

Clem Perry  
Consumers and Competition  
Ofgem  
9 Millbank  
London  
SW1P 3GE

6 March 2017

Dear Clem,

**Statutory Consultation: Enabling consumers to make informed choices**

We are pleased to respond to Ofgem's Statutory Consultation setting out its proposals to overhaul the Sales and Marketing Licence Condition and to make amendments to some of the Clearer Information Licence Conditions which were originally introduced as part of the Retail Market Review (RMR).

A new sales and marketing licence condition

We support Ofgem's overall policy objective, to move away from the high level of prescription in standard licence condition (SLC 25) and to instead deliver appropriate consumer protections in this area by relying on an amended set of narrow principles in conjunction with the proposed amendments to the Standards of Conduct (set out in Ofgem's separate policy consultation). We agree that the sales and marketing arena is one which has the potential for innovation that improves the customer experience and which the current level of prescription may inhibit, and that the proposed principles will help to support such innovation. At the same time, given the potential for consumer harm if suppliers don't get it right, it is important that the principles are drafted so that suppliers ensure that the right outcomes are achieved for consumers.

A key area of concern for suppliers in the drafting of the new principles was the proposal to move away from an 'all reasonable steps' threshold. We had queried the rationale for this move in our response to the original policy consultation and we appreciate Ofgem's explanation of this rationale within the statutory consultation. We understand that the ultimate aim is to focus suppliers' efforts more firmly on achieving the consumer outcomes set out in the principles and agree that the proposed approach may help to achieve that aim. We also welcome Ofgem's commitment to applying principles in a proportionate manner and appreciate the explanation in paragraph 2.19 that enforcement action will be targeted on systemic failings rather than on small or minor breaches. On this basis we are comfortable with the drafting of the principles.

A number of stakeholders have raised concerns with the application of the sales and marketing Licence Condition to multi-party Representatives, such as price comparison websites. We note the guidance in paragraph 2.17 of the consultation document and welcome the clarification that Ofgem will take the proximity of the licensee's relationship with a particular Representative into account when considering compliance with a particular principle (or principles). This is helpful in addressing our concerns and on that basis we believe that Ofgem's proposals are appropriate.

### Changes to clearer information rules

We remain supportive of proposals to amend the RMR Clearer Information rules to align with the recent changes to the RMR Simpler Tariff Choices rules. We share Ofgem's view that the Tariff Comparison Rate (TCR) offers limited value to consumers and therefore support proposals to remove the TCR from the supply Licence in its entirety. This change, along with the associated changes to the Tariff Information Label (TIL), will allow for clearer presentation of tariffs to consumers.

We agree that it is sensible that Ofgem undertakes further stakeholder engagement on the Personal Projection methodology, as it is clear that there are polarised views on the optimal approach to the methodology and its interaction with the Cheapest Tariff Messaging. We note that the proposal to remove the obligation to move customers to the Relevant Cheapest Evergreen Tariff at the end of their current Fixed Term Tariff is not considered further within this statutory consultation, and understand that this is on the basis that the outcome of this proposal will also be relevant to the Personal Projection methodology discussions. We agree that this is sensible, but would urge Ofgem to open these discussions as soon as practicably possible.

### Ofgem's operational model

We welcome Ofgem's reminder that it intends to exercise its enforcement powers in a proportionate and appropriate manner and the recognition that its internal culture and processes will need to evolve to support the move to a more principles based regulatory framework. We will continue to work with Ofgem to support any consequential changes to its engagement with ScottishPower as Ofgem's operating framework adapts.

To further assist with this, we would suggest that Ofgem considers how this might work in practice, in particular around the processes for allowing suppliers to raise questions, comments or issues with Ofgem. This could be through a single point of contact for each organisation or through named individuals or teams within Ofgem for different issues. However, we think transparency of these arrangements will encourage suppliers to participate more proactively within the engagement process.

We have provided answers to your specific consultation questions in Annex 1 and some minor comments on the draft Licence modifications in Annex 2 to this letter. We would be pleased to discuss these, or any of the points discussed above, with you in further detail.

Yours sincerely,



**Rupert Steele**  
Director of Regulation

**STATUTORY CONSULTATION: ENABLING CONSUMERS TO MAKE INFORMED CHOICES: SCOTTISHPOWER RESPONSE**

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

We support Ofgem's overall policy objective to move away from the prescription in standard licence condition (SLC 25) and to instead rely on principles to deliver appropriate consumer protections in this area.

We note Ofgem's continued intention to introduce a new broad "informed choices" principle within the Standards of Conduct. While we did not consider that a broad principle requiring suppliers to ensure that information provided to Domestic Customers enables them to make informed choices was necessary in addition to the narrow principles proposed, we do not have any further concerns about its inclusion at this stage. However, as this is now being taken forward under the separate consultation on the Standards of Conduct, we have not commented on this further within this response.

We support the proposal to retain the current obligation to keep records of all sales entered into for a period of two years following the sale and agree that this should be extended to Telesales, as well as those conducted Face to Face.

We believe that the proposed drafting for the new and amended principles will support Ofgem's aim to focus suppliers' efforts more firmly on achieving the required consumer outcomes in this area and (alongside the Standards of Conduct) should encourage suppliers to increase their emphasis on putting the customer at the heart of everything that they do. We therefore do not intend to make further substantive comments on the drafting of the proposed principles, as we consider that Ofgem has either provided suitable amended drafting or provided further helpful explanation of its intention in drafting.

We appreciate the clarification over the definition of 'Recommended' in Principle 5, along with the clarification that this does not require suppliers to make Recommendations to customers. As this is a new proposal within Ofgem's wider suite, we think it would be helpful to give some further thought as to what this might mean in practice. We understand that in the sales process (for example an online quote page) the featured tariff presented to the customer is generally the only one 'recommended' in this context. However, we would still feel obliged in some circumstances to tell the customer about other tariffs (if applicable) that may also be available, with the aim of helping the customer make an informed choice. It is our understanding that Ofgem's definition of 'Recommend' is not intended to capture the latter; but we think that a small drafting change might help to clarify this. We have suggested a minor amendment to the drafting in Annex 2 to this letter.

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

We support proposals to remove the Tariff Comparison Rate (TCR) and all related references from the supply Licence. We share Ofgem's view that the TCR may not be relevant in relation to the shape of tariffs in the future and is not currently particularly useful in helping customers compare tariffs. We consider that customers will be better served by the proposed package of principles outlined earlier in the consultation document, which

should aid tariff comparability in a way that is more meaningful to the individual customer. We also agree with the proposals to amend the Tariff Information Label accordingly. We agree that SLC 22CA and 22CB are no longer relevant and can be removed from the Licence.

We understand Ofgem's rationale for considering further options in relation to the Personal Projection and its use within the Cheapest Tariff Messaging, given the complexity of views in this area. We would urge Ofgem to take this forward as soon as possible, and to incorporate within this discussion consideration of the removal of the obligation to move customers to the Relevant Cheapest Evergreen Tariff at the end of their current Fixed Term Tariff, which is likely to be a relevant consideration for the Personal Projection methodology.

**STATUTORY CONSULTATION: ENABLING CONSUMERS TO MAKE INFORMED CHOICES: DRAFT LICENCE CONDITIONS  
SCOTTISHPOWER COMMENTS**

Reference	Suggested Amendment	Rationale
SLC 25 – Heading for paragraph 25.6	Insert the heading <b>‘Obligations to keep records’</b> between paragraphs 25.5 and 25.6	Within the proposed drafting of SLC 25, paragraph 25.6 falls under the heading of ‘Principles’ simply on the basis that it follows on directly from the new principles. However, this is not a principle, in fact being the only point of prescriptive regulation retained within SLC 25. We think that this paragraph would benefit from its own heading, to distinguish it from the principles above and to aid clarity of the Licence.
SLC 25 – Definition of ‘Recommend’	Insert the word <b>‘particularly’</b> in the definition as follows:  <b>“Recommend”</b> 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 <b>particularly</b> suitable for their characteristics and/or preferences.	While introducing a definition of ‘Recommend’ is helpful, we think that the drafting of this definition is quite broad, meaning that it could apply to any situation where a supplier informs a customer about available tariffs which <i>might</i> be suitable (as opposed to promoting a particular tariff for a particular customer), such as where a supplier displays a particular tariff as the ‘featured tariff’ for that customer but also lists other tariffs that the customer that are available. We do not believe that this is the intention and think that this can be clarified with the slight amendment proposed.

**ScottishPower  
March 2017**