

Future of retail market regulation – stakeholder workshop

28 February 2017

ofgem

Item	Time
Opening remarks	9:45 – 09:55
Changing how we work with industry	09:55 – 10:05
<u>Standards of Conduct – proposed changes to the <i>Fairness Test</i> and <i>all reasonable steps</i></u>	10:05 – 10:30
Morning Tea	10:30 – 10:45
<u>Standards of Conduct – proposed vulnerability and informed choices principle</u>	10:45 – 11:15
Break out session	11:15 – 12:30
Lunch	12:30 – 13:30
<u>Standard Licence Condition 25 proposals</u>	13:30 – 14:15
Group discussion – Supporting understanding and compliance with obligations	14:15 – 14:45
Final remarks and next steps	14:45 – 14:55
End of workshop	15:00

Opening remarks – Why are we all here?

Kiera Schoenemann
Project Director, Future Retail Regulation

What we're setting out to achieve

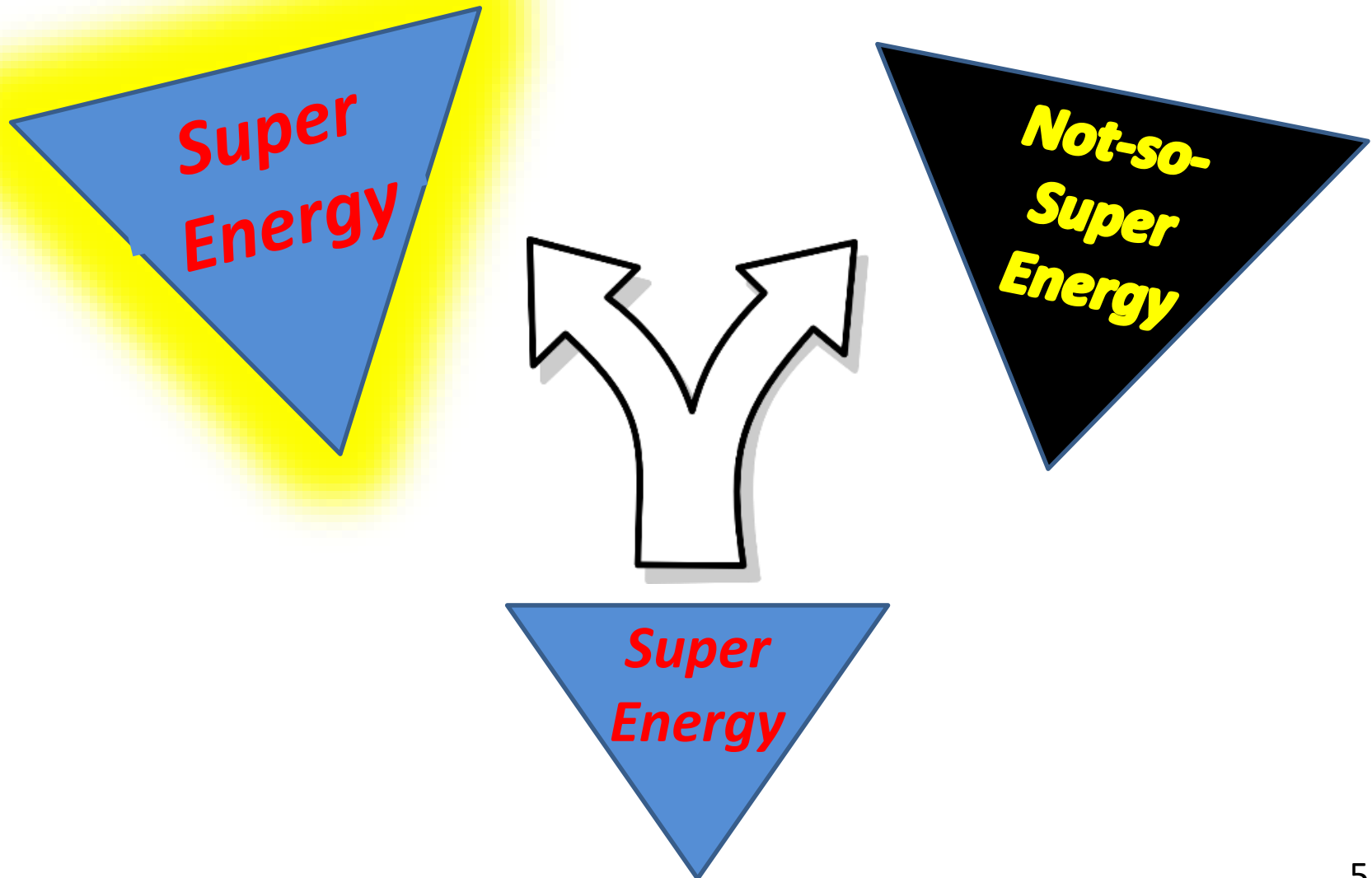
We want to see...

... a retail energy market where competition constrains prices, drives efficiency and delivers the quality of service and products that customers need and expect from an essential service.

To enable this, our Future Retail Regulation Project is making tangible changes to our rulebook and the way we operate.

Combined, these changes should:

- Allow more room for suppliers to compete and innovate.
- Provide effective protection for consumers in a rapidly changing market.
- Put responsibility firmly on suppliers to deliver good consumer outcomes.

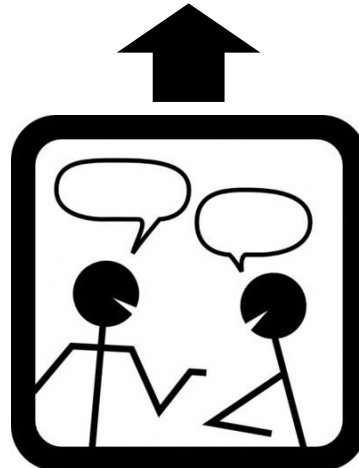


Changing how we work with industry – Supporting better consumer outcomes

Georgia Klein

To deliver our ambition and objectives we have been making changes to:

- How we **engage with suppliers** to help them understand and apply our principles in their businesses – this will help develop a more consumer centric culture in the industry.
- The way we **monitor the market** so we are better able to spot and react to problems quickly.
- The way we **work with suppliers to ensure compliance** as we rely more on principles – while remaining ready to act quickly where necessary.

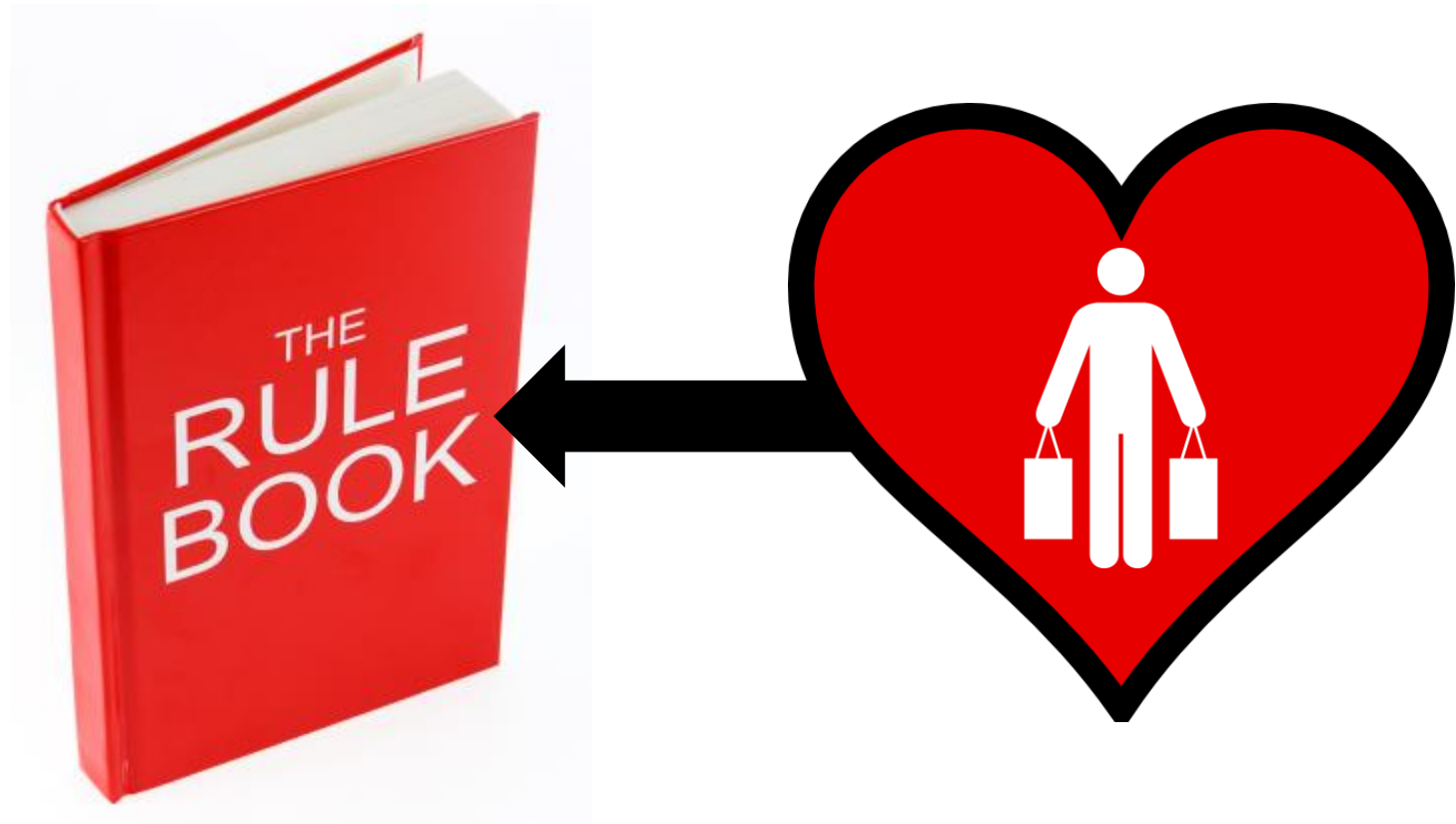


Policy Consultation: Standards of Conduct for suppliers in the retail energy market

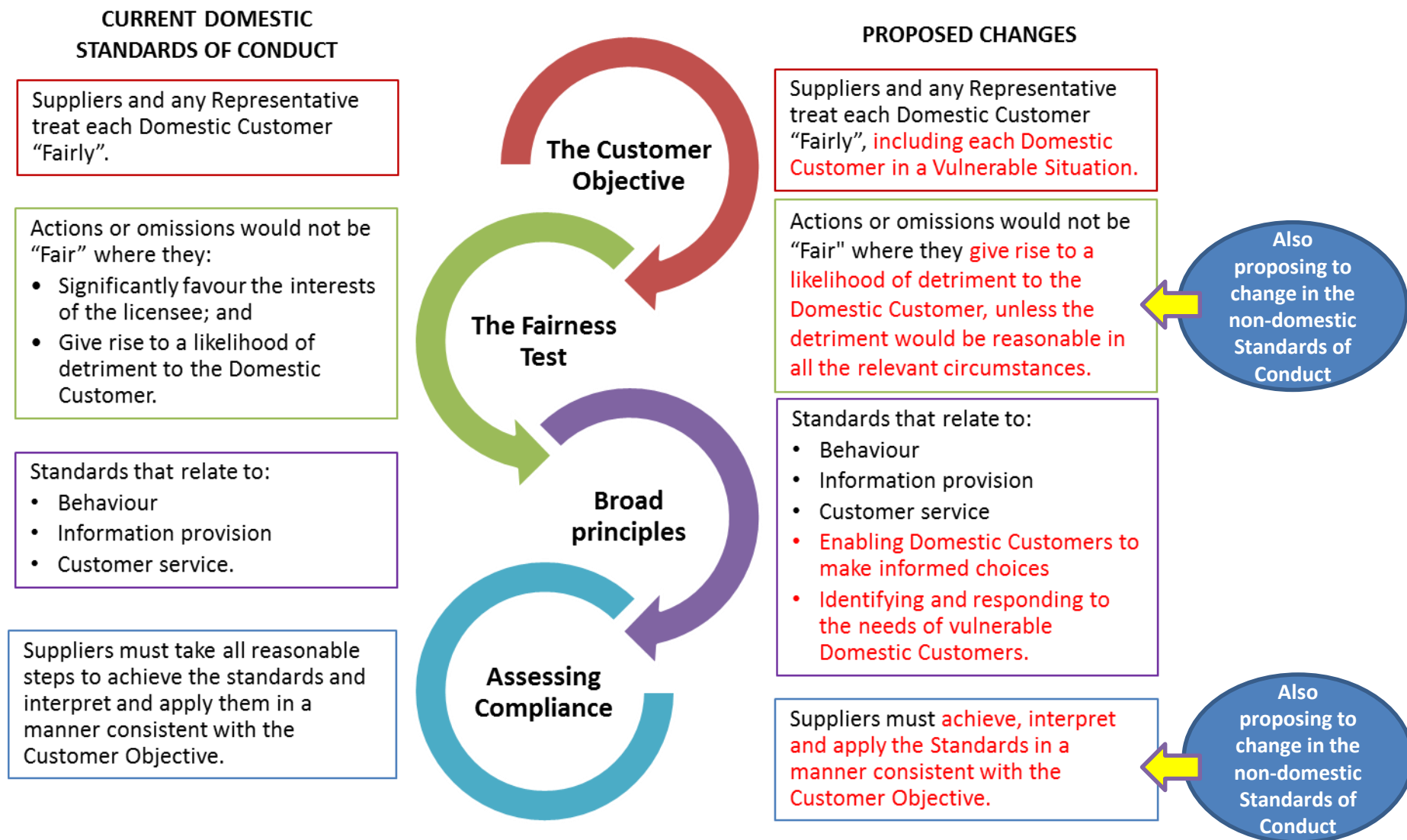
Laila Benfaida, Edwin Tammam-Williams & Andrew Thomsen

Consultation available at: <https://www.ofgem.gov.uk/publications-and-updates/standards-conduct-suppliers-retail-energy-market-1>

Why are we making these changes?



Standards of Conduct – proposed changes



Acts / omissions are unfair if they **fail to meet a standard** and:

EXISTING:

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

PROPOSED:

gives rise to a likelihood of detriment to the Domestic Customer,
unless the detriment would be reasonable in all the relevant circumstances.



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.

The 3 steps:

1. Has a standard been failed?
2. Has failing that standard given rise to a risk of harm/risk of detriment?
- ~~3. Did the supplier take all reasonable steps to achieve the standards?~~
3. Would the detriment be reasonable in the circumstances? [would the outcome be fair to the customer?]

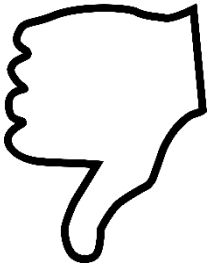


What does 'reasonable in all the relevant circumstances' mean?

Recognises and preserves suppliers' ability to charge for services and exercise statutory rights proportionately (e.g. to fit PPM where proportionate and permitted by licence).



What is unlikely to be reasonable:



- Wasting customers' time/effort/money
- Falling short of customers' legitimate expectations of service standards
- Restricting/contravening consumer rights

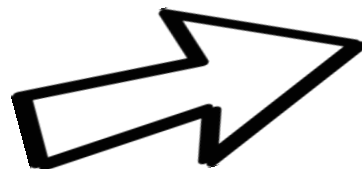
e.g. because...

- They were **not given information which is accurate enough, or sufficient, to make a good decision** about things relating to their energy supply - they would have chosen something different if they were given sufficient, accurate information
- The **promises made to them have not been kept** (e.g. on the supplier's website, in their supply contract, or by a sales representative)
- The supplier has **acted unlawfully and/or in contravention of the Licence** (NB - it is possible for conduct to breach a prescriptive rule and the Standards at the same time – any penalty would be proportionate)



Detriment which is "reasonable in all the relevant circumstances" - how is this different from all reasonable steps in the Standards?

- The proposed Fairness Test **focusses on the customer's perspective**, and whether they have been/are likely to be caused detriment which isn't reasonable – **not what steps the supplier took to achieve compliance**.
- Suppliers need to think about *why the outcome for the customer was acceptable*. **This means it is necessary to consider consumer outcomes at the outset.**
- The steps a supplier took to comply with the standards **remains relevant to compliance conversations** – along with the steps a supplier took to put things right promptly, and to offer redress to affected customers where appropriate.





Exploring the Fairness Test – what sort of detriment could be reasonable?

EXAMPLE: My customers had to wait for some time before we answered the phone.

Some things to consider (examples only/not exhaustive):

- How does this wait time compare to my own expectations?
- Have our service levels fallen?
- Did I let my customer know they would have to wait this long, or the best time to call?
- Am I meeting the promises I have made on my website / in my contracts about service performance?
- Could this customer be calling because they are vulnerable and off supply, and need to reach us urgently?
- Is it free to call my customer services line?
- **What is the impact on the customer**, ...if this happened to me, would I have any reason to think my supplier was unfair?
- Is there anything I need to bring to the attention of Ofgem?



Any Questions?

Morning Tea

Why are we proposing to introduce a broad vulnerability principle?

Imbalance in customer experience

Typical customers

Customers in
vulnerable
situations

More able to make
informed choices

More resilient

Vulnerability not
identified or taken
into account

Less aware of
rights

Less likely or able
to advocate for self
interest



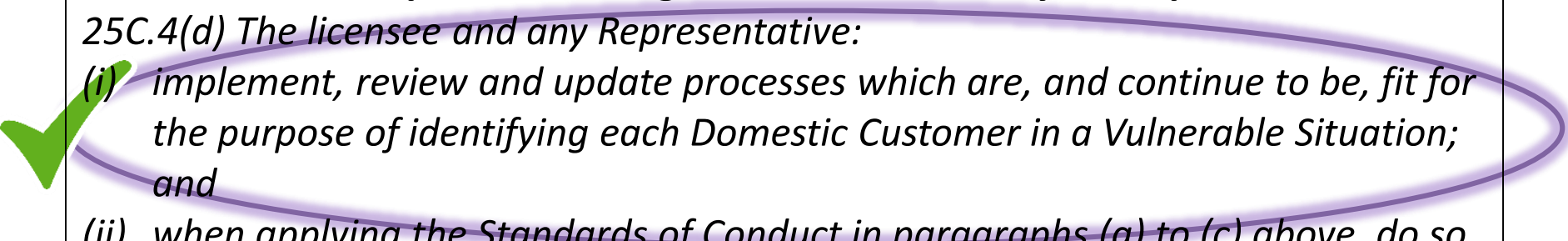
Proposed drafting: vulnerability principle in standard licence condition (SLC) 25C

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").*

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.



What's changing?

- ✓ Requirement to implement procedures that enable vulnerability to **be identified**
- ✓ Amendment to the **definition of a vulnerable situation** used in our [Consumer Vulnerability Strategy](#)

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.



What's staying the same?

- ✓ Our expectation that **all customers**, including those in vulnerable situations, are treated fairly
- ✓ Like the rest of SLC 25.C, the vulnerability principle **does not cover the amount of any charge or fee** (except for deemed contracts)
- ✓ **Narrow rules will continue to apply** (including Priority Services Register, Debt Assignment Protocol, Ability to Pay principles)
- ✓ We will **focus on systemic issues**
- ✓ **Consumer Vulnerability Strategy and Social Obligations Report** will continue to guide suppliers

How will we operate the vulnerability principle? (cont'd)



What can a good supplier do?

Is my customer in a situation where they are significantly less able to protect or represent their interests? Are they significantly more likely to suffer detriment, and/or is that detriment likely to be more substantial?

What is the situation? How does it or could it impact the customer's ability to engage with me or do the things I would expect typical customers to do easily?

What help might the customer need? What can we reasonably do to make things easier for this customer?

Anticipate - what is the risk to vulnerable consumers? How can it be mitigated?

The outcome for the consumer should be the main consideration.

Any Questions?

Informed, engaged consumers are central to a well-functioning market.



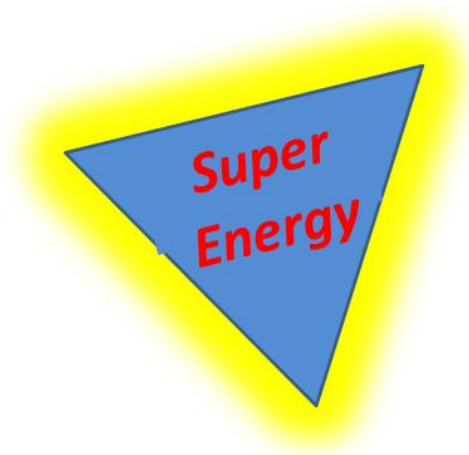
25C.4(v) The licensee and any Representative provide information (whether in Writing or orally) to each Domestic Customer which: is sufficient to enable the Domestic Customer to make informed choices about their supply of gas and/or electricity by the licensee.

- This principle **only applies to the domestic Standards of Conduct (SLC 25.C)**.
- It **supplements the narrow principles** proposed for Standard Licence Condition 25 which are designed to ensure consumers are able to make informed choices about tariffs.
- The broad principle sets a clear expectation that **consumers should be provided with information that is sufficient to enable them to make informed choices** in all **their dealings with a supplier**, not just those related to tariffs.

Any Questions?

Consider and discuss these scenarios in the context of the proposals:

1. How would a good supplier approach this?
2. How would a poor supplier approach this?



Lunch

Statutory Consultation: Enabling consumers to make informed choices

Andrew Thomsen

Consultation available at: <https://www.ofgem.gov.uk/publications-and-updates/statutory-consultation-enabling-consumers-make-informed-choices>

“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.”

- CMA found prescriptive **Simpler Tariff** rules were limiting the ability of **suppliers to innovate** and recommended a more principles-based regulatory approach.
- Around 30 pages of **Simpler Tariff** rules removed in November 2016.
- Around 5 pages of Standard Licence Condition (SLC) 25 **sales and marketing rules proposed for removal**.
- **Five narrow principles proposed** in 30 January *Statutory consultation: Enabling consumers to make informed choices*.

Five proposed informed tariff choices principles

1. The licensee must ensure that the structure, terms and conditions of its Tariffs are clear and easily **understandable comprehensible**.
2. The licensee must ensure that its Tariffs are easily distinguishable from each other.
3. The licensee must ensure that it puts in place information, services and/or tools to enable each Domestic Customer to easily compare and select **appropriate** ~~which~~ Tariff(s) within its offering, **taking into account that Domestic Customer's is/are appropriate to their needs characteristics** and/or preferences
- ~~4. The licensee must conduct its Domestic Customer sales and marketing activities in a fair, honest, transparent, appropriate and professional manner and must ensure that its Representatives do the same.~~
4. The licensee must not, and must ensure that its Representatives do not, mislead or otherwise use inappropriate tactics, including high pressure sales techniques, when selling or marketing to Domestic Customers.
5. The licensee must only **Recommend**,* and must ensure that its Representatives only Recommend, **to a Domestic Customer** products and/or services which are appropriate to that Domestic Customer's needs **characteristics and/or** preferences.

***Recommend** means communicating (whether in Writing or orally) to a Domestic Customer information about products or services in a way which gives, or is likely to give the Domestic Customer the impression that a particular product or service is suitable for their characteristics and/or preferences.





What hasn't changed since our policy consultation?

- **Proposing to retain the “must ensure” threshold, rather than “all reasonable steps”.**
 - Principles are achievable for a competent, responsible supplier. Consumers are right to expect this.
 - Not upholding these principles will have a detrimental affect on consumers and competition.
 - Measures already in place to ensure we act proportionately
- **Must ensure threshold to apply in the context of suppliers and their Representatives.**
 - The nature of a supplier's relationship with a Representative will be taken into account when monitoring compliance.
- **SLC 25 scope inclusive of online sales.**
- **Maintaining prescription around record keeping.**



What has changed since our policy consultation?

- “Easily understandable” changed to “easily comprehensible”.
- Principle 4 regarding supplier sales and marketing conduct removed – Standards of Conduct to be relied upon.
- “Characteristics and/or preferences ” rather than “needs and preferences”.
- “Take into account characteristics and preferences”.
- We propose to define “Recommend”.



Any Questions?



Consider and discuss these scenarios in the context of the proposals:

1. How would a good supplier approach this?
2. How would a poor supplier approach this?

Group discussion: Supporting understanding of obligations

Kiera Schoenemann

We have already made changes to how we support suppliers in understanding their obligations, while giving them increasing space to innovate.



The onus will continue to be firmly on suppliers to think for themselves and deliver positive consumer outcomes.

The onus will continue to be on us to act proportionately where this does not happen.

We will continue to support suppliers in understanding their obligations.

Let's discuss how best to do this.

Final remarks and next steps

Neil Barnes
SRO, Future Retail Regulation

- Survey to be circulated in the **next week** – share your thoughts on our proposals.
- [Statutory consultation on narrow informed choices principles](#) closes on **6 March**.
- [Standards of Conduct policy consultation](#) closes on **13 March**.
- Statutory consultation on potential adaptations to the Personal Projection and Cheapest Tariff Message in **the spring**.
- Review of customer communications prescription.
- Ongoing improvements to how we operate – greatly welcome ongoing feedback on how we're doing.



**Please get in touch if you would like to discuss our proposals –
we want to hear what you think!**

FutureRetailRegulation@ofgem.gov.uk