



Ofgem consultations on enabling consumers to make informed choices and the Standards of Conduct

OVO Energy's response

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1. Introduction

1.1. OVO welcomes the opportunity to respond to Ofgem's recent consultations in relation to future retail regulation (**FRR**), namely:

- (a) Statutory consultation: Enabling consumers to make informed choices, published 30 January 2017 (**Informed Choices Consultation**)¹; and
- (b) Policy consultation on the Standards of conduct for suppliers in the retail energy market, published 30 January 2017 (**SoC Consultation**).

1.2. We commend Ofgem on the progress it has made in its FRR work, and thank Ofgem for taking such active steps to consider and adopt recommendations from suppliers and stakeholders such as OVO. The Consultations clearly reflect significant movement by Ofgem in its transition towards principles-based regulation, of which OVO remains hugely supportive and convinced of its benefits to energy consumers.

1.3. In continuation of OVO's support of Ofgem's FRR work, we set out in the sections below our responses to some of the specific questions in the Consultations. In doing so we make three overarching comments:

- (a) The Informed Choices Consultation demonstrates significant progress in defining principles to replace prescription, but there remains opportunity to outline more specifically the **customer outcomes** Ofgem wants suppliers to achieve in fulfilling each principle. We feel this approach would prove far more useful than issuing guidance to underpin the principles.
- (b) We are very supportive of introducing a vulnerability principle, but we remain concerned as to how suppliers are expected to operate it in practice given the limitations suppliers face in identifying and assessing vulnerable circumstances. Please see our response to question 11 of the SoC Consultation (section 3 below) for further details. We would also ask Ofgem to remain open to removing

¹ As our responses to the Informed Choices Consultation are intrinsically linked to the SoC Consultation, we have taken the opportunity to respond to both Consultations in this document.

areas of prescription in the context of vulnerability where the new principle achieves the same if not a better result.

- (c) We would ask Ofgem to be mindful of any duplication or overlap between the broad Standards of Conduct (**SoCs**) with the narrow principles proposed in the Informed Choices Consultation. We recognise that narrow principles will be required and overlaps cannot be avoided completely in a flexible FRR framework. However duplication can cause confusion, and we believe narrow principles should be resorted to only where the broad SoCs do not go far enough to achieve a stated outcome.

2. Informed Choices Consultation - OVO's response

- 2.1. OVO fully supports Ofgem's intention to overhaul the sales and marketing licence condition and move to a principles-based approach.
- 2.2. As noted above and explained in our response to previous consultations, we have some concerns that introducing narrow principles in a specific area of the licence without first identifying the broad outcomes that Ofgem wants to achieve may lead to a disconnect between the rules that are ultimately produced and the purpose they are trying to achieve.
- 2.3. However, we acknowledge the immense task Ofgem faces in reforming the regulatory framework, in terms of both process and supplier behaviour. We therefore recognise that Ofgem's approach to overhauling the sales and marketing licence condition is an appropriate way to begin this process.
- 2.4. Our answers to the formal Informed Choices Consultations questions are below:

Question 1: Do you have any specific concerns with our proposal to remove prescription from standard licence condition 25 and rely on the proposed package of principles?

We fully support and agree with Ofgem's proposals. We have no concerns with them nor any specific comments on the wording of the individual narrow informed choices principles.

Specifically we support:

- Removing prescription from standard licence condition 25
- Dropping Principle 4 as we agree that it duplicates the behaviour SoC in SLC 25C.4(a).
- Subject to proportionality in Ofgem's application, retaining the "must ensure" threshold across all of the proposed narrow informed choices principles because a "reasonable steps" test will encourage suppliers to focus only on their own behaviour, while we would hope that "must ensure" will focus suppliers' attention on achieving customer outcomes
- Moving to a single broad principle ("*ensuring customers can make informed choices*" or similar) once the narrow principles have embedded. This will remove the potential duplication between the narrow principles and the overarching SoCs, and therefore simplify regulation even further and avoid confusion.
- Applying such broad principle on informed choices across all activities of a supplier and at all customer touch points (i.e., at the SoC level), not just to sales and marketing

activities.

We believe the principles can be further enhanced by expressly stating the intended customer outcomes whether alongside the principles or as guidance. We believe this will help suppliers understand what exactly they “must ensure”.

Based on our previous consultation responses we would propose the following outcomes:

- that customers understand all aspects of their interaction with their supplier; and
- that customers are empowered to choose tariffs that are appropriate for them.

Question 2: Do you have any specific concerns with our proposals to amend the RMR Clearer Information tools?

We fully support Ofgem’s decision to remove the TCR from the supply licence and its proposal to amend the TIL to accommodate removal of the TCR.

In OVO’s experience, personalised usage comparisons are most useful to consumers, and therefore the TCR is rarely used by consumers to compare tariffs.

In addition, as suppliers introduce more complex and innovative tariffs, the TCR becomes more obsolete and could in fact lead to greater confusion amongst customers, given its lack of specific application to an individual customer.

In relation to the **personal projection and the CTM**, we reiterate our previous response. We support the principle that customers need to be able to compare their estimated annual costs easily between a supplier’s various tariff offerings, and also between different suppliers. However, as we move to a market which has more tariffs in terms of both volume and complexity, it will become increasingly difficult to define a “consistent” method for calculating estimated annual costs.

Therefore, we believe that Ofgem can use the existing SoCs (specifically the Information SoC and the Behaviour SoC) to ensure suppliers are giving their customers information about their estimated annual costs that is complete, accurate, and not misleading, without needing to prescribe how to do so.

3. SoC Consultation - OVO's response

- 3.1. We fully support Ofgem's proposal to review the SoCs as the next step in its regulatory reform process.
- 3.2. Given that the SoCs require suppliers to achieve the overall objective of treating customers fairly, our view is that the SoCs should sit at the top of the regulatory framework and govern every interaction between a supplier and its customers. To put it another way, the SoCs should represent the top-level principles in the regulatory framework and should be supplemented by narrow principles or prescriptive rules only in specific circumstances where added protection is needed.
- 3.3. We therefore broadly support Ofgem's proposal to amend the SoCs by:
- (a) removing the "all reasonable steps" requirement - our view is this would simplify the SoCs and correctly focus them on achieving customer outcomes, not on supplier behaviour;
 - (b) reviewing the definition of "unfair" and the "fairness test" generally; and
 - (c) adding two new SoCs relating to informed choices and additional protection for vulnerable customers.
- 3.4. We do, however, have some specific views on Ofgem's specific proposals and provide these below in response to the questions set out in the SoC Consultation:

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

We support the concept of retaining a fairness test, but we would recommend changes to the language and approach to move the test away from prescribing what a supplier should *not* be doing towards setting down the principle of what a supplier should be achieving *for its customers*.

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”?

While we support a fairness test in principle, we are concerned that the reference to “actions or omissions” continues to place emphasis on preventing poor supplier behaviour rather than achieving better customer outcomes. We believe that if application of SLC 24C.2 is working - by both suppliers and Ofgem - then further clarification in SLC 24C.3 is not necessary.

However, we support retaining in the test the element of “detriment” to a customer which does focus on customer outcomes.

Furthermore we recognise that removing SLC 24C.3 altogether will be unhelpful for some suppliers who may find the transition towards principles-based regulations challenging. We also recognise that SLC 24C.3 is a helpful sub-principle for Ofgem in operating SLC 24C.2.

Therefore we support the fairness test in the amended form as a transitional sub-principle. We would encourage Ofgem to keep the test under review and consider removing or enhancing it as Ofgem continues to optimise how it operates principles-based regulations and they become more embedded in the market.

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?

We do not have any specific comments on this proposal as we do not operate in the non-domestic market.

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

We fully support this proposal as we agree with Ofgem that this would “shift the focus of the Standards more firmly on to consumer outcomes, rather than the internal processes of a supplier”.

Our support is also on the basis of Ofgem’s proportionate application of the SoCs as outlined on page 19 of the SoC Consultation. This is imperative for building trust between Ofgem and suppliers as well as consumers.

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?

We do not have any specific comments on this proposal as we do not operate in the non-domestic market.

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

While we do not object to the concept of a broad “informed choices” principle, OVO’s view is that it is not strictly necessary in light of the introduction of narrow informed choices principles under the Informed Choices Consultation, coupled with the existing protection provided by the SoCs.

The narrow informed choices principles will ensure that customers are able to easily understand tariffs, compare and distinguish between them and have the appropriate information provided to them to facilitate this. The SoCs will then overlay this and require suppliers to provide information about tariffs to customers in a way which is clear, fair and not misleading.

Similar to the fairness test, the narrow “informed choices” principles may be a useful transitional measure which Ofgem may wish to consider removing or paring back once principles-based regulations become more embedded.

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

We do not have any specific comments on the proposed drafting.

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?

We believe that the narrow “informed choices” principles being introduced in parallel with a broad principle should provide sufficient clarity to both suppliers and consumers. In fact we would caution Ofgem against issuing guidance unless responding to a *widespread* specific issue or lack of clarity that arises once both narrow and broad principles have started operating. Otherwise we are concerned that guidance (in this area or otherwise) could lead to “prescription by the back door”. We note for example the cautionary tale from the FCA’s adoption of detailed, complex guidance which underpins their principles-based regulations.

Instead we would encourage all market players to embrace the holistic, substantive

approach to compliance that is needed to make principles-based regulation successful - i.e., rather than relying on detailed guidance, suppliers should interpret for themselves, in the context of their business, how they believe their customers can best make informed choices.

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.

We do not consider the “Treating Customers Fairly” statement to be useful in any way. Whilst we recognise that it was introduced with the best of intentions, we agree with Ofgem’s survey results that customers are generally not aware of it or its purpose. More importantly, we don’t believe it’s a constructive way to incentivise suppliers to treat their customers fairly.

Instead, we believe that the introduction of new principles and *how Ofgem applies them* will encourage suppliers to consider more carefully and holistically how to treat their customers fairly. That in turn will set in the market the appropriate benchmarks for supplier behaviour and expectations of consumers from their suppliers.

Therefore we would recommend removing the requirement for the statement.

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

Yes, as outlined in our previous consultation responses, we are highly supportive of the introduction of a broad vulnerability principle. We agree that Ofgem’s proposal will address one of the key issues identified by the CMA in its investigation into the retail energy market - that the market is not working well for a large number of consumers, many of whom are likely to be vulnerable.

Specifically, we agree that the SoCs should apply to vulnerable customers not in terms of the amount of a charge, but *the way* in which a charge may be applied.

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

OVO’s concern is not so much with how the definition is drafted, but how suppliers are expected to operate it. As we have said in previous consultation responses, even with the best processes and intentions, suppliers are often not well placed to identify and assess vulnerable customers. Suppliers have little choice but to rely on a customer to identify potentially vulnerable traits, but that customer (due to their vulnerability) may be ill equipped to express their circumstances or situation. Furthermore, vulnerable

circumstances are often transient - e.g., a household with young children will naturally over time no longer be vulnerable. Therefore we would strongly urge Ofgem to consider in more detail how it expects suppliers to operate the vulnerability principle and apply the definition in practice.

Ideally, similar to operating the core Warm Home Discount scheme, suppliers would be notified of vulnerable customers from a centralised database. However we appreciate such a system will take considerable time and effort to implement. In the meantime, we would ask Ofgem to consider how Citizens Advice and other consumer bodies can help support suppliers in identifying vulnerable customers.

OVO would be happy to share our experiences based on how we train our team members, operate a special 'vulnerability unit' within our customer care team, and interact with Citizens Advice and the Extra Help Unit.

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

No, we do not have any comments and we support Ofgem's approach in this matter.

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?

On the whole, OVO's processes are unlikely to change materially, due to the fact that prioritising customer outcomes is already embedded in our decision-making culture and approach.

Applying the vulnerability principle could incur greater costs and new processes, which would be justified if it genuinely improves the treatment of vulnerable customers in the market. However as noted above we would like to discuss with Ofgem in more detail the practicality of applying the principle and definition.

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

The only substantive alternative we would propose is the application of the vulnerability principle and definition. We would like to discuss alternatives with Ofgem first before gathering evidence.

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.

OVO believes that Ofgem's proposals and the transition towards principles-based regulation

will greatly benefit not only OVO but other suppliers' businesses which are innovative and truly customer-centric.

The proposals provide suppliers much greater flexibility in developing new products and services, and designing processes in ways which are best tailored for *their* customer bases. In doing so suppliers will, in our view, be able to better deploy their resources towards such development and design, rather than on today's tick-box, loop-hole compliance which has proven to be unsuccessful in achieving better outcomes for consumers.

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

OVO is confident that with less complex, more outcomes-based regulation, consumers will better understand what they can expect from their suppliers. Furthermore we would hope that consumers will receive not only better protection but far more *value* from their suppliers, in the form of innovation and potential cost savings with reduced prescriptive compliance.

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.

In 2016 OVO estimates that it spent **over 50 days FTE** on responding to Ofgem's RFIs. This compares to approximately 30 days FTE on responding to other organisations' RFI.

This estimate includes time spent analysing RFIs, collating and formatting the responses to Ofgem's specifications, and management time in reviewing and approving them.

Question 17: Can you provide evidence of any unintended consequences that could arise as result of our proposals?

Not specifically. We are mindful that new principles-based regulations will take time for both suppliers and Ofgem to embed and operate, and during this transitional time there will inevitably be some 'calibration' of what suppliers are expected to achieve. However we are confident that with Ofgem's approach of open, constructive dialogue, consumers will remain sufficiently protected and engaged during such transitional time.