



By Email

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Dear Katherine,

Statutory consultation: Domestic supplier-customer communications rulebook reforms

Please find below our response to Ofgem's statutory consultation on the proposals around reforming the domestic supplier-customer communications rulebook. We welcome the opportunity to provide our comments and input.

Overall, we generally support Ofgem's final proposals as set out in the statutory consultation paper. We support the removal of the prescriptive rules around supplier-customer communications, and believe that the new narrow principles (as set out in the five new licence conditions) will assist suppliers in better meeting customer needs and providing tailored journeys based on customers characteristics. We also feel it has been highly beneficial for Ofgem to provide clarification around the form and method by which suppliers can deliver the relevant communications to customers; the recognition by Ofgem of the need to be technologically neutral will help provide future proofing here while allowing suppliers to provide communications to customers in a more engaging and meaningful way.

With regard to the proposal to move the rules around engagement prompts from the licence conditions and into a direction, we do not see the rationale for doing so and we think it would introduce various unintended consequences and potentially result in poor outcomes for customers.

We would also request that Ofgem details how it envisages the Market Wide Statement of Renewal Terms Derogation (issued in December 2017) operating once the proposed licence condition modifications go live.

Our responses to the specific questions you posed in the consultation are set out below. If you require clarification on any of the points we have made please do not hesitate to contact me.

This response is not confidential.

Yours sincerely,

Pardeep Bansi
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Appendix A – Responses to Consultation Questions

Question 1: Do you consider that a direction is required to enable suppliers to make changes to existing fixed-term contracts, so that those customers can benefit from our rule changes sooner? If yes, please:

- (a) provide examples of specific clauses in your T&Cs that would require such a direction (suppliers only); and/or**
(b) provide suggestions for how the scope of the direction should be drafted to achieve our policy intent (set out in paragraphs 2.37-2.41 of this document).

Yes, we believe that a direction may be required to enable us to make changes to existing fixed-term contracts.

A number of our fixed-term contracts (that have terms that will run beyond the expected timeframe for the implementation of the modified licence conditions) contain references to the time window within which we would issue the Statement of Renewal Terms (SoRT) notification to customers. Examples are as follows:

“At the end of the Price Control Period, or at the end of your Price Control Agreement if this is earlier, and you continue to take supply from us, we will place you on our cheapest standard variable tariff applicable to you, which may be more expensive than your current ... offer. We will notify you of your new standard variable prices and the associated estimated annual costs you will pay 42-49 days before the end of your Price Control Period.”

“If you switch supplier as a result of the notice received during the 42-49 day window prior to the end of the Price Control Period...”

These terms were included to help us comply with the requirements of supply licence condition (SLC) 23. With the proposed removal of the prescriptive requirements of SLC 23 in favour of the principles-based approach of the new SLC 31I, particularly with the withdrawal of the prescriptive window for issuing the SoRT, we would need to vary the affected fixed-term contracts in order to help customers benefit from more engaging prompts.

We think that any direction Ofgem may issue should be drafted in a way that enables, rather than compels, suppliers to vary their existing fixed-term contracts. This would allow suppliers to make their own decisions on how best to deliver positive outcomes for their customers.

Question 2: Are there any other consequential amendments to the licences that we haven’t proposed in annexes 1-2 that you consider would be needed in light of our proposed changes?

We did not identify any other consequential amendments that need to be made to the licence conditions.

However, we did notice a couple of apparent drafting errors that need to be addressed. These are as follows.

In the proposed drafting of the new SLC 31I.5(c) it states “...changes to the *Principles Terms*, this means ...”. We think the term ‘*Principles*’ should actually state ‘*Principal*’.

Further, SLC 23 sets out the provisions around how increases in charges and/or other disadvantageous unilateral variations are to be handled, with SLC 23.3 setting out the requirements for the relevant notifications to be provided to customers and SLC 23.6 detailing the associated provisions around applying price holds in the aforementioned circumstances. SLC 23.8 details two circumstances under which licensees are not required to meet the notice requirements of SLC 23.3 (providing the requirements of SLC 23.8 are adhered to), however, we believe that the price hold requirement of SLC 23.6 should similarly be suspended when licensees rely on the SLC 23.8 exception. This would seem to be consistent with the policy intent, as is evident from Ofgem's October 2017 guidance letter on tracker tariffs. Therefore, clarification on this point would be welcomed.

Question 3: Do you agree that our proposals reflect our policy intent relating to encouraging and enabling engagement?

Yes, we agree that Ofgem's proposals on the encouraging and enabling engagement principles (and associated licence conditions) reflect its policy intent.

However, we are disappointed that Ofgem has not taken this opportunity to review the methodology behind the Cheapest Tariff Message, which still requires the presentation of both the Relevant Cheapest Tariff and the Alternative Cheapest Tariff at relevant prompt points. We note Ofgem's comments at paragraph 3.31 in the consultation paper and also the indication that this may be reviewed in future. This positioning seems out of line with the Market Wide SoRT Derogation that Ofgem issued to licensees in December 2017. We have shared with Ofgem customer insight that demonstrates the successes of providing customers with our simplified SoRT, where we only presented the cheapest overall tariff to customers. This had the effect of reducing customer confusion and increasing customer engagement which led to more positive customer outcomes. This seems like a missed opportunity to make some simplifications here that would tangibly benefit customers.

Question 4: What are your views on our proposal (set out in paragraphs 3.35-3.36) to move the rules around engagement prompts into a direction separate from the supply licences?

We believe this proposal would be highly problematic and challenging.

We think that any prescriptive detail around prompts for customers to engage (such as the Cheapest Tariff Message) belongs in the licence conditions rather than in a direction that is separate from the supply licences.

The implication here is that in addition to modifying any rules that may be in play, Ofgem could potentially increase the prescription in this area. This would be inconsistent with the move towards employing narrow principles on supplier-customer communications and the wider move towards principles-based regulation.

If at some point in the future Ofgem deems it necessary to modify the rules around engagement prompts, this should go through the formal and open consultative route as this would reflect the principles of good regulation as well as benefitting consumer and suppliers alike. For customers, it would mean that changes would be properly reviewed and impact assessed, which would mitigate against the possibility of customers experiencing sub-optimal or adverse outcomes. This would also enable suppliers to better prepare for any changes that may be implemented. Whilst Ofgem may want to *'respond in a more agile and dynamic way to market*

developments and trial results', such changes can be complex and very resource intensive for suppliers to implement (often necessitating systems and process changes). If suppliers are pressed to implement changes too quickly, this can prove to be more costly, costs that are ultimately borne by consumers.

Question 5: Do you agree that our proposals reflect our policy intent relating to assistance and advice information?

Yes, we agree that Ofgem's proposals on the advice and assistance information principles (and associated licence conditions) reflect its policy intent.

Question 6: Do you agree that our proposals reflect our policy intent relating to Bills and billing information?

Yes, we agree that Ofgem's proposals on the Bills and billing information principles (and associated licence conditions) reflect its policy intent.

As set out in the Energy UK response on this question, we would stress that Ofgem should take this opportunity to modernise the language used in the licence conditions and the definitions in order to future-proof the licence conditions to provide more certainty for suppliers.

Question 7: Do you agree that our proposals reflect our policy intent relating to contract changes?

Yes, we agree that Ofgem's proposals on the contract changes principles (and associated licence conditions) reflect its policy intent.

However, whilst we can see the rationale for retaining the 'switching window' in its current form for now (as framed in the proposed revision to SLC 24.17), we believe that Ofgem should revisit this in the near future. With the upcoming implementation of the Switching Programme (enabling faster and more reliable switching), and also greater customer insight potentially becoming available following the move to a principles-based approach on issuing contract change communications to customers, we think that this would necessitate a further review of the timing requirements of the switching window to see whether they remain appropriate and proportionate.

As mentioned above, Ofgem issued to licensees the Market Wide SoRT Derogation in December 2017, which is expected to remain in force until 13 December 2019. The aforementioned derogation is based on the current SLC 22C and the proposed modifications to that licence condition are significant; in particular, key aspects of that SLC will be moved to another part of the licence conditions. Further, the licence condition modifications under these reforms are expected to go live prior to the scheduled expiry of the derogation. Therefore, clarification from Ofgem on the status of the derogation would be helpful, such as an indication as to whether Ofgem intends to modify or replace the derogation.