market Review 2014 Baseline Consumer Survey](#), pp. 213-214.

Ofgem (2015) [Retail Market Review Evaluation Survey](#), pp. 683-685.

Ofgem (2016) [Consumer Engagement Survey 2016](#), pp. 910-919.

⁴¹ Ofgem (2016) [Request for information and challenge panel: Enabling consumers to make informed choices](#).

have not reached a view on whether the statement is achieving its objectives sufficiently or whether it could be more effective if the TCF statement requirements in the Standards of Conduct were amended.

- 2.53. We welcome the views of stakeholders to our question below, along with any supporting evidence, to assist us in reaching a decision. Based on the evidence submitted in this consultation we may decide to retain, amend or remove the TCF statement requirement in the domestic and non-domestic Standards through a statutory consultation alongside other changes which are proposed in this consultation. At the present time, the TCF statement requirements in SLC 7B and SLC 25C remain enforceable licence conditions which suppliers are required to comply with.

Question 9: Do you consider that the “Treating Customers Fairly” statement has a valuable role to play and should be retained as an obligation in the domestic and non-domestic Standards of Conduct? Please provide an explanation for your answer.

Clarifying the scope of the Standards of Conduct

- 2.54. As the domestic and non-domestic Standards of Conduct are at the heart of the retail market regulatory framework, it is important that these obligations are as clear as possible. One area we feel the Standards could be made clearer, on the face of the rule, relates to their scope in respect of charges and fees.
- 2.55. The domestic Standards, SLC 25C, apply to all activities of the licensee and any Representative which involve, or otherwise relate to, dealings with a domestic consumer. The non-domestic Standards, SLC 7B, apply to all of a licensee’s Designated Activities in respect to a micro-business customer (activities of a licensee’s representatives are out of scope under the non-domestic Standards).
- 2.56. We propose to clarify what is within scope for both the domestic and non-domestic Standard of Conduct and welcome the views of stakeholders on our proposal. The proposed drafting of SLCs 25C.6, 25C.6A, 7B.7 and 7B.7A are set out in Appendices 3 (domestic Standards) and 5 (non-domestic Standards) respectively.
- 2.57. These proposed changes will make it clear in the licence that although the amount of a charge or fee (except for Deemed Contracts) is out of scope, the Standards do apply to a determination of whether it was fair to charge for a given product or service, including the circumstances in which a charge is levied. These amendments do not signal a change in policy intent and are consistent with the policy positions put forward during our original consultation on the Standards of Conduct licence conditions.

3. Broad vulnerability principle

Chapter Summary

We continue to see worrying signs that customers in vulnerable situations are experiencing poor outcomes and worsening detriment. As the market develops, we want to ensure that consumers in vulnerable situations are not left behind. We are proposing to introduce an enforceable principle into the domestic Standards of Conduct which makes it clear that suppliers have a special responsibility towards consumers in vulnerable situations. This would require suppliers to make efforts to identify and support these customers to access energy markets on a level playing field when compared to non-vulnerable consumers. A principle gives suppliers an incentive and the flexibility to innovate as they design and deliver products and services that are inclusive of customers in vulnerable situations.

Question 10: Do you agree with our proposal to include a broad vulnerability principle in the domestic Standards of Conduct? If not, please explain why with supporting evidence.

Question 11: Do you agree with our proposed definition of 'Vulnerable Situation'? If not, please explain why with supporting evidence.

- 3.1. Protecting and empowering consumers in vulnerable situations is a priority for Ofgem.⁴² As retail energy markets evolve, there will be more choices available, not only in the number of suppliers but in the types of products and services. As these changes set in, we want to be clear about our expectations and provide the right protection for customers in vulnerable situations.
- 3.2. The Standards of Conduct require that each customer is treated fairly. In practice, to treat customers fairly they may need to be treated differently, according to their circumstances. For many customers in vulnerable situations, being treated fairly may require special consideration and extra effort from suppliers. Our understanding of current consumer outcomes indicates that this is not happening consistently and often these consumers receive little attention. We therefore intend to clarify, in the licence, the outcomes we expect for customers in vulnerable situations.
- 3.3. Doing so would align the supply licence conditions with the Consumer Vulnerability Strategy (CVS), which sets out our expectations regarding suppliers identifying and tackling vulnerability in the energy sector.⁴³ We recognise that vulnerability is about the situations which consumers are in, rather than about the individual per se. Risk factors stem from personal circumstances as well as from the energy sector itself. Therefore, vulnerability can be transitory as people's circumstances change.

⁴² Ofgem (2016) [Working paper on broad principles](#), pp. 12–16.

⁴³ Ofgem (2013) [Consumer Vulnerability Strategy](#).

- 3.4. The definition of vulnerability set out in the CVS is when a consumer's personal circumstances and characteristics combine with aspects of the market to create situations where he or she is:
- Significantly less able than a typical consumer to protect or represent his or her interests in the energy market; and/or
 - Significantly more likely than a typical consumer to suffer detriment, or that detriment is likely to be more substantial.⁴⁴
- 3.5. Circumstances which can cause or exacerbate vulnerability could include a low or insecure income, treatment by a supplier, permanent or temporary physical disability or mental illness, and significant life events. Anyone can find themselves in a vulnerable situation at least once in their lifetime.
- 3.6. There is evidence that some customers in vulnerable situations are more likely to be disengaged from energy markets⁴⁵ and less aware of - and less able to - exercise their consumer rights.⁴⁶ We expect suppliers, and other players in energy markets (such as third-party intermediaries) to help these customers to access energy markets on a level playing field by identifying vulnerability, responding to it, and considering vulnerability in how they design and deliver products and services.

Current outcomes for consumers in vulnerable situations

- 3.7. Since the CVS was published in 2013, we have seen industry taking steps to address vulnerability.⁴⁷ Some suppliers are starting to train their staff to handle difficult issues with empathy, sometimes in partnership with debt and mental health charities. One larger supplier is striving to achieve accreditation with The British Standards Institution Standard for Inclusive Services.⁴⁸
- 3.8. However, the overall picture from our social obligations reporting (SOR), consumer complaints and information from consumer groups is that there are inconsistencies in how well suppliers are identifying and supporting customers in vulnerable situations. This often results in suppliers not fully considering customers' circumstances, thereby leading to poor consumer engagement. Case studies from charities we work with also show a lack of flexibility and sensitivity in how customers are dealt with. This can further deter these customers from engaging with the market.
- 3.9. Some specific areas of concern identified in our latest SOR are:

⁴⁴ Ofgem (2013) [Consumer Vulnerability Strategy](#), p. 12.

⁴⁵ CMA (2016) [Energy market investigation](#), p. 448.

⁴⁶ Citizens Advice (2016) [Consumer detriment](#)

⁴⁷ Ofgem (2016) [Domestic Suppliers' Social Obligations: 2015 annual report](#)

⁴⁸ This Standard recognises that all consumers have different needs and abilities, with many unintentionally being excluded by service providers because of their personal circumstances.



Standards of Conduct for suppliers in the retail energy market

- Last year, over a million gas and 1.2 million electricity customers were in debt to their supplier. The average debt that consumers owed to their supplier when they set up a debt repayment grew from around £450 in 2012 to nearly £600 in 2015. For some suppliers, this figure is over £1,000 for electricity customers.
- The average debt repayment amount at small and medium suppliers is equivalent to nearly doubling the weekly energy costs of an average direct debit customer. Among the large suppliers, customers using prepayment meters (PPMs) are very rarely given the lowest repayment rates, while customers on credit payment arrangements often are.
- There has been a long-term growth in the number of PPMs. PPMs are often installed to manage customer debt, and around two in five customers repaying a debt use one. PPM customers are generally more likely to be fuel poor and vulnerable, pay more and have fewer competitive tariff choices. Some customers may be left with little choice but to self-ration or self-disconnect their energy.

3.10. These examples illustrate a gap in how suppliers are considering vulnerability. We are concerned that outcomes for vulnerable customers may continue to worsen as new participants and technologies gain a foothold in the market. We want all customers, and especially those that are in vulnerable situations, to have an equal chance to capitalise on the opportunities these market developments will bring.

Objectives

3.11. Relying more on principles in the context of vulnerability will help us to deliver the following objectives, which align with the overarching objectives of our reforms.

- **Put responsibility firmly on suppliers to have a special regard for consumers in vulnerable situations.** Customers should receive an appropriate response to any vulnerability identified, and not be subjected to detriment caused by inflexible policies.
- **Promote innovation and competition among suppliers.** A principle will give suppliers an incentive and the flexibility to innovate as they design and deliver products and services that are inclusive of customers in vulnerable situations. It will also give suppliers flexibility to achieve our outcomes in a way that suits their organisation.
- **Provide effective protection for consumers in vulnerable situations in a fast-changing market.** The pace of change we're seeing means we can no longer rely on multi-year projects to develop narrow regulations to

protect consumers.⁴⁹ A broad vulnerability principle will set a clear and enduring expectation that licensees must treat vulnerable customers fairly and according to their individual circumstances in all interactions.⁵⁰

Adding a broad vulnerability principle to the domestic Standards of Conduct

Working Paper Engagement

3.12. In our August 2016 working paper we shared our thinking on what a vulnerability principle might look like.⁵¹ This comprised a *vulnerability objective* and *standards*. The *vulnerability objective* reflected the status quo that customers in vulnerable situations are not always able to achieve the same outcomes as typical customers due to their circumstances and therefore these consumers should be “*protected and empowered, and not disadvantaged due to their circumstances*”. The *standards* for suppliers we outlined were i) better, more consistent identification of vulnerability; and ii) respond in a way that reflects the individual circumstances, needs and interests of customers in vulnerable situations.

3.13. Some key themes from informal feedback on the working paper included:

- Support for an incentive on suppliers to act in a way that reflects the individual needs and circumstances of customers in vulnerable situations.
- Support for greater accountability on suppliers to deliver better service for customers in vulnerable situations.
- Support for a definition of vulnerability which captures its complex, often transient and multi-dimensional nature.
- Desire for us to be clear about our expectations and to be mindful of how much burden any new principle would impose on industry.

Proposals

3.14. We propose to make two substantive changes to the domestic Standards of Conduct:

- i) make explicit reference to customers in vulnerable situations in the Customer Objective (SLC 25C.2) and
- ii) introduce a vulnerability broad principle in SLC 25C.4.

⁴⁹ Ofgem (2016) [Ofgem’s Future Insights Series: Overview Paper](#), p. 10.

⁵⁰ BEIS and Ofgem (2016) [A smart, flexible energy system. Call for evidence](#), p. 7, p. 68.

⁵¹ Ofgem (2016) [Working paper on broad principles](#), pp. 12–16.

Proposed Drafting: Customer Objective and Fairness Test

25C.2 *The objective of this condition is for the licensee and any Representative to ensure that each Domestic Customer, **including each Domestic Customer in a Vulnerable Situation**, is treated Fairly ("the Customer Objective").*

25C.3 *For the purposes of this condition, the licensee or any Representative would not be regarded as treating a Domestic Customer Fairly if their actions or omissions **give rise to a likelihood of detriment to the Domestic Customer, unless the detriment would be reasonable in all the relevant circumstances.***

Proposed Drafting: Broad Vulnerability Principle

25C.4(d) *The licensee and any representative:*

- (i) *implement, review and update processes which are, and continue to be, fit for the purpose of identifying each Domestic Customer in a Vulnerable Situation; and*
- (ii) *when applying the Standards of Conduct in paragraphs (a) to (c) above, do so in a manner which takes into account any Vulnerable Situation of each Domestic Customer identified in accordance with the processes in (d)(i) above or otherwise.*

Proposed Drafting: Compliance Threshold

25C.5. *The licensee must achieve, interpret and apply the Standards of Conduct in a manner consistent with the Customer Objective.*

Rationale

3.15. The existing Customer Objective does not exclude customers in vulnerable situations. However, given the evidence of poor outcomes that we see, being explicit that the Customer Objective applies to customers in vulnerable situations would make absolutely clear that suppliers must have a special regard for these customers (SLC 25C.2 and 25C.3).

3.16. For many customers in vulnerable situations, being treated fairly will require special consideration and effort from suppliers to treat customers according to their needs. This could mean making sure, for example, that if a customer notifies the supplier that they are suffering from a bereavement, this is appropriately recorded so the customer doesn't have to explain their

circumstances multiple times to different people. Having special consideration for these vulnerable situations will help enable customers to engage in the market on similar terms as non-vulnerable customers, helping to ensure they don't suffer detriment.

- 3.17. The proposed vulnerability principle (SLC 25C.4(d)) makes clear this intent and our expectations of suppliers. To achieve the Customer Objective, we are proposing that suppliers will be required to embed processes that enable customers in vulnerable situations to be identified. These processes must remain fit-for-purpose and enable staff at all levels to take into account any vulnerable situation identified when applying the rest of the domestic Standards.⁵²
- 3.18. To be compliant with the domestic Standards, we are proposing that licensees must ensure they are achieving, interpreting and applying the broad vulnerability principle - and the other broad principles within the Standards - in a manner which is consistent with the Customer Objective. We believe the vulnerability principle sets out basic expectations that any competent, responsible supplier and their representative(s) should be able to achieve. We also consider that they set a standard which all consumers might reasonably expect to receive.
- 3.19. A supplier may be in breach of the vulnerability principle if its actions or omissions gave rise to a likelihood of detriment to domestic customers, including those in vulnerable situations, unless the detriment would be "reasonable" in all the relevant circumstances. For example, a supplier acting proportionately and otherwise complying with the Standards when exercising a statutory right to disconnect a customer is unlikely to cause detriment which is unreasonable in the relevant circumstances. However, in the case of a customer who is in a vulnerable situation, a supplier may need to have particular regard to that customer's circumstances to ensure their actions do not give rise to more substantial detriment than a typical energy consumer would experience.

Scope

- 3.20. The vulnerability principle will apply in the same way as the existing domestic Standards, covering all activities of the supplier and any representative which involve, or otherwise relate to, dealings with a domestic customer.
- 3.21. Again, like the existing broad principles in the domestic Standards, the vulnerability principle would not apply to the amount of any charge, except in

⁵² See proposed amendments to SLC 25C.4 in Appendix 3.

relation to deemed contracts. It would, however, cover the circumstances in which a charge may be applied (in the same way as the existing Standards).⁵³

- 3.22. The principle would not in any way seek to replicate the provisions of the now defunct SLC 25A (prohibition of undue discrimination in supply obligations) and therefore would not capture whether prices or other terms and conditions discriminate between different groups of customers.

Question 10: Do you agree with our proposal to include a broad vulnerability principle in the domestic Standards of Conduct? If not, please explain why with supporting evidence.

Definition of 'a vulnerable situation'

- 3.23. The broad definition of vulnerability in the CVS was intended to support industry in understanding the complex nature and impact of vulnerability. We are proposing to retain the spirit of the CVS definition and amend the wording as follows:

Proposed Drafting: definition of a vulnerable situation

A Vulnerable Situation means the ~~when a consumer's personal circumstances and characteristics of each Domestic Customer combine with aspects of the market to create a situation where he or she is:~~

- *Significantly less able than a typical ~~consumer~~ Domestic Customer to protect or represent his or her interests ~~in the energy market;~~ and/or*
- *Significantly more likely than a typical ~~consumer~~ Domestic Customer to suffer detriment, or that detriment is likely to be more substantial.*

- 3.24. We propose to delete 'combine with aspects of the market'. Using the words 'Domestic Customer' provides a sufficient link to the concept of energy markets, and shows that the customer must be someone supplied, or required to be supplied, with gas or electricity.

- 3.25. This definition reflects the multi-dimensional and transient nature of vulnerability. This is necessary for a broad vulnerability principle as it allows a wide range of characteristics and circumstances to be considered by suppliers.

Question 11: Do you agree with our proposed definition of 'Vulnerable Situation'? If not, please explain why with supporting evidence.

⁵³ See paragraphs 2.54 – 2.57 regarding the scope of the Standards of Conduct.

Operating the broad vulnerability principle

Interaction with existing SLCs

- 3.26. The vulnerability principle would complement existing principles-based licence obligations by making clear in the licence that we expect suppliers to be alert to signs of all vulnerabilities. It would be wider than the requirements of the Priority Services Register (PSR)⁵⁴ which requires suppliers to take all reasonable steps to identify customers who may benefit from *free non-financial* services relating to safety, access and communication (eg quarterly meter readings).
- 3.27. Existing prescriptive rules would only be removed or replaced by narrow principles if we were confident this would improve overall consumer outcomes and provide enough certainty about our expectations. Until then, we propose that prescriptive rules continue to apply until we have reviewed them and see a strong case to remove or change any rule.

Monitoring and reporting

- 3.28. We will continue to collect data as part of the social obligations reporting requirements to highlight any concerns we have about industry's performance. We will also provide more examples of good and poor practice around vulnerability, which suppliers have told us that they find helpful. In 2017 we will be reviewing the social obligations reporting. We will amend this where needed to allow us to monitor performance trends in key vulnerability indicators. As part of this review, we would consider if and how we can use this reporting to assess compliance with the vulnerability principle.
- 3.29. We will continue to hold meetings with suppliers, Citizens Advice and other consumer groups so that we can address any concerning trends or behaviours early on, and provide feedback where we see positive actions. We may from time-to-time carry out detailed studies into compliance with the principle. Where we suspect that there is disparity between policy and practice, we will engage with suppliers to understand the reasons for this. Our tripartite market monitoring arrangement with Citizens Advice (including the Extra Help Unit) and the Ombudsman will continue to provide insights into suppliers' behaviours and customers' experiences on the ground.
- 3.30. We continue to conduct research with customers to understand their attitudes, experiences and behaviours in the energy markets. We will use these insights

⁵⁴ See Ofgem (2016) [Decision to modify gas and electricity supply, electricity distribution and gas transporter licences for PSR arrangements](#) for changes to the standard special licence condition covering Priority Services Register arrangements.

to help evaluate the impact of our changes on outcomes for customers in vulnerable situations.

Enforcement

- 3.31. We will consider any potential breaches of the broad vulnerability principle as per the bespoke approach for enforcing the Standards of Conduct set out in the current Enforcement Guidelines. In addition to our general duties to have regard to proportionality and other Better Regulation principles, we have a strong track record of enforcing against more serious issues. This should provide licensees with assurance that we will deal with small or minor breaches proportionately.
- 3.32. It is important to stress, however, that while we will tend to focus on systemic failings, the Enforcement Guidelines already make clear that we will not rule out investigating instances of particular detriment affecting small groups or individuals, especially when those affected are vulnerable.⁵⁵

Guidance

- 3.33. We do not propose to provide further guidance on the domestic Standards of Conduct at this stage. Our CVS continues to set out our expectations about how suppliers can approach vulnerability, as well as our overall strategy for supporting customers in vulnerable situations.

⁵⁵ See paragraph 2.32 – 2.36 regarding how we apply the Standards of Conduct.

4. Ofgem's information gathering powers

Chapter Summary

We are proposing to amend Standard Licence Condition (SLC) 5 so that our information gathering powers are in line with those of other regulators with a market monitoring function. These changes will enable us to monitor the market more effectively as we move to a principles-based world.

Question 12: Do you have any comments on the proposal to amend SLC 5?

Our proposal

- 4.1. We are proposing to amend SLC 5 in the electricity and gas supply licences so that we have wider powers to require information from licensees that can be used in our market monitoring function. Such amendments are necessary as we move to rely more on principles in the supply licences because we want to:
 - be confident that suppliers are achieving good consumer outcomes;
 - assist our understanding of the effectiveness of the principles by assessing their impact on suppliers and consumers; and
 - engage proactively with suppliers on any non-compliance as early as possible, in order to allow us to act quickly and minimise or prevent consumer detriment.
- 4.2. The relevant extract of SLC 5 we propose to amend is set out below.
 - 5.1 *After receiving a request from the Authority for Information that it may reasonably require or that it considers may be necessary to enable it to perform any functions given or transferred to it by or under any legislation, including any functions conferred on the Authority by or under the Regulation, the licensee must give that Information to the Authority when and in the form requested.*
 - 5.2 *The licensee is not required to comply with paragraph 5.1 if:*
 - a) *the Information is required by the Authority to enable it to perform its functions under section [34 of the Gas Act 1986 / section 47 of the Electricity Act 1989]; or*
 - b) *the licensee could not be compelled to produce or give the Information in evidence in civil proceedings before a court.*
- 4.3. SLC 5.2(a) restricts the Authority⁵⁶ from requesting information (under SLC 5) to perform its market monitoring function. We propose to remove SLC 5.2(a) in order to allow us to gather information for monitoring the market, including

⁵⁶ The terms "the Authority", "we" and "us" are used interchangeably in this chapter.

monitoring compliance with licence conditions.⁵⁷ Under our proposal, the amended SLC 5.2 would read as follows:

Proposed Drafting

5.2 *The licensee is not required to comply with paragraph 5.1 if the licensee could not be compelled to produce or give the Information in evidence in civil proceedings before a court.*

Rationale for amending SLC 5

- 4.4. Since 2011, we have had the power under the Gas Act 1986 and the Electricity Act 1989 (the Acts) to compel the production of information for market monitoring purposes which relate to particular market monitoring duties set out in the EU gas and electricity directives (eg, monitoring the effectiveness of retail market opening and competition). However, there is scope for interpretation of these EU duties and therefore the scope of our information gathering powers.
- 4.5. The proposed amendment would address any uncertainties around the scope of our market monitoring powers and ensure that we are able to compel licensees to provide information for the purposes of any of our statutory functions. This includes all activities that would be carried out pursuant to our market monitoring activities, such as those relating to compliance and policy development.
- 4.6. The proposed amendment would also bring Ofgem in line with other regulators with market monitoring functions that include compliance monitoring, including:
- Ofwat has standard licence conditions which enable them to compel information to be produced for the purpose of any of their statutory functions under the Water Industry Act 1991, including in respect of their market monitoring functions.⁵⁸
 - Ofcom has the power to require information to ascertain whether an electronic communications networks and services provider has contravened a licence condition, or to ascertain whether a licence condition continues to be effective.⁵⁹
 - The Financial Conduct Authority has the power to require information for its supervisory functions,⁶⁰ which includes monitoring compliance with regulatory requirements.⁶¹

⁵⁷ Ofgem has separate powers under statute to request information if it appears that a licence condition or other relevant requirement is not being complied with.

⁵⁸ Ofwat (2005) [Standard Conditions of Water Supply Licences](#), p. 8.

⁵⁹ Section 135(3)(a) and (c) of the *Communications Act 2003*.

⁶⁰ Section 165 of the *Financial Services and Markets Act 2000*.

⁶¹ Explanatory note to the *Financial Services Act 2012*.



Standards of Conduct for suppliers in the retail energy market

- The Care Quality Commission must conduct reviews of the carrying on of regulated activities by service providers⁶² and can require information for that purpose.⁶³
- 4.7. As is the case when applying principles, we will have regard to our Better Regulation principles when considering whether it is necessary and appropriate to issue a request for information under the proposed new SLC 5. The degree of scrutiny companies receive will be influenced by how well individual suppliers demonstrate to us that they are focused on achieving good consumer outcomes.

Question 12: Do you have any comments on the proposal to amend SLC 5?

⁶² Section 46 of the *Health and Social Care Act 2008*.

⁶³ Section 64 of the *Health and Social Care Act 2008*.

5. Next steps

Chapter Summary

We understand that our move to relying more on principles when regulating energy suppliers will be an ongoing journey. We will therefore be taking an evolutionary approach to adapting how we operate this new framework. This chapter highlights the aspects of our operations we are refining and sets out some of the changes we have already made. This chapter also sets out, at a high level, what we will be doing over the course of 2017-18 to make our domestic supply licence, and associated guidance, more user-friendly.

- 5.1. At our October 2016 senior stakeholder event on the future of retail market regulation, many attendees believed that making the changes needed to operate a more principles-based regime will be a considerable challenge for us.⁶⁴ We recognise this, and have been adapting our operating approach so that our move to rely more on principles will achieve its objectives (see paragraph 1.2). Three operating functions we have been focusing on are how we engage with suppliers, the way we monitor risks and our approach for handling potential cases of non-compliance.

We will be more open with our engagement

- 5.2. We are committed to talking more openly with suppliers. This type of engagement is necessary to build trust among suppliers that Ofgem will act proportionately. It will also build our confidence that suppliers are embedding a consumer-centric approach in their businesses. We have been working to establish this dialogue by:
- **Having proactive conversations with suppliers.** This is necessary so we can gain a greater understanding of what is happening in companies and can flag issues of concern early on. Since the autumn, we have been meeting with suppliers that are relatively new to the market and less familiar to us in order to learn more about their businesses.
 - **Helping suppliers who are considering genuinely innovative products, services or systems.** We will provide information that helps these suppliers to understand how the regulatory framework applies and will consider workarounds if necessary or appropriate. Our recently launched Innovation Link initiative is one way we could offer support to parties looking to introduce significantly innovative technologies or different business propositions to the energy sector.
 - **Holding up a mirror in order to support suppliers with the culture change needed to embrace the spirit of our principles.** Our 2016

⁶⁴ Ofgem (2016) [Future of retail market regulation senior stakeholder event](#).

Challenge Panel highlighted that, generally speaking, suppliers could be doing more to secure a consumer-centric culture.⁶⁵

We will monitor the market in a more risk-based and streamlined way

- 5.3. We are committed to improving our ability to spot issues of concern as early as possible. We will continue to use the qualitative intelligence we capture from our engagement and quantitative market monitoring data to identify emerging risks and issues. Our tripartite arrangement with Citizens Advice and the Ombudsman is already helping us to improve the quality of intelligence collected and shared. We are also considering how we can improve other monitoring tools, such as our social obligations reporting and complaints handling survey. The metrics we gather from our monitoring activities will not only allow us to detect issues early, but will also help us to evaluate and report on the impact of our reforms.
- 5.4. As outlined in Chapter 4, we are proposing to amend the gas and electricity standard licence condition 5 so that we can monitor the market more effectively. We recognise that information requests can present a burden to suppliers and are continually assessing whether the information we request is necessary to ask for and is being collected in an efficient and effective way.

We will maintain a strong focus on managing non-compliance

- 5.5. As per our Better Regulation duties we will continue to respond proportionately to the risks and behaviours we observe in the market.⁶⁶ We recognise that proportionality is especially important under a principles-based regime, as we want suppliers to have the confidence to innovate as we remove prescription from the supply licence. Alongside making changes to the licence and the way we operate, we intend to review our strategy for achieving the right outcomes for consumers through compliance activity. Subsequently we intend to publish guidelines on our approach in order to give clarity and certainty on our vision and approach to Compliance and Enforcement.
- 5.6. While suppliers trusting us to be proportionate is important, we also need to build our own confidence that suppliers are embedding an ethos that focuses on consumer needs and which supports good consumer outcomes through robust practices, policies and procedures. Although we will continue monitor the market carefully, we'd expect suppliers to report any problems to us immediately and tell us what they are doing, or what they plan to do, to put things right. This culture change will not be easy for the industry and needs to

⁶⁵ Ofgem (2017) [Findings from the 2016 Challenge Panel](#).

⁶⁶ Under section 4AA(5A) of the *Gas Act 1986* and section 3A(5A) of the *Electricity Act 1989*, when carrying out its actions the Authority (Ofgem) must have regard to: a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and, b) any other principles appearing to it to represent the best regulatory practice.

be led from board level down. Suppliers who do not take this change seriously will be subject to closer regulatory scrutiny. Those who do focus on and deliver good consumer outcomes will face fewer burdens.

Removing prescription from the supply licence

- 5.7. To understand exactly what we expect, stakeholders are required to navigate a long supply licence (currently around 490 pages) as well as tackle a substantial body of online guidance that is not always well labelled and organised. We understand that this status quo presents challenges for the industry. This is particularly the case for new entrant suppliers who are less familiar with the regulatory landscape.
- 5.8. Stakeholders have said they support us taking a phased approach when removing prescriptive rules.⁶⁷ The first rules we prioritised for removing prescription and relying more on principles were those relating to tariff comparability and sales and marketing activities. On 28 November 2016 we removed around 30 pages of prescriptive rules that aimed to make tariffs simpler and more comparable across the market. Alongside this document, we have published a statutory consultation that proposes to remove further prescription relating to sales and marketing rules and introduce principles that will require that suppliers enable consumers to make informed tariff choices.⁶⁸
- 5.9. Previous engagement asked stakeholders which prescriptive rules should be prioritised for a move towards principles. Apart from the rules we have already started to reform, there was strong support for us to review the prescription relating to customer communications (such as bills, annual statements and end-of-fixed-term notices).⁶⁹ Stakeholders felt that the high level of prescription in these areas was causing communications to become difficult to understand, and that this was inhibiting consumer engagement.
- 5.10. We agree with these stakeholder views and will review the prescriptive customer communications rules over 2017-18. We intend to publish a short working paper in the spring that sets out the objectives of this review and the approach we plan to take. We are keen for stakeholders to play a leading role in this approach and welcome early views on how stakeholders could best feed-in their own experiences and research findings regarding customer communication and engagement.

Making the supply licences and guidance more user-friendly

- 5.11. We are committed to restructuring the supply licences so they are easier to navigate. We have already signalled that we consider the themes of the

⁶⁷ Ofgem (2016) [Summary of responses to the future of retail market regulation consultation](#), p. 14.

⁶⁸ Ofgem (2017) [Statutory consultation: enabling consumers to make informed choices](#).

⁶⁹ Ofgem (2016) [Summary of responses to the future of retail market regulation consultation](#), pp. 15-16.

customer journey could be an appropriate model. We are also committed to giving the Standards of Conduct licence conditions more prominence. Exploring ways to reorganise and make the licence conditions more accessible online could be a sensible first step before renumbering the licence conditions. We are also considering how best to implement other actions such as consolidated definitions, being able to link to other relevant material (eg guidance, decisions and consultations) and providing historic versions.

- 5.12. As we remove prescription from the supply licences we will be reviewing any related guidance and either removing it if it is no longer relevant or, if we decide to keep it, making it more accessible. To prevent guidance proliferation into the future we have developed our internal guidance governance arrangements to ensure that we are not inadvertently placing prescriptive burdens on licensees through the guidance we issue. This governance will also help ensure that when we publish new guidance it is concise, user-friendly and its enforcement status is clear.

Engagement on our proposals

- 5.13. Strong stakeholder engagement and collaboration will continue to be necessary if the transition to relying more on principles in the retail market is to be successful. We encourage stakeholders to engage with us on the proposals in this document. **This consultation will run until 13 March 2017.**
- 5.14. We recognise the resource constraints on smaller market participants. We are happy for these parties to submit thoughts on our proposals by email or to phone the team as part of their response. Workshops will also be held during the consultation period to explore our questions and proposals in greater detail. Invitations will be sent in due course.
- 5.15. At this time, we plan to publish a statutory consultation on these proposals in June 2017.

Appendix 1 – Consultation Response and Questions

We want to hear from anyone interested in this document. Send your response to the person or team named at the front of this document.

We've asked for your feedback in each of the questions throughout it. Please respond to each one as fully as you can.

Unless you mark your response confidential, we'll publish it on our website, www.ofgem.gov.uk, and put it in our library. You can ask us to keep your response confidential, and we will respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. If you want us to keep your response confidential, you should clearly mark your response to that effect and include reasons.

If the information you give in your response contains personal data under the Data Protection Act 1998, the Gas and Electricity Markets Authority will be the data controller. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. If you are including any confidential material in your response, please put it in the appendices.

CHAPTER: Two

Question 1: Do you agree with our proposal to retain a *Fairness Test* for all the broad principles within the domestic Standards of Conduct? If you don't agree, please provide an explanation in support of your answer.

Question 2: Do you agree with our proposed wording for a revised *Fairness Test*: "the licensee or any Representative would not be regarded as treating a Domestic Customer/Micro Business Consumer Fairly if their actions or omissions give rise to a likelihood of detriment to the Domestic Customer/Micro Business Consumer, unless the detriment would be reasonable in all the relevant circumstances"?

Question 3: Do you agree that the changes to the *Fairness Test* should be made to the non-domestic Standards of Conduct at the same time as the domestic Standards of Conduct?

Question 4: Do you agree with our proposal to remove the *all reasonable steps* threshold from the domestic Standards of Conduct? If you don't agree, please provide an explanation in support of your answer.

Question 5: Do you agree that *all reasonable steps* should be removed from the non-domestic Standards of Conduct at the same time as the domestic Standards of Conduct?

Question 6: Do you support our proposal to introduce a broad “informed choices” principle into the domestic Standards of Conduct?

Question 7: Do you agree with the proposed drafting of the broad “informed choices” principle we have set out?

Question 8: What, if any, additional guidance on the domestic and non-domestic Standards of Conduct do you consider would be helpful in light of the changes we are proposing?

Question 9: Do you consider that the “Treating Customers Fairly” statement has a valuable role to play and should be retained as an obligation in the domestic and non-domestic Standards of Conduct? Please provide an explanation for your answer.

CHAPTER: Three

Question 10: Do you agree with our proposal to include a broad vulnerability principle in the domestic Standards of Conduct? If not, please explain why with supporting evidence.

Question 11: Do you agree with our proposed definition of ‘Vulnerable Situation’? If not, please explain why with supporting evidence.

CHAPTER: Four

Question 12: Do you have any comments on the proposal to amend SLC 5?

APPENDIX: Six

Question 13: How would your processes change if our proposals are implemented? Can you provide evidence of what costs you think you will incur to a) implement the changes and b) comply with these?

Question 14: Can you provide evidence to support any alternatives to our proposals?

Question 15: Can you provide evidence of how the proposal will benefit your business? As an example, these could include greater efficiency and coordination among internal processes, development of new business models etc.

Question 16: What wider benefits do you think our proposals could deliver?

Question 17: In a year, how much time (in full-time equivalents/month) on average does your business spend responding to requests for information (RFIs) from Ofgem? How does this compare with the time spent responding to other organisations’ RFIs (eg from BEIS, CMA)? Please provide evidence and indicate whether this is half the time or less, or twice the time or more.

Question 18: Can you provide evidence of any unintended consequences that could arise as result of our proposals?

Appendix 2 – Current Domestic Standards of Conduct

Condition 25C. Customer Objective and Standards of Conduct for supply activities⁷⁰

Application of standard condition

25C.1 Subject to paragraph 25C.6, standard condition 25C applies to all activities of the licensee and any Representative which involve, or otherwise relate to, dealings with a Domestic Customer.

Customer Objective

25C.2 The objective of this condition is for the licensee and any Representative to ensure that each Domestic Customer is treated fairly (“the Customer Objective”).

25C.3 For the purposes of this condition, the licensee or any Representative would not be regarded as treating a Domestic Customer fairly if their actions or omissions:

- (a) significantly favour the interests of the licensee; and
- (b) give rise to a likelihood of detriment to the Domestic Customer.

Standards of Conduct

25C.4 The Standards of Conduct are that:

- (a) the licensee and any Representative behave and carry out any actions in a Fair, honest, transparent, appropriate and professional manner;
- (b) the licensee and any Representative provide information (whether in Writing or orally) to each Domestic Customer which:
 - (i) is complete, accurate and not misleading (in terms of the information provided or omitted);
 - (ii) is communicated (and, if provided in Writing, drafted) in plain and intelligible language;

⁷⁰ This is drawn from the [electricity supply licence](#), as consolidated on 8 December 2016. The wording of SLC 25C in the [gas supply licence](#) is materially the same.

- (iii) relates to products or services which are appropriate to the Domestic Customer to whom it is directed; and
 - (iv) is otherwise Fair both in terms of its content and in terms of how it is presented (with more important information being given appropriate prominence);
- (c) the licensee and any Representative:
- (i) make it easy for a Domestic Customer to contact the licensee;
 - (ii) act promptly and courteously to put things right when the licensee or any Representative makes a mistake; and
 - (iii) otherwise ensure that customer service arrangements and processes are complete, thorough, fit for purpose and transparent.

Compliance with the Standards of Conduct

25C.5 The licensee must take all reasonable steps to achieve the Standards of Conduct and ensure that it interprets and applies the Standards of Conduct in a manner consistent with the Customer Objective.

Exception to scope of condition

25C.6 Apart from any matters relating to Deemed Contracts, standard condition 25C does not apply in respect of the amount or amounts of any Charges for the Supply of Electricity or any other type of charge or fee.

Provision and publication of information

- 25C.7 The licensee must prepare and update annually information (hereafter referred to as the "Treating Customers Fairly Statement") which:
- (a) is set out in Writing;
 - (b) uses a heading which clearly highlights that the information relates to how the licensee is seeking to treat customers fairly; and
 - (c) includes the following information:
 - (i) the main actions taken and being taken by the licensee in line with the Customer Objective and Standards of Conduct; and
 - (ii) the service and treatment Domestic Customers can expect from the licensee and any Representative.
- 25C.8 If the licensee or any Affiliate Electricity Licensee has a Website, the licensee must publish the Treating Customers Fairly Statement on that Website in a position that is capable of easily being accessed by any person.



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25C.9 If any person requests a copy of the Treating Customers Fairly Statement, the licensee must provide a Written copy to that person free of charge as soon as reasonably practicable.

Guidance

25C.10 The licensee must have regard to any guidance on standard condition 25C (including in respect of definitions which appear in standard condition 1) which, following consultation (which may be conducted before this condition takes effect), the Authority may issue and may from time to time revise (following further consultation).

Definitions for condition

25C.11 For the purposes of this condition:

Customer Objective	is to be interpreted in accordance with paragraph 25C.2
Fair and cognate expressions	are to be interpreted in accordance with paragraph 25C.3.
Standards of Conduct	means one or more of sub-paragraphs 25C.4(a) to (c).
Treating Customers Fairly Statement	is to be interpreted in accordance with paragraph 25C.7.

Appendix 3 – Proposed amendments to the domestic Standards of Conduct

Standard condition 25C. Customer Objective and Standards of Conduct for supply activities

Application of standard condition

25C.1 Subject to paragraph 25C.6, standard condition 25C applies to all activities of the licensee and any Representative which involve, or otherwise relate to, dealings with a Domestic Customer.

Customer Objective

25C.2 The objective of this condition is for the licensee and any Representative to ensure that each Domestic Customer, **including each Domestic Customer in a Vulnerable Situation**, is treated **F**fairly (“the Customer Objective”).

25C.3 For the purposes of this condition, the licensee or any Representative would not be regarded as treating a Domestic Customer **F**fairly if their actions or omissions: ~~(a) significantly favour the interests of the licensee; and (b)~~ give rise to a likelihood of detriment to the Domestic Customer, **unless the detriment would be reasonable in all the relevant circumstances.**

Standards of Conduct

25C.4 The Standards of Conduct are that:

- (a) the licensee and any Representative behave and carry out any actions in a Fair, honest, transparent, appropriate and professional manner;
- (b) the licensee and any Representative provide information (whether in Writing or orally) to each Domestic Customer which:
 - (i) is complete, accurate and not misleading (in terms of the information provided or omitted);
 - (ii) is communicated (and, if provided in Writing, drafted) in plain and intelligible language **with more important information being given appropriate prominence;**
 - (iii) relates to products or services which are appropriate to the Domestic Customer to whom it is directed; **and**
 - (iv) ~~is otherwise Fair both~~ in terms of its content and in terms of how it is presented ~~(with more important information being given appropriate prominence)~~, **does not create a material imbalance in the rights, obligations or interests of the licensee and the Domestic Customer in favour of the licensee; and**
 - (v) **is sufficient to enable the Domestic Customer to make informed choices about their supply of gas and/or electricity by the licensee.**

- (c) the licensee and any Representative:
 - (i) make it easy for a Domestic Customer to contact the licensee;
 - (ii) act promptly and courteously to put things right when the licensee or any Representative makes a mistake; and
 - (iii) otherwise ensure that customer service arrangements and processes are complete, thorough, fit for purpose and transparent;
- (d) the licensee and any Representative:
 - (i) implement, review and update processes which are, and continue to be, fit for the purpose of identifying each Domestic Customer in a Vulnerable Situation; and
 - (ii) when applying the Standards of Conduct in paragraphs (a) to (c) above, do so in a manner which takes into account any Vulnerable Situation of each Domestic Customer identified in accordance with the processes in (d)(i) above or otherwise.

Compliance with the Standards of Conduct

25C.5 The licensee must ~~take all reasonable steps to~~ achieve, ~~interpret and apply~~ the Standards of Conduct ~~and ensure that it interprets and applies the~~ ~~Standards of Conduct~~ in a manner consistent with the Customer Objective.

~~Exception to~~ **Scope of condition**

25C.6 Apart from any matters relating to Deemed Contracts, standard condition 25C does not apply in respect of the amount or amounts of any Charges for the Supply of [Gas / Electricity] or any other type of charge or fee, ~~applied or waived~~.

~~25C.6A Standard condition 25C applies to the exercise of a licensee's discretion to apply or waive any fee or charge.~~

Provision and publication of information

- 25C.7 The licensee must prepare and update annually information (hereafter referred to as the "Treating Customers Fairly Statement") which:
- (a) is set out in Writing;
 - (b) uses a heading which clearly highlights that the information relates to how the licensee is seeking to treat customers fairly; and
 - (c) includes the following information:
 - (i) the main actions taken and being taken by the licensee in line with the Customer Objective and Standards of Conduct; and
 - (ii) the service and treatment Domestic Customers can expect from the licensee and any Representative.
- 25C.8 If the licensee or any affiliate Gas Licensee has a Website, the licensee must publish the Treating Customers Fairly Statement on that Website in a position that is capable of easily being accessed by any person.

25C.9 If any person requests a copy of the Treating Customers Fairly Statement, the licensee must provide a Written copy to that person free of charge as soon as reasonably practicable.

Guidance

25C.10 The licensee must have regard to any guidance on standard condition 25C (including in respect of definitions which appear in standard condition 1) which, following consultation (which may be conducted before this condition takes effect), the Authority **has issued**, may issue and may from time to time revise (following further consultation).

Definitions for condition

25C.11 For the purposes of this condition:

Customer Objective	is to be interpreted in accordance with paragraph 25C.2.
Fair	and cognate expressions are to be interpreted in accordance with paragraph 25C.3.
Standards of Conduct	means one or more of sub-paragraphs 25C.4(a) to (ed).
Treating Customers Fairly Statement	is to be interpreted in accordance with paragraph 25C.7.
Vulnerable Situation	means the personal circumstances and characteristics of each Domestic Customer create a situation where he or she is: (a) significantly less able than a typical Domestic Customer to protect or represent his or her interests; and/or (b) significantly more likely than a typical Domestic Customer to suffer detriment or that detriment is likely to be more substantial.

Appendix 4 – Current non-domestic Standards of Conduct

Condition 7B. Customer Objective and Standards of Conduct for non-domestic supply activities⁷¹

Application of standard condition

7B.1 Standard condition 7B applies to all Designated Activities in respect of a Micro Business Consumer.

Customer Objective

7B.2 The objective of this condition is for the licensee to ensure that each Micro Business Consumer is treated fairly (“the Customer Objective”).

7B.3 For the purposes of this condition, the licensee would not be regarded as treating a Micro Business Consumer fairly if their actions or omissions:

- (a) significantly favour the interests of the licensee; and
- (b) give rise to a likelihood of detriment to the Micro Business Consumer.

Standards of Conduct

7B.4 The Standards of Conduct are that:

- (a) the licensee behaves and carries out any actions in a Fair, honest, transparent, appropriate and professional manner;
- (b) the licensee provides information (whether in Writing or orally) to each Micro Business Consumer which:
 - (i) is complete, accurate and not misleading (in terms of the information provided or omitted);
 - (ii) is communicated (and, if provided in Writing, drafted) in plain and intelligible language;
 - (iii) relates to products or services which are appropriate to the Micro Business Consumer to whom it is directed; and

⁷¹ This is drawn from the [electricity supply licence](#), as consolidated on 8 December 2016. The wording of SLC 7B in the [gas supply licence](#) is materially the same.



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(iv) is otherwise Fair both in terms of its content and in terms of how it is presented (with more important information being given appropriate prominence);

(c) the licensee:

(i) makes it easy for a Micro Business Consumer to contact the licensee,

(ii) acts promptly to put things right when the licensee makes a mistake, and

(iii) otherwise ensures that customer service arrangements and processes are fit for purpose and transparent.

Compliance with the Standards of Conduct

7B.5 The licensee must take all reasonable steps to achieve the Standards of Conduct and ensure that it interprets and applies the Standards of Conduct in a manner consistent with the Customer Objective.

7B.6 In the event of a conflict between this condition and paragraph 14.2 of standard condition 14, this condition will prevail.

Exception to Scope of condition

7B.7 Apart from any matters relating to Deemed Contracts, standard condition 7B does not apply in respect of the amount or amounts of any Charges for the Supply of Electricity or any other type of charge.

Provision and publication of information

7B.8 The licensee must prepare and update annually information (hereafter referred to as the "Treating Customers Fairly Statement") which:

(a) is set out in Writing;

(b) uses a heading which clearly highlights that the information relates to how the licensee is seeking to treat customers fairly; and

(c) includes the following information:

(i) the main actions taken and being taken by the licensee in line with the Customer Objective and Standards of Conduct; and

(ii) the service and treatment Micro Business Consumers can expect from the licensee.

7B.9 If the licensee or any Affiliate Electricity Licensee has a Website, the licensee must publish the Treating Customers Fairly Statement on that Website in a position that is capable of easily being accessed by any person.



7B.10 If any person requests a copy of Treating Customers Fairly Statement, the licensee must provide a Written copy to that person free of charge as soon as reasonably practicable.

Guidance

7B.11 The licensee must have regard to any guidance on standard condition 7B (including in respect of definitions which appear in standard condition 1) which, following consultation (which may be conducted before this condition takes effect), the Authority may issue and may from time to time revise (following further consultation).

Definitions for condition

7B.12 For the purposes of this condition:

“Billing”

all matters relating to the provision of a Bill or statement of account to a Customer, including the content and calculations relating to such a Bill or statement of account and the collection and use of information relating to the consumption of electricity.

“Contractual Information”

includes the drafting and content of a Non-domestic Supply Contract or Deemed Contract and the provision of information relating to the Non-domestic Supply Contract or Deemed Contract that applies to a Micro Business Consumer which is being supplied by the licensee.

“Customer Objective”

is to be interpreted in accordance with paragraph 7B.2.

“Customer Transfers”

includes, but is not limited to, any matters that relate to a Customer’s ability to change supplier and/or affect the timeframe for changing supplier (including related terms and conditions of a Non-domestic Supply Contract or Deemed Contract that applies to a Micro Business Consumer).

Designated Activities”

mean each of the following:
(a) the accuracy of a Bill or statement of Account;
(b) the timeframe for a Micro Business Consumer receiving a Bill or statement of account and the timeframe for the payment



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- of a Bill;
- (c) any written or oral communications regarding Billing or Contractual Information;
- (d) Customer Transfers;
- (e) any matters relating to Deemed Contracts; and
- (f) any matters which fall within the scope of standard conditions 7A, 14, 14A and 21B (in so far as they relate to a Micro Business Consumer).

“Fair”

and cognate expressions are to be interpreted in accordance with paragraph 7B.3.

“Micro Business Consumer”

has the meaning given in standard condition 7A.

“Standards of Conduct”

means one or more of sub-paragraphs 7B.4(a) to (c).

“Treating Customers Fairly Statement”

is to be interpreted in accordance with paragraph 7B.8.

Appendix 5 – Proposed amendments to non-domestic Standards of Conduct

Condition 7B. Customer Objective and Standards of Conduct for non-domestic supply activities

Application of standard condition

7B.1 Standard condition 7B applies to all Designated Activities in respect of a Micro Business Consumer.

Customer Objective

7B.2 The objective of this condition is for the licensee to ensure that each Micro Business Consumer is treated ~~F~~fairly (“the Customer Objective”).

7B.3 For the purposes of this condition, the licensee would not be regarded as treating a Micro Business Consumer ~~F~~fairly if their actions or omissions: ~~(a) significantly favour the interests of the licensee; and (b)~~ give rise to a likelihood of detriment to the Micro Business Consumer, ~~unless the detriment would be reasonable in all the relevant circumstances.~~

Standards of Conduct

7B.4 The Standards of Conduct are that:

- (a) the licensee behaves and carries out any actions in a Fair, honest, transparent, appropriate and professional manner;
- (b) the licensee provides information (whether in Writing or orally) to each Micro Business Consumer which:
 - (i) is complete, accurate and not misleading (in terms of the information provided or omitted);
 - (ii) is communicated (and, if provided in Writing, drafted) in plain and intelligible language ~~with more important information being given appropriate prominence;~~
 - (iii) relates to products or services which are appropriate to the Micro Business Consumer to whom it is directed; and
 - (iv) ~~is otherwise Fair~~ in terms of its content and in terms of how it is presented ~~(with more important information being given appropriate prominence),~~ does not create a material imbalance in the rights, obligations or interests of the licensee and the Micro Business Consumer in favour of the licensee;

(c) the licensee:

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- (i) makes it easy for a Micro Business Consumer to contact the licensee,
- (ii) acts promptly to put things right when the licensee makes a mistake, and
- (iii) otherwise ensures that customer service arrangements and processes are fit for purpose and transparent.

Compliance with the Standards of Conduct

- 7B.5 The licensee must ~~take all reasonable steps to~~ achieve, interpret and apply the Standards of Conduct ~~and ensure that it interprets and applies the Standards of Conduct~~ in a manner consistent with the Customer Objective.
- 7B.6 In the event of a conflict between this condition and paragraph 14.2 of standard condition 14, this condition will prevail.

~~Exception to~~ Scope of condition

- 7B.7 Apart from any matters relating to Deemed Contracts, standard condition 7B does not apply in respect of the amount or amounts of any Charges for the Supply of Electricity or any other type of charge ~~or fee, applied or waived~~.
- 7B.7A ~~Standard condition 7B applies to the exercise of a licensee's discretion to apply or waive any charge or fee.~~

Provision and publication of information

- 7B.8 The licensee must prepare and update annually information (hereafter referred to as the "Treating Customers Fairly Statement") which:
- (a) is set out in Writing;
 - (b) uses a heading which clearly highlights that the information relates to how the licensee is seeking to treat customers fairly; and
 - (c) includes the following information:
 - (i) the main actions taken and being taken by the licensee in line with the Customer Objective and Standards of Conduct; and
 - (ii) the service and treatment Micro Business Consumers can expect from the licensee.
- 7B.9 If the licensee or any Affiliate Electricity Licensee has a Website, the licensee must publish the Treating Customers Fairly Statement on that Website in a position that is capable of easily being accessed by any person.
- 7B.10 If any person requests a copy of Treating Customers Fairly Statement, the licensee must provide a Written copy to that person free of charge as soon as reasonably practicable.

Guidance

7B.11 The licensee must have regard to any guidance on standard condition 7B (including in respect of definitions which appear in standard condition 1) which, following consultation (which may be conducted before this condition takes effect), the Authority **has issued**, may issue and may from time to time revise (following further consultation).

Definitions for condition

7B.12 For the purposes of this condition:

“Billing”

all matters relating to the provision of a Bill or statement of account to a Customer, including the content and calculations relating to such a Bill or statement of account and the collection and use of information relating to the consumption of electricity.

“Contractual Information”

includes the drafting and content of a Non-domestic Supply Contract or Deemed Contract and the provision of information relating to the Non-domestic Supply Contract or Deemed Contract that applies to a Micro Business Consumer which is being supplied by the licensee.

“Customer Objective”

is to be interpreted in accordance with paragraph 7B.2.

“Customer Transfers”

includes, but is not limited to, any matters that relate to a Customer’s ability to change supplier and/or affect the timeframe for changing supplier (including related terms and conditions of a Non-domestic Supply Contract or Deemed Contract that applies to a Micro Business Consumer).

Designated Activities”

mean each of the following:

- (a) the accuracy of a Bill or statement of Account;
- (b) the timeframe for a Micro Business Consumer receiving a Bill or statement of account and the timeframe for the payment of a Bill;
- (c) any written or oral communications regarding Billing or Contractual Information;



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- (d) Customer Transfers;
- (e) any matters relating to Deemed Contracts; and
- (f) any matters which fall within the scope of standard conditions 7A, 14, 14A and 21B (in so far as they relate to a Micro Business Consumer).

“Fair”

and cognate expressions are to be interpreted in accordance with paragraph 7B.3.

“Micro Business Consumer”

has the meaning given in standard condition 7A.

“Standards of Conduct”

means ~~one or more of~~ sub-paragraphs 7B.4(a) to (c).

“Treating Customers Fairly Statement”

is to be interpreted in accordance with paragraph 7B.8.

Appendix 6 – Call for Evidence

Question 13: How would your processes change if our proposals are implemented? Can you provide evidence of what costs you think you will incur to a) implement the changes and b) comply with these?

Question 14: Can you provide evidence to support any alternatives to our proposals?

Question 15: Can you provide evidence of how the proposal will benefit your business? As an example, these could include greater efficiency and coordination among internal processes, development of new business models etc.

Question 16: What wider benefits do you think our proposals could deliver?

Question 17: In a year, how much time (in full-time equivalents/month) on average does your business spend responding to requests for information (RFIs) from Ofgem? How does this compare with the time spent responding to other organisations' RFIs (eg from BEIS, CMA)? Please provide evidence and indicate whether this is half the time or less, or twice the time or more.

Question 18: Can you provide evidence of any unintended consequences that could arise as result of our proposals?

Introduction

- 1.1. This Appendix is a Call for Evidence to support our impact assessment on the proposed changes to the Standards of Conduct in both the domestic and non-domestic electricity supply licence. This is not an impact assessment, which we intend to publish at a later stage alongside the policy development process. In doing so, we are following Ofgem's guidelines on impact assessments. We discuss the merits of the proposals in Chapters 2, 3 and 4 of this consultation, so this call for evidence focuses on the information we need and what we intend to do to assess their impact.
- 1.2. We welcome your contribution to understanding the impacts of relying more on principles in the retail energy markets. We are committed to lowering the burden of requests for information (RFIs) on the industry and insofar as possible we will aim to avoid issuing RFIs on our proposals here, if the evidence given by stakeholders in response to this call for evidence is sufficiently robust.

Approach

- 1.3. Assessing the benefits and costs of introducing principles is challenging. As many stakeholders have pointed out when we previously consulted⁷², there is an expectation that relying more on principles will deliver benefits to consumers by promoting innovation and competition. Suppliers will have greater freedom to decide what to do and how to do things. Some parties have also noted that they will inevitably incur some costs to embed new principles in their organisation, but these costs are likely to be one-off and be outweighed by the benefits. While there is broad agreement on the potential for great benefits and likelihood of some costs, there is little evidence of the expected scale of both.
- 1.4. Our approach to assessing the impacts of our proposals tries to deal with these challenges. While mainly qualitative in nature, wherever possible, we will draw from existing evidence of the case for introducing principles. We also want to hear from you about both the monetary and non-monetary potential impacts of our proposals. In the next sections we provide a qualitative assessment of the expected benefits, costs and risks of the proposals, highlighting where we would welcome more evidence from stakeholders.
- 1.5. Ofgem has a duty to report to the Regulatory Policy Committee (RPC) on the impact on business of our policy measures, when they qualify for reporting. We will update stakeholders in due course if, based on the qualifying criteria, we will need to report to the RPC on our proposals.

Methodology

- 1.6. To assess the impacts of the proposals we plan to:
 - Define the baseline, setting out what the existing issues are and the evidence available
 - Set out the proposals we have developed to address the issues identified and their impact on consumers, suppliers, third parties and Ofgem
 - Describe the expected impacts of the proposals, including expected benefits, costs and risks.

Baseline

Standards of Conduct

⁷² Ofgem (2016) [Summary of responses to the future of retail market regulation consultation](#) pp. 16-17.

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- 1.7. The domestic and non-domestic Standards of Conducts are currently set out in SLC 25C and SLC 7B respectively. They represent a cornerstone of conduct we expect suppliers to display towards their customers.
- 1.8. But evidence of recent enforcement cases shows that there is still some non-compliance with the standards. Since their introduction in 2013, we have imposed penalties for two domestic and two non domestic breaches of SLC25C and 7B , with fines among the highest imposed in all our investigations.
- 1.9. In addition, our monitoring of suppliers' compliance with the domestic Standards of Conduct shows discrepancies on how fairly consumers are treated by different suppliers. Our recent complaints handling survey confirms this.⁷³ While the number of complaints over the past two years has decreased, satisfaction with how complaints are handled worsened, with 60 per cent of domestic customers of the sample dissatisfied by the customer service of their supplier when they made a complaint.

Vulnerability

- 1.10. There is evidence that customers in vulnerable situations are more likely to be disengaged from - and less empowered in - the retail energy market. For example, those with household incomes under £18,000 a year; living in rented social housing; without qualifications; aged 65+; with a disability or registered on the PSR are less likely to have switched supplier in the last three years.⁷⁴ More educated customers are, on average, more aware of their own consumer rights and therefore more able to identify incidents of consumer detriment.⁷⁵
- 1.11. In a research report by IPSOS Mori⁷⁶, it was found that those in lower social grades were less likely to have heard of non-financial assistance available to consumers in vulnerable situations. This is despite those in lower social grades being more likely to be eligible for the PSR, and more likely to be considered potentially vulnerable according to the risk factors developed by IPSOS Mori and Ofgem. This indicates there is asymmetry in communication of services and/or access to information between different groups, and that these groups are not receiving appropriate support to allow them to engage on a level playing field.
- 1.12. In addition, we continue to see detriment – and in some cases worsening outcomes – for consumers in vulnerable situations. This is based on data from our Social Obligations Report and evidence provided by Citizens Advice and other consumer groups that we engage with.

⁷³ Ofgem (2016) [Biennial survey on how suppliers handle complaints](#).

⁷⁴ CMA (2016) [Energy market investigation](#), p. 448.

⁷⁵ Citizens Advice (2016) [Consumer detriment](#).

⁷⁶ Ipsos MORI, 2013. [Research into the Priority Services Register and non financial support for vulnerable energy consumers](#)

- 1.13. For example, while the number of customers in debt has fallen since a post-recession peak in 2013, the average amount owed by customers in debt has risen consistently over this period. For customers repaying a debt last year, their average debt at the time they agreed a debt repayment arrangement was almost £600. For some suppliers, this figure is over £1,000 for electricity customers.
- 1.14. We are also concerned that small and medium suppliers have many customers making high weekly repayments. The average repayment amount at small and medium suppliers is equivalent to nearly doubling the weekly energy costs of an average direct debit customer. Among the large suppliers, we note that customers using prepayment meters are rarely given the lowest repayment rates, while customers on credit payment arrangements often are.
- 1.15. Disconnecting a customer's energy supply should always be a last resort. There has been a long-term decline in the number of customers who are disconnected for debt. However, there was an increase in the numbers in 2015, with 204 electricity customers and 49 gas customers disconnected. Most suppliers no longer disconnect any customers because of debt.
- 1.16. At the same time as disconnections have been declining, there has been a long-term growth in the number of PPMs, although this slowed in 2015 - with some evidence of new demand being driven by smart meters operating in PPM mode. PPMs are often installed to manage customer debt, and around two in five customers repaying a debt use one. PPM customers are generally more likely to be fuel poor and vulnerable, pay more, have fewer competitive tariff choices and are more exposed to the risk of self-disconnection.
- 1.17. Evidence from Citizens Advice, the Extra Help Unit and other consumer groups shows that too many vulnerable customers are not receiving an adequate level of service or protection that is expected of an essential service. The current situation where services to vulnerable consumers are dealt with through specific, narrow rules is resulting in vulnerability not being considered in the round.

Proposed changes

- 1.18. The changes we propose to the Standards of Conduct licence conditions are set out in detail in Chapter 2, 3 and 4 of the main consultation document and are summarised below.
- Amend the *Fairness Test* in the domestic and non-domestic Standards of Conduct.
 - Remove the *all reasonable steps* threshold so that licensees are required to ensure the domestic and non-domestic Standards of Conduct are achieved.
 - Include a broad vulnerability principle in the domestic Standards of Conduct only setting out the outcomes we expect suppliers to achieve when identifying and dealing with vulnerable consumers.



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- Include a broad informed choices principle in the domestic Standards of Conduct only.
- Amend SLC 5 so Ofgem can monitor the market more effectively.

Expected impacts

- 1.19. In assessing the impacts of our proposals, we consider consumers, suppliers, third parties and Ofgem.
- 1.20. Looking at the benefits, we consider what could better deliver the following objectives:
- Ensure adequate consumer protection;
 - Give certainty that we will act proportionately;
 - Rules are clear and easy to understand; and
 - Rules allows flexibility and space for innovating.
- 1.21. With respect to the costs, we consider both implementation costs and ongoing costs of the proposed changes.
- 1.22. We know that our reforms could have a monetary impact on parties, so this call for evidence looks for your input on this. For example, there may be potentially large benefits for consumers (and avoided costs for suppliers) if the number of complaints on customer service decreases as result of our policy. Also, we expect that the new rules will give suppliers more space for doing things differently and more efficiently if they want to, potentially delivering greater benefits to consumers at lower costs.
- 1.23. The proposed changes could also have some costs for some suppliers, but for those that already put their customers at the heart of their business and try hard to offer good customer service little should change in this respect.
- 1.24. The analysis would benefit from a quantitative assessment of the impacts of the proposed reforms. In particular, we are keen to understand current costs for complying with the Standards of Conduct and how this could change if our proposals are implemented.
- 1.25. We present our initial thoughts on the impacts of our proposed reforms in Table 1 below.

Table 1 - Expected impacts of proposed changes

Consumers	Benefits	<p>Hard-to-monetise benefits</p> <ul style="list-style-type: none"> - Maintain adequate consumer protection by changing the fairness test - Place greater emphasis on ensuring vulnerability is identified and that suppliers are treating customers in vulnerable situations fairly <p>Monetary benefits</p> <ul style="list-style-type: none"> - Monetary benefits if services and offers are tailored to each customer (including the needs and circumstances of those in vulnerable situations), eg customers are on a cheaper tariff, are more likely to re-pay debt, and are promptly compensated if things go wrong and they suffer detriment
	Costs	<ul style="list-style-type: none"> - No impacts
Suppliers	Benefits	<p>Hard to monetise benefits</p> <ul style="list-style-type: none"> - Text clearer to understand on the face of the rule - No change to policy intent so suppliers will still be flexible in how they will apply fairness in the dealings with their customers, leaving room for innovation - Reputational benefits if suppliers keep improving customers service in line with the spirit of the Standards of Conduct <p>Monetary benefits</p> <ul style="list-style-type: none"> - Positive monetary benefits for those suppliers who will use the Standards of Conduct as a platform for innovating and offering good customer service, thus gaining customers and increasing their market share - Potentially lower costs to respond to ad-hoc RFIs if, given broader scope of SLC5, we make proportionate and effective use of monitoring (eg more regular and comprehensive RFIs planned in advance as opposed to ad hoc RFIs)
	Costs	<p>Additional upfront costs for:</p> <ul style="list-style-type: none"> - Developing a framework for decision making on how the Standards of Conduct should be applied - Making changes to internal guidance and training material - Training staff <p>Additional ongoing costs</p> <ul style="list-style-type: none"> - For those suppliers who already fully embrace the intent of the Standards of Conduct, we expect a neutral monetary impact compared to a counterfactual - For those suppliers who don't fully apply the intent of the Standards of Conduct now, we expect increasing ongoing costs compared to a counterfactual. This is due to the need to improve their practices to ensure they achieve the objective of the Standards of Conduct. - Ongoing training costs - Potentially, penalties if suppliers do not respond to the RFIs
Third parties	Benefits	<p>Hard to monetise benefits</p> <ul style="list-style-type: none"> - Clearer, enduring rules will help consumers groups to feel more confident in helping consumers understand their rights
	Costs	<p>Monetary benefits</p> <ul style="list-style-type: none"> - Consumers groups may need to invest and train staff on how to interpret the new licence conditions in order to give appropriate advice
Ofgem	Benefits	<ul style="list-style-type: none"> - We expect a neutral monetary impact
	Costs	<ul style="list-style-type: none"> - Potentially additional costs to monitor compliance with the amended Standards of Conduct

Unintended consequences

1.26. We considered whether and what unintended consequences are associated with the proposed reforms. In doing so, our primary concerns are risk to consumers, more specifically whether the reforms could cause any detriment or hinder the realisation of benefits, the former being a more severe risk. We have also considered if the reforms pose any risk to supplier or third party. Our initial views are summarised in Table 2 below.

Table 2 - Potential unintended consequences

Consumers	- None identified
Suppliers	- None if suppliers fully embed spirit of the amended Standards of Conduct
Third parties	- For consumer groups: there may be some initial uncertainty on how to interpret the amended Standards of Conduct in order to give adequate assistance to consumers - <u>How we plan to mitigate this</u> : we are considering how best to ensure uncertainty is minimised
Ofgem	- None identified

Conclusions and next steps

1.27. In this Call for Evidence we have set out our initial views of the impacts of our proposals and the risks associated with them. We seek your views on those impacts and evidence of their scale.

1.28. Following review of the responses to the questions set out above, we will publish a draft IA in Q2 2017, if possible alongside a statutory consultation on the licence changes we have proposed. In doing so, we will consider if the information provided on the costs and benefits of the reform are sufficient or whether we should request additional information.

Appendix 7 – Feedback Questionnaire

We believe that consultation is at the heart of good policy development. We are keen to hear your comments about how we've conducted this consultation. We'd also like to get your answers to these questions:

- 1.** Do you have any comments about the overall process of this consultation?
- 2.** Do you have any comments about its tone and content?
- 3.** Was it easy to read and understand? Or could it have been better written?
- 4.** Were its conclusions balanced?
- 5.** Did it make reasoned recommendations for improvement?
- 6.** Any further comments?

Please send your comments to stakeholders@ofgem.gov.uk.