

Future of retail market regulation: Working paper on broad principles

Working Paper

Publication date: 18 August 2016

Contact: Adhir Ramdarshan /
Niki Sharp

Team: Future Retail Regulation

Tel: 020 7901 7000

Email: futureretailregulation@ofgem.gov.uk

Overview:

The retail energy market is undergoing a period of far-reaching and exciting change, driven by new technologies, new business models and new ways of running the energy system. Our ambition is to change the way we regulate the retail energy market in order to better achieve good consumer outcomes.

This paper sets out our latest thinking on how we might amend the existing Standards of Conduct so they remain fit-for-purpose in a rapidly changing market. It also explains our intention to introduce a broad, enforceable principle to set out our expectation that suppliers must consider the needs and circumstances of consumers in vulnerable situations.

We will use this document to inform discussions with stakeholders and develop proposals for a policy consultation in November. We do not expect stakeholders to formally respond to this working paper. If there are particular views you would like to share with us, please do so via the following email address: futureretailregulation@ofgem.gov.uk.

Context

In our Forward Work Programme for 2016-17, we indicated that we would further expand the use of principles and reduce our reliance on prescriptive rules in the retail energy market. This document provides an update on our thinking for broad principles. It is intended to generate further discussion to inform a policy consultation in November 2016.

Associated documents

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

[Standard conditions of electricity supply licence](#) (consolidated 13 July 2016)

[Standard conditions of gas supply licence](#) (consolidated 13 July 2016)

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

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

[Enforcement Guidelines](#) (September 2014)

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

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

[The retail market review – final domestic proposals](#) (April 2013)

Contents

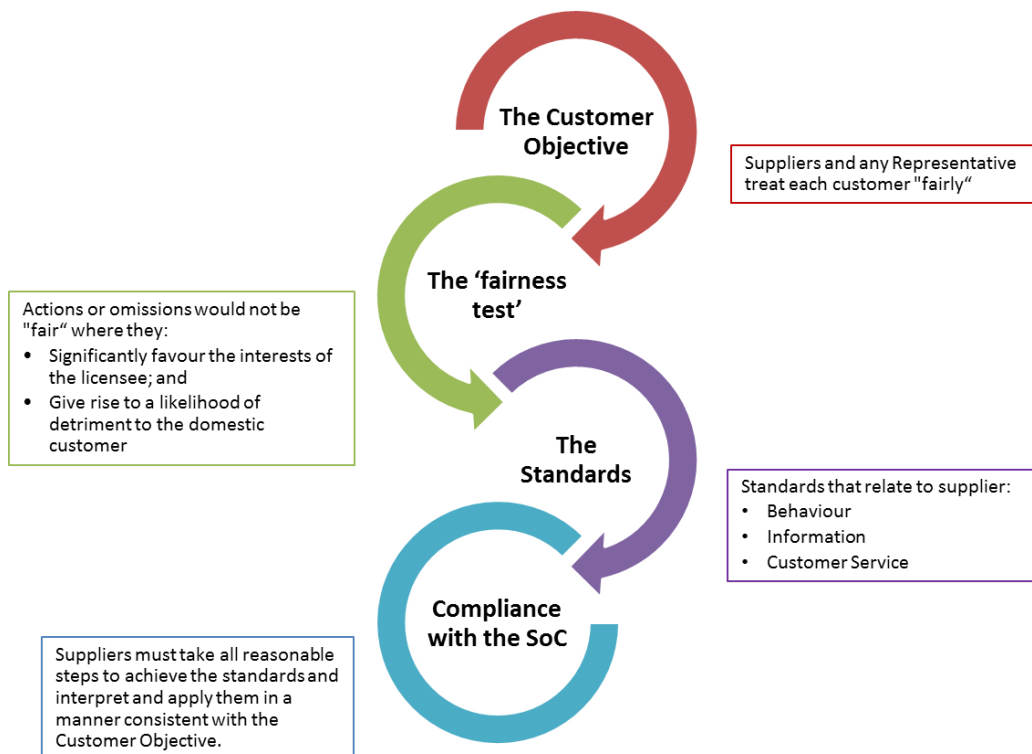
Executive Summary	1
1. Introduction	3
What are broad principles?	3
2. Reviewing the Standards of Conduct	5
The fairness test	7
The Standards	9
Compliance with the SoC	9
Treating Customers Fairly Statement	10
SoC Guidance	11
3. Consumers in vulnerable situations	12
Rationale for a broad vulnerability principle	13
Objectives of a vulnerability principle	14
Scope, policy intent and operating framework	14
4. Next steps	17
Appendix A – Domestic Standards of Conduct	18
Appendix B – Non-domestic Standards of Conduct	21

Executive Summary

The energy market is in a state of rapid change. We need a regulatory framework for the retail market which is flexible enough to enable this change. Regulation needs to stay ahead of market developments and in a way that does not distort them – enabling suppliers to take innovative approaches, while offering effective protection to consumers.

At the heart of our regime will be broad, enforceable principles. Recent enforcement cases have shown how principles can be effective. Broad principles will sit above narrow principles and prescription that relate to specific policy areas. They will promote innovation and competition among suppliers, provide effective protection for consumers in a rapidly changing market and put responsibility firmly on suppliers for achieving good consumer outcomes.

Figure 1: Constituent elements of the Customer Objective and SoC



We want to build on the Standards of Conduct to ensure they remain fit-for-purpose in a world where we rely more on principles. To achieve this, we are considering whether the SoC is formulated in the best way to achieve the outcomes we want, and whether the current tests and thresholds create the right balance of responsibilities between us and suppliers.

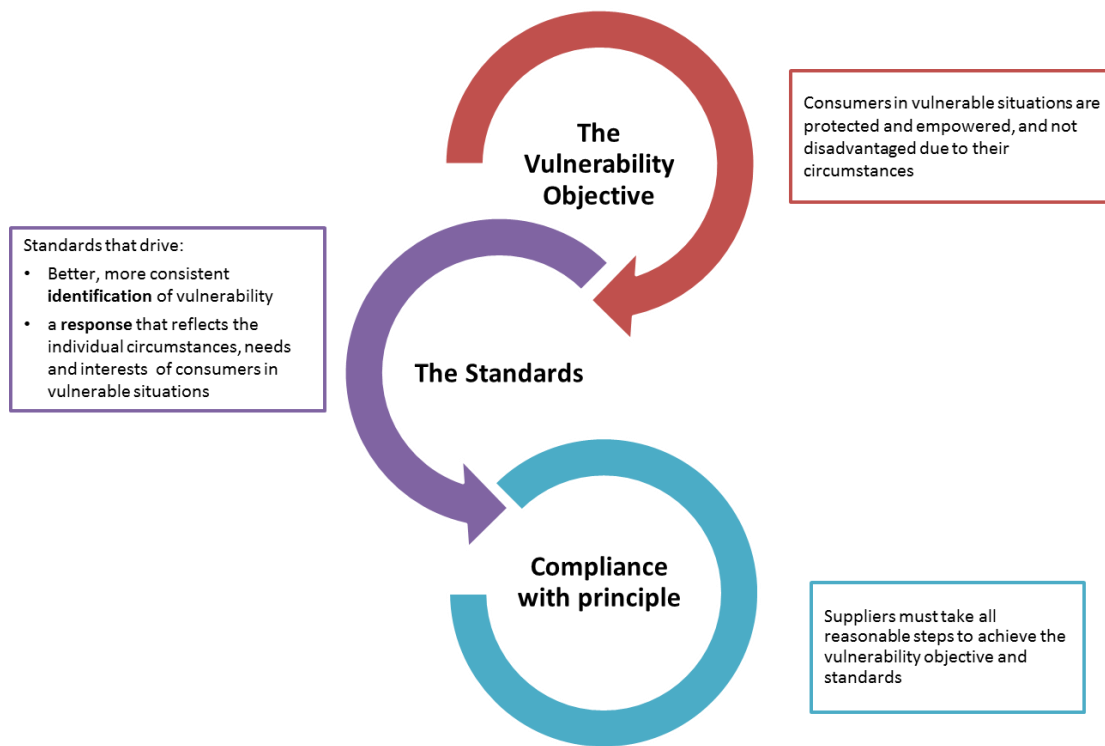
More specifically, we are reviewing the SoC's constituent parts - see Figure 1 above. Some of the changes we are considering are aimed at giving greater clarity around some of the terms, for example 'significantly favour' which forms part of the 'fairness



test’. We are also assessing whether the “all reasonable steps” requirement in the compliance obligation could better meet our objective of placing the responsibility for achieving good consumer outcomes firmly on suppliers. Other potential changes are more structural, such as streamlining the links between the fairness test, compliance provision and standards, or whether to include additional standards.

As set out in our June update, we are also minded to introduce a broad, enforceable principle that sets out our expectation that suppliers ensure consumers in vulnerable situations are not disadvantaged due to their circumstances – see Figure 2. Introducing such a principle would embed and clarify our expectations around vulnerability in the licence. It would also ensure that our regulatory framework enables customers in vulnerable situations to engage and benefit from the opportunities brought about by changes in the market. As we develop this principle, we will consider how it interacts with the SoC.

Figure 2: Vulnerability Objective and Standards



We recognise the importance of an operational framework that effectively supports these principles. Our November consultation will provide an update on our thinking in this regard.

In terms of next steps, we will continue to engage with stakeholders over the coming months as we develop our proposals for a policy consultation in November. We will engage via a number of channels, including a consumer group workshop, senior stakeholder event and Challenge Panel.

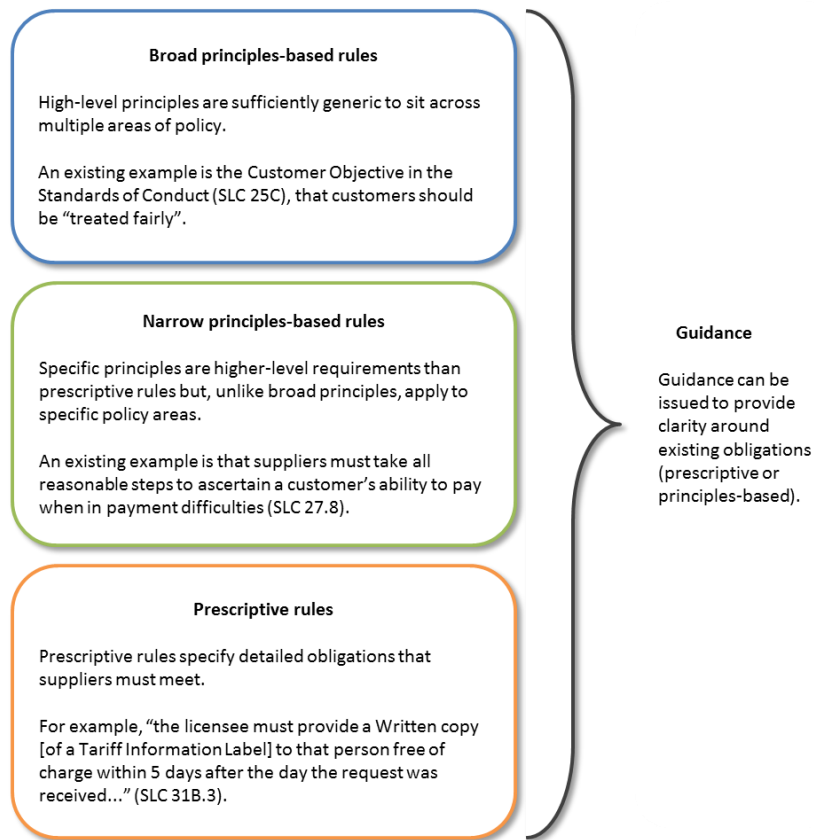
1. Introduction

- 1.1. The retail market is changing. We are seeing many new entrants and emerging, innovative business models which have the potential to transform the energy market. These include bundled services, community energy and increased customer participation through collective switching. We are also seeing technological and process changes which have the potential to deliver a smarter, more competitive market with more innovative tariffs and services. The smart meter roll-out can bring about faster switching and electricity settlement arrangements which would encourage suppliers to offer tariffs that cut charges for consumers who use electricity when it is cheaper.
- 1.2. We need a way of regulating that is flexible enough to encourage this innovation and deliver good consumer outcomes. Relying more on principles in our regulation and less on prescription will:
 - Promote innovation and competition among suppliers
 - Provide effective protection for consumers in a rapidly changing market
 - Put responsibility firmly on suppliers for achieving good consumer outcomes
- 1.3. We see a role for broad and narrow principles, as well as prescription in the supply licence. This paper focuses on our plans to build on the broad principles already contained in the Standards of Conduct (SoC) and to introduce a broad vulnerability principle.

What are broad principles?

- 1.4. For the purposes of this paper, we are using broad principles to mean those that apply across a number of supplier activities. By contrast, when we refer to narrow principles, we mean those that relate to specific policy areas (eg sales and marketing).
- 1.5. In crafting broad principles, we aim to provide sufficient certainty to suppliers to encourage innovation as well as front-line staff to advise consumers of what they can expect. They will also form the basis for removing some of the prescriptive rules throughout the domestic licence.

Figure 3: Relationship between broad principles, narrow principles and prescription



- 1.6. In our June update¹, we set out our intention to have broad, enforceable principles which focus on all aspects of a supplier’s relationship with consumers. The central pillar will be an enhanced SoC. We are also developing a broad principle which clarifies our expectations about suppliers’ treatment of consumers in vulnerable situations.
- 1.7. In chapter two, we explore possible improvements to the SoC to ensure that it remains fit-for-purpose and meets our objectives. In chapter three, we set out our current thinking behind a vulnerability principle including its potential scope and policy intent.
- 1.8. This paper focuses on the domestic supply licence. In our upcoming November consultation, we will consider how to manage the links between domestic and non-domestic provisions (eg the domestic and non-domestic SoC).²

¹ Ofgem, [The future of retail market regulation - update on the way forward](#)

² As noted in chapter 2, we are considering whether changes to the domestic SoC should also be made to the non-domestic SoC and, if so, implemented at the same time.

2. Reviewing the Standards of Conduct

Chapter Summary

In our June update, we signalled that the Standards of Conduct (SoC) will remain the central pillar of our regulatory regime and also that we would consider whether any amendments were needed to ensure it remains fit-for-purpose in relation to meeting our objectives. We are considering key features of the SoC including the fairness test and its application, the “all reasonable steps” provision and the current SoC Guidance.

- 2.1. The SoC came into force as a binding licence condition on 26 August 2013 in response to findings that there were negative consumer experiences and low levels of trust in the energy market.³ The aim was to encourage greater levels of consumer trust with a view to increasing engagement in the market and promoting competition.
- 2.2. They require suppliers and organisations that represent them, such as third party intermediaries,⁴ to ensure that each domestic customer is treated fairly and involve applying the SoC from the outset of an activity and continuously thereafter. The SoC cover all activities of the supplier and any representative which involve, or relate to, dealings with a domestic consumer. The SoC do not cover the amount of any charges or fees (eg do not control tariff prices) except for deemed contracts. They do cover the circumstances in which a charge may be applied, requiring customers to be treated fairly.

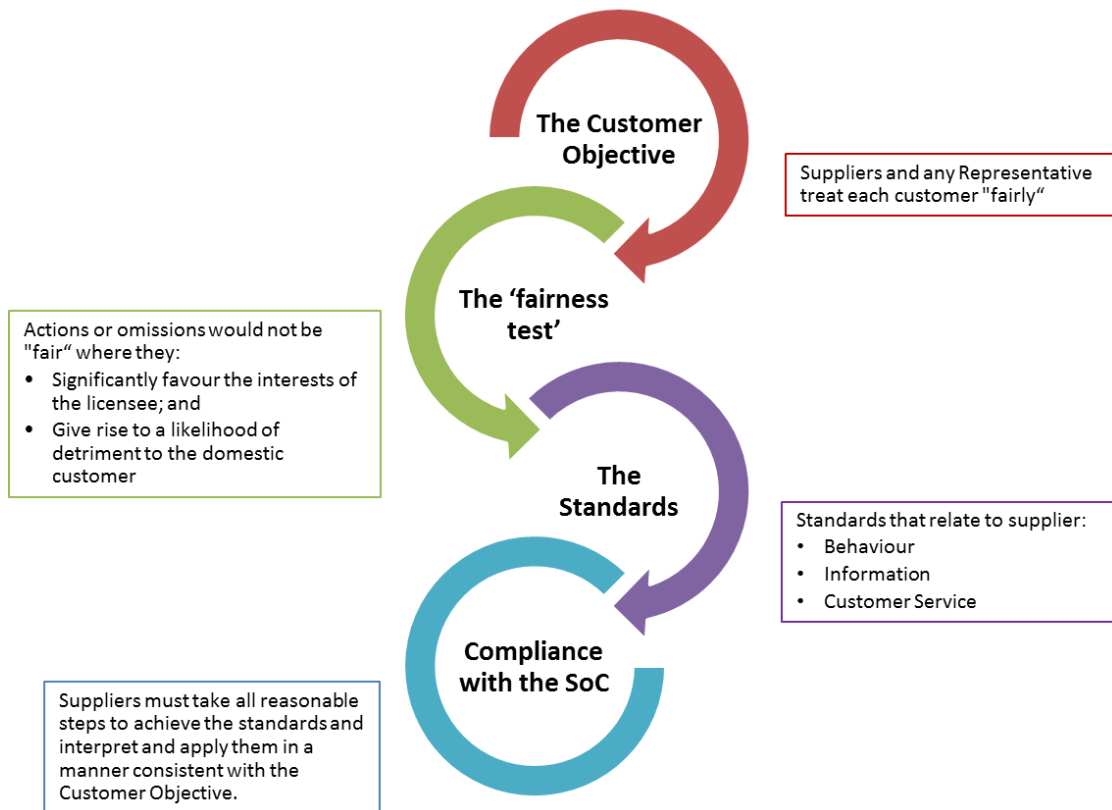
How the SoC work

- 2.3. There are four key elements to the operation of the SoC – the customer objective (to treat each customer fairly), the fairness test, a compliance obligation and the ‘standards’ themselves. Parts of the licence condition also relate to provision of information, application and scope. The domestic and non-domestic SoC are included at Appendix A and B respectively.

³ Ofgem, [2008 Energy Supply Probe, and subsequent research in 2011](#)

⁴ As outlined at paragraphs 4.40 and 4.41 of our [Final Proposals](#), as a matter of policy, we would tend to focus our oversight of the SoC on more direct and express relationships. This is because we consider these relationships lead to more prominent interactions with a consumer on behalf of a supplier.

Figure 4: Constituent elements of the Customer Objective and SoC



- 2.4. These elements, as set out in Figure 4 above, interact with each other and act in a cumulative way when determining whether a breach has occurred. Below we explain these in more detail.
- 2.5. Through our monitoring of the market, we sometimes spot concerns or issues which may lead to, or are already resulting in, consumer detriment and therefore require further scrutiny. In the context of the SoC, we would first look at the relevant behaviour (actions or omissions) by a licensee that may infringe the SoC, identifying the Standard(s) that is relevant. The Standards provide areas of focus for treating customers fairly and, broadly, relate to behaviour, information and customer service. Each Standard provides detail on what fairness might look like in that circumstance (eg information is complete, accurate and not misleading).
- 2.6. Second, we consider whether that behaviour meets conditions set out in the 'fairness test'. Specifically, did such actions or omissions (a) significantly favour the interests of the licensee, and (b) give rise to a likelihood of detriment to the customer. An action or omission will be 'unfair' where it meets these two conditions.

- 2.7. Third, in relation to any identified actions or omissions which 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 it is only at this point that a breach can be considered to have occurred.⁵
- 2.8. Below, we consider each key feature of the SoC in turn including how they work together.

The fairness test

- 2.9. The SoC apply to all interactions between consumers and suppliers⁶ and rely on the principle of “fair” treatment. Given this may in some cases be open to interpretation, the SoC were drafted to include a fairness test to provide greater regulatory certainty to suppliers. Under this test, for a licensee to be considered as treating a domestic customer unfairly, its actions or omissions must:
- 1) significantly favour the interests of the licensee; and
 - 2) give rise to a likelihood of detriment to that customer.
- 2.10. The fairness test was based on the Unfair Terms in Consumer Contracts Regulations 1999⁷, and draws on the established principles surrounding fairness. In particular, the concept of “significantly favour” was based on how such legislation defines fairness by making reference to “a significant imbalance in the parties' rights and obligations”. The concept of “significantly favour” was used in drafting the SoC in part to make it clear that the SoC does not restrict suppliers from exercising their rights to carry out certain business activities where necessary and appropriate.⁸
- 2.11. We are considering whether the fairness test, as currently structured and worded, remains the best way to provide appropriate regulatory certainty. Part of this consideration includes whether the SoC and fairness test are readily clear and understandable to suppliers, including those who are new entrants to the market. Another aspect is whether the SoC is robust in requiring fair customer treatment across a full range of future supplier/consumer interactions (ie that there are no prospective ‘loopholes’).

⁵ Our [Enforcement guidelines](#) contain information on our approach to enforcing the SoC.

⁶ As set out in SLC 25C.1, the SoC apply to all activities of the licensee and any representative which involve or otherwise relate to dealings with a domestic customer.

⁷ Unfair Contract Terms provisions are now contained within the Consumer Rights Act 2015.

⁸ For example disconnecting a consumer could cause detriment to that consumer and the supplier could be seen to benefit by reducing bad debt. The effect of “significantly favour” means that the SoC do not in themselves prevent the supplier from ultimately exercising that right (eg recovering debt in an appropriate manner). It will, however, always be necessary for the supplier to employ its discretion before exercising a legal right to ensure that their treatment of the customer is fair and consistent with the SoC.

Significantly favour

- 2.12. We are considering whether the term “significantly favour” can be expressed in a different way. We have seen from cases concluded to date under the SoC,⁹ that a supplier’s behaviour can “significantly favour” its interests, even if that behaviour also results in some disadvantage to that supplier. For example, customers may decide to switch suppliers, or a supplier may incur substantial costs in putting problems right. Such disadvantage is a separate consideration from the question of whether the supplier’s interests have been “significantly favoured”. Where there has been an advantage or loss avoidance of some kind, this advantage is not nullified or off-set, even if there is an overall “net” loss or disadvantage to the supplier.
- 2.13. Whether an act or omission has significantly favoured a licensee will depend on the specific circumstances and is a matter of fact and degree. It does not require there to have been financial gain or a large-scale advantage. Nor does it require there to have been an intention to make gain, as unfair treatment of customers can arise unintentionally, for example through careless or reckless behaviour.
- 2.14. We are currently considering whether the current wording of “significantly favour” communicates how the fairness test may be breached in a way which is clear to suppliers, consumers and consumer representatives. Options include re-wording the fairness test, for example, by changing “significantly favour the interests of the licensee” to “favour the interests of the licensee in a *non-trivial* way”, or a similar expression. This relates to clarifying language and is not a shift in our fundamental approach.

Application to the Standards

- 2.15. The ‘fairness test’ currently applies to all three areas of focus within the SoC: (a) Behaviour, (b) Information and (c) Customer Service. This means that when an action or omission fails to meet one or more of the Standards, the fairness test must also be applied to assess whether the action or omission can be deemed as being unfair.
- 2.16. We are considering whether this continues to be appropriate as the SoC take on a more prominent role in the domestic market. This includes whether the fairness test may in some cases be adding a duplicative second level test to behaviours which are intrinsically unfair. For example, the information standard (b) requires information to be provided which is “complete, accurate and not misleading”. These terms are arguably clear and readily understandable relative to the concept of fairness without the need for the test to provide greater regulatory certainty. If a supplier was to provide information which was incomplete, inaccurate or misleading, this may be sufficient grounds alone to establish a breach of the SoC without requiring an additional test to demonstrate unfairness.

⁹ See here for more details: <https://www.ofgem.gov.uk/investigations>

- 2.17. We consider that the elements of the SoC which refer to “Fair” or “otherwise Fair” are the elements where the need for regulatory certainty may be the greatest. We will however consider carefully whether each area of focus, including these, should remain subject to the fairness test.

The Standards

- 2.18. In reviewing the SoC, we are also considering whether any additional areas should be included. Our recent policy consultation¹⁰ identified the key objective of the tariff rules as ensuring ‘consumers can make informed tariff choices’. Depending on the outcome of that consultation, we are considering whether ‘consumers making informed choices’ should in fact apply to a wider range of consumer interactions beyond choosing tariffs or sales and marketing issues and could therefore be included expressly in the SoC.
- 2.19. The domestic SoC currently provide protection to each domestic customer, including customers in vulnerable circumstances. There are also separate standard licence conditions (SLCs) which provide specific protections in relation to vulnerability, in the form of narrow principles and prescriptive rules. We see a role for an enforceable broad vulnerability principle that embeds and clarifies our expectations around vulnerability in the licence. We will consider whether our objectives for vulnerability can be best met by the SoC or a separate licence condition. This is discussed in more detail in chapter 3.

Compliance with the SoC

- 2.20. The SoC require suppliers to take “all reasonable steps” to achieve the standards and apply them in a manner consistent with the Customer Objective. As currently framed, Ofgem is responsible for setting out whether all reasonable steps have been taken. We consider that it may be more appropriate to re-frame this part of the SoC so that the responsibility for demonstrating that all reasonable steps have been taken is with the supplier.
- 2.21. A central objective of our new regulatory approach is getting suppliers to firmly own the responsibility for achieving good consumer outcomes. We think placing responsibility with the supplier for demonstrating that all reasonable steps have been taken to achieve the SoC supports this objective.
- 2.22. We recognise suppliers will already be thinking about ensuring customers are treated fairly in order to win and retain their custom. We also recognise there may be many different ways to successfully achieve good consumer outcomes and prevent negative ones. Through the SoC, we want to ensure that the fair treatment of each customer is embedded within the supplier, and not

¹⁰ Ofgem, [Helping consumers make informed choices – proposed changes to rules around tariff comparability and marketing](#)

perceived as a perfunctory box-ticking exercise but as an active and constant consideration.

- 2.23. In the event that something goes wrong, we think a supplier who has acted reasonably and thought in advance about consumer impacts arising from their business activities should be well placed to set out the steps they have taken to ensure each customer was treated fairly and why these were all the steps that were reasonable in the circumstances. If a supplier was able to demonstrate that they had taken all reasonable steps to achieve the SoC, no breach would be found.
- 2.24. If there is enforcement action, under the current SoC, Ofgem would ultimately need to identify one or more steps which should reasonably have been taken but were not, in order to find a breach of the SoC. Moving the obligation to suppliers to demonstrate all reasonable steps would not change this. However, we consider that this change would have positive impacts by underlining that the active and early consideration of fairness is a supplier responsibility.
- 2.25. We will also consider whether taking “all reasonable steps” remains the appropriate threshold in the light of any other changes we may propose. This may include thinking about whether any standards, including any new principles relating to vulnerability or informed choices, should be ‘absolute’ requirements. As with the other potential changes outlined in this chapter, we recognise that there are strong interdependencies between the four elements of the SoC. Therefore any proposed changes need to be considered together to determine their impact on regulatory certainty and the operation of the SoC.

Treating Customers Fairly Statement

- 2.26. The SoC includes a requirement for suppliers to publish an annual ‘Treating Customers Fairly Statement’. This was introduced to help consumers understand the specific actions they can expect from a supplier in relation to the SoC.¹¹ This statement could also assist consumers with complaints if things go wrong.
- 2.27. We are considering how suppliers and customers are using these statements and whether they play a useful role in promoting consumer interests. In particular, we are reviewing how to encourage suppliers to be more active in their promotion of their efforts to treat customers fairly and whether these statements have a place in providing assurance that they are committed to delivering good consumer outcomes. This requires consideration of whether this part of the SoC should be removed, amended or moved to another part of the supply licence (eg to sit alongside other reporting requirements used for wider monitoring of supplier compliance).

¹¹ Ofgem, [The retail market review – final domestic proposals](#)

SoC Guidance

- 2.28. The existing guidance on the SoC¹² explains some of the key terms used in the SoC (eg 'appropriate' or 'professional manner') and also sets out Ofgem's approach to enforcement of the SoC. Bearing in mind our desire to encourage suppliers to think flexibly and creatively rather than being constrained by prescriptive and detailed rules and guidance, our upcoming policy consultation will discuss whether we need the existing SoC guidance and, if so, whether it remains fit-for-purpose given the proposed changes.

¹² Ofgem, [Implementation of the domestic Standards of Conduct – decision to make licence modifications](#)

3. Consumers in vulnerable situations

Chapter Summary

Consumers in vulnerable circumstances are a key priority for Ofgem.¹³ We are considering including an enforceable, broad vulnerability principle in the domestic standard licence conditions (SLCs). This principle would set out our expectation that suppliers must consider the needs and circumstances of customers in vulnerable situations. This would ensure that our regulatory framework enables these customers to engage effectively and benefit from market developments.

- 3.1. Light, power and a warm home are essential services for our society. In carrying out our duties, we recognise that not all consumers are equally capable of engaging in the market. There are consumers who find it challenging to engage with the market as their circumstances (permanent or temporary) make them vulnerable. These consumers are a key priority for Ofgem. Our Consumer Vulnerability Strategy¹⁴ (CVS) sets out our approach to achieving positive outcomes for consumer in vulnerable circumstances.
- 3.2. The CVS sets out our definition of vulnerability as: 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.
- 3.3. This definition provides a framework for supply companies, distribution companies¹⁵ and other players in the energy market (such as third party intermediaries) to consider how to:
 - i. identify vulnerability;
 - ii. respond to vulnerability; and
 - iii. embed consideration of vulnerability into the design and delivery of products and services.
- 3.4. Our work to develop a broad vulnerability principle complements the remedies identified by the CMA in its Energy Market Investigation.¹⁶ The CMA concluded

¹³ For example, we state in our [Annual Enforcement Priorities 2016/17](#) that taking action where industry behaviour fails to meet obligations for consumers in vulnerable situations is a strategic enforcement priority for us.

¹⁴ Ofgem, [Consumer Vulnerability Strategy](#)

¹⁵ Our electricity distribution network operators Stakeholder Engagement and Consumer Vulnerability Incentive rewards network companies for outcomes that meet minimum standards. One of these outcomes is to have a comprehensive and up-to-date stakeholder engagement and consumer vulnerability strategy, in line with our CVS.

¹⁶ CMA, [Energy Market Investigation Final Report](#)

that the market is not working well for a large number of consumers, many of whom are likely to be vulnerable (eg many prepayment customers).

Rationale for a broad vulnerability principle

Embedding and clarifying our expectations in the supply licence

- 3.5. We note that some suppliers are starting to adopt the spirit of the CVS and taking steps including some innovative approaches to reach out to consumers in vulnerable circumstances. We also note that supplier practices with respect to these consumers vary greatly and there is room for improvement.
- 3.6. The retail energy market is undergoing changes with many new suppliers having entered the market in recent years. There is a need to clarify regulatory expectation in this space through the supply obligations. We want suppliers to take accountability for protecting and empowering consumers in vulnerable situations, from frontline customer advisors to senior management and boards.
- 3.7. Vulnerability lends itself to a principles based approach because it requires suppliers to exercise judgment about how best to handle individual circumstances and find effective (and where possible innovative) ways to support consumers in vulnerable situations.
- 3.8. We already put the onus on suppliers to deliver positive consumer outcomes through certain obligations that are essentially narrow principles addressing specific circumstances. Some examples include:
 - (i) SLC 27.3 sets out our rules on the use of security deposits, including an expectation that suppliers use these in a reasonable manner. In particular, SLC 27.3 (b) states that a licensee must not require a domestic customer to pay a security deposit “if it is *unreasonable* in all the circumstances of the case”; while SLC 27.4 states a security deposit “must not exceed a *reasonable* amount”.
 - (ii) In our recent statutory consultation on proposed changes to the Priority Services Register (PSR)¹⁷, we set out our intention to adopt the spirit of the CVS approach to identifying vulnerability in companies’ licence obligations. Our PSR proposals would require companies to move away from a ‘box ticking’ approach and improve identification of consumer vulnerability during the course of their normal interactions. The changes will focus on outcomes rather than prescribed actions, giving suppliers the flexibility to determine the most appropriate way to meet the needs of their PSR customers.

¹⁷ Ofgem, [Priority Services Register Statutory Consultation and Proposals](#)

Future proofing

- 3.9. Given the number of new entrants, emerging business models and technological changes that we are seeing, it is essential that our regulatory framework continues to be responsive and flexible. We must ensure that regulation clearly helps consumers in vulnerable situations to engage with, and benefit from, the opportunities brought about by changes in the market. A customer's vulnerability should not disadvantage and get in the way of them realising the current and future benefits of the market.

Objectives of a vulnerability principle

- 3.10. We think a broad, enforceable vulnerability principle would deliver positive outcomes for consumers in vulnerable situations in the following ways.
- **Provide effective protection for consumers in vulnerable situations in a fast changing market:** a broad principle would provide prominence to vulnerability and set a clear expectation that licensees must have an approach in place to treat vulnerable customers according to their individual circumstances.
 - **Put responsibility firmly on suppliers to protect and empower consumers in vulnerable situations:** we want to see an industry-wide culture shift with accountability for vulnerability at all levels of the organisation.
 - **Promote innovation and competition among suppliers:** we think a broad principle is likely to promote innovation by allowing for flexibility in approach whilst being clear on the consumer outcome and standards we expect from suppliers.

Scope, policy intent and operating framework

- 3.11. Here we set out our initial thinking on the policy intent, scope and operating framework of the vulnerability principle. In developing our thinking, we have looked at approaches taken by other regulators. We will continue to engage stakeholders to inform our proposals.

Scope

- 3.12. Like the Standards of Conduct (SoC), it is proposed that the vulnerability principle would cover all activities of the supplier and any representative which involve, or relate to, dealings with a domestic consumer.
- 3.13. The vulnerability principle would not determine how prices are set (eg it would not control tariff prices). It would, however, cover the circumstances in which a charge may be applied. The principle would not in any way seek to address

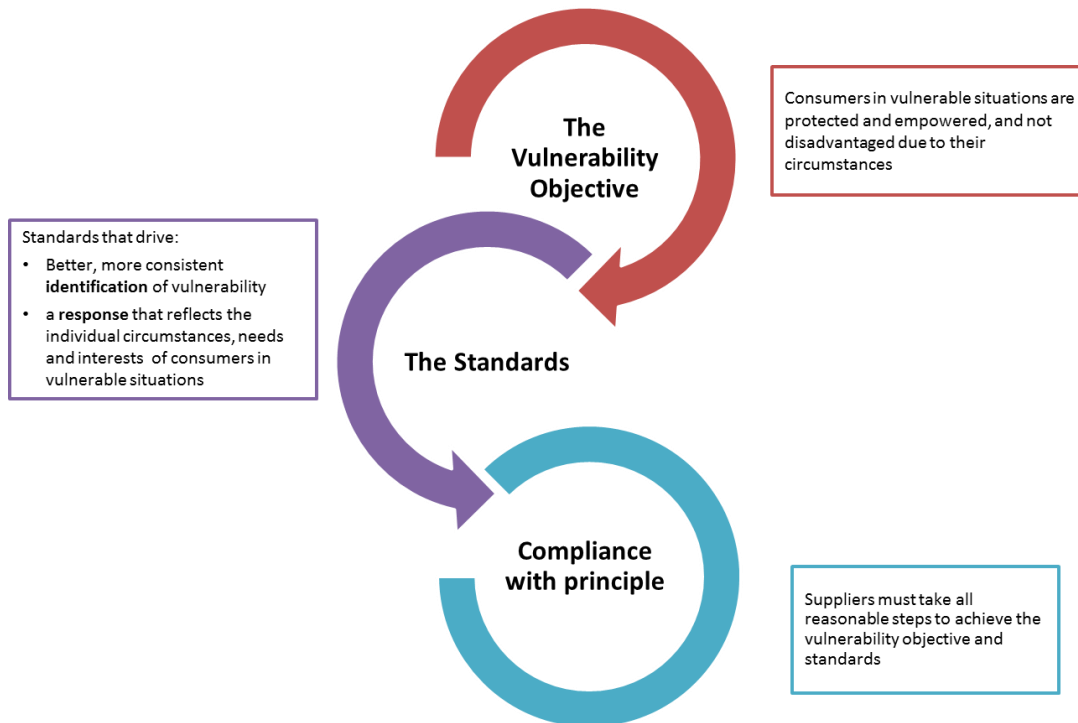
prices or other terms and conditions which discriminate between different groups of customers (ie this would not seek to replicate the provisions of the now defunct SLC 25A on undue discrimination in supply).

- 3.14. As we develop our thinking, we will consider whether our current definition of vulnerability set out in the CVS will enable us to deliver our objectives or whether we need to make any amendments.

Policy intent

- 3.15. Our proposed vulnerability principle contains a consumer outcome and two standards - see Figure 4. Our current thinking on the consumer outcome is *"consumers in vulnerable situations are protected and empowered, and not disadvantaged due to their circumstances."*
- 3.16. We are proposing two standards: (i) identify and (ii) respond to vulnerability. We want suppliers to demonstrate better, more consistent identification of vulnerability and to respond to consumers in a way that takes into account their individual circumstances, needs and interests.
- 3.17. We expect suppliers to embed the consumer outcome and standards into their business processes and management reporting. We are considering whether this expectation should be an explicit standard of the vulnerability principle (like 'identify' and 'respond') or whether it should remain implicit in line with our current expectation that suppliers embed the SoC.
- 3.18. It will be for suppliers to take account of the principle across all levels of the organisation and to consider how decisions made across the business will impact consumers in vulnerable situations. Ofgem will not prescribe how suppliers should operationalise the required standards.
- 3.19. We have identified the need for a bespoke customer objective for those in vulnerable situations alongside the 'identify and respond' standards. We intend to do further work on defining 'disadvantage' in this proposed customer objective so that it is suitably clear to suppliers, consumers and their representatives.

Figure 5: Vulnerability Objective and Standards

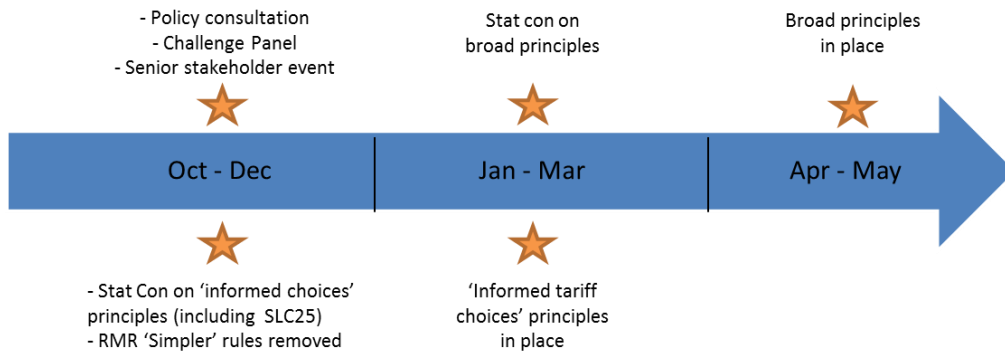


- 3.20. As set out in chapter 2, we are considering re-framing the “all reasonable steps” requirement so that responsibility for demonstrating that all reasonable steps have been taken is with the supplier. At this stage we consider this approach to be right for achieving the vulnerability customer objective, as opposed to the current ‘fairness test’ in the SoC licence obligation which is a general test for all consumers. We will consider whether this is proportionate as opposed to drafting them as absolute requirements with no test.
- 3.21. At a high level, our current thinking is that where there is an overlap or potential conflict between the vulnerability principle and existing SLCs, the vulnerability principle will take precedence. We will assess this further by examining how the proposed vulnerability principle interacts with existing rules.
- 3.22. It is our continued intention to introduce the vulnerability principle before we consider removing any existing vulnerability-related prescription. Prescriptive rules would only be removed or replaced by additional principles if, after due process, we are confident this will improve overall consumer outcomes and maintain regulatory certainty.

4. Next steps

- 4.1. As well as the broad principles themselves, we are continuing to develop proposals in relation to the operational framework we will use to support principles and how we will evaluate the impact of our changes. Our key deliverables are below:

Figure 6: Key milestones for principles



- 4.2. We will continue to engage with stakeholders on all of these areas as we develop proposals for our November consultation. This includes a senior stakeholder event, Challenge Panel, bilateral meetings and a workshop with consumer groups. It is essential that all stakeholders understand our policy intent behind these broad principles, their scope as well as how we will monitor them.

Appendix A – Domestic Standards of Conduct

Condition 25C. Customer Objective and Standards of Conduct for supply activities¹⁸

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;
 - (iii) relates to products or services which are appropriate to the Domestic Customer to whom it is directed; and

¹⁸ This is drawn from the [electricity domestic supply licence](#), as consolidated on 13 July 2016. The wording of SLC 25C in the [gas domestic supply licence](#) is the same.

(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.

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 B – Non-domestic Standards of Conduct

Condition 7B. Customer Objective and Standards of Conduct for non-domestic supply activities¹⁹

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
 - (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:

¹⁹ This is drawn from the [electricity domestic supply licence](#), as consolidated on 13 July 2016. The wording of SLC 7B in the [gas domestic supply licence](#) is the same.

- (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 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 B.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.