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Domestic Consumers Team
Ofgem
9 Millbank
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28th September 2016

Dear Clem,

Consultation on changes to rules around tariff comparability and marketing

Thank you for the opportunity to comment on the above consultation. Bristol Energy is a new entrant supplier with a mission to be a force for social good to energy users in Bristol and beyond.

Executive Summary

Bristol Energy welcomes Ofgem's proposals to remove certain aspects of the RMR informed choices regulations, and to move to a more principle based approach to SLC25.

We support allowing suppliers to roll customers onto new fixed term tariffs provided there are no exit fees rather than switching them onto the cheapest standard variable tariff (SVT). This will prevent customers who have engaged in the market by switching to a fixed tariff returning to standard variable tariffs by default rather than being placed on their current suppliers' best offer.

We believe Ofgem must look forward as part of this review and ensure its proposals are future proofed for the introduction on the back of smart meters complex tariffs which require behavioural change to become the best tariff for that customer. In particular how to calculate the cheaper tariff messaging (CTM) if it is dependent on behavioural change, and not mandating what items need to be in the Tariff Information Label (TIL) based on the current market.

We are not convinced that the six narrow principles to replace SLC25 are necessary as they should all be covered by the standard of conduct. They are prescribing the way suppliers act rather than the outcome and reflect Ofgem's apparent lack of trust in suppliers in this area.

Finally, we believe that any impact assessment should not just consider where prescriptive regulations are removed or replaced, but also justify areas where Ofgem has decided to retain prescription.

We have answered your specific questions below, expanding where necessary.

Q1.

- (a) Do you agree with the proposed requirement that any calculation by a supplier of the estimated annual cost figure should be internally consistent (i.e. calculated in the same way by any given supplier for all the tariffs and for all customers over time)?**

We agree that suppliers should be consistent in how they calculate estimated annual costs

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for customers, and that any such calculation should be reasonable, this includes a reasonable calculation of the estimated annual consumption on which it is based. Where a prospective customer requesting a quote does not have their annual consumption then we believe that there should be a recognised methodology for calculating consumption based on house size and occupancy otherwise quotes between suppliers may vary widely.

(b) Are there any circumstances in which suppliers should have the flexibility to provide an estimated annual cost figure to customers based on different assumptions or methodologies? Please explain your answer.

As access to smart metering data becomes available suppliers will, when promoting a time of use tariff, need to demonstrate to customers the impact of the tariff on them both with and without behavioural change. Without this flexibility, then consumers may be deterred from opting for a tariff where the personal projection is based on historical usage, although it could lead to significant savings if accompanied by behavioural change.

Suppliers should still be required to base any EAC dependent on behavioural change on reasonable assumptions, with supporting evidence where available. Although Ofgem would need to be pragmatic in accepting that until a ToU tariff has entered the market the actual level of behavioural engagement may have to be based on untested assumptions until the evidence begins to be accumulated from live customers.

Q2. Do you support our proposal to require that, in the absence of a prescribed methodology, the estimated annual cost must be personalised, transparent, fair and as accurate as possible, based on reasonable assumptions and all available data?

Whilst it is always preferable to use actual consumption data, if this is not available then suppliers should have the option to provide customers with average comparison data as long as this is clear to the customer. If suppliers are required to ask several detailed questions then there is the risk that the customer becomes disengaged with the process and perceives switching to be “a lot of hassle”. The current length of telephone switching calls is a big turn off to customers, and we have had several instances of customers terminating the call part way through as a result.

Suppliers are required to treat customers fairly via the standard of conduct and this proposal is prescriptive in that it requires the customer to provide detailed data in order to get a quote even if they would be happy with an average.

For this reason we do not support this proposal.

Q3. Do you support our suggestion that, at the end of a fixed-term contract, consumers could be rolled onto another fixed-term (rather than evergreen) tariff, if the consumer were able to exit this tariff with no penalty and at any time?

We support this proposal. Currently, Bristol Energy has no exit fees on its fixed rate tariff and may prefer to default customers onto a new fixed term tariff of similar length rather than our standard variable tariff. This could benefit the consumers in two ways. Firstly customers would not have to find time to give us their positive consent to roll onto a new fixed term

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which is the best deal for them. Second they would be on a cheaper deal. We believe that customers may perceive suppliers defaulting them on to a more expensive SVT than their cheapest tariff as an effort to increase their margin rather than what they are obliged to do by regulation.

We believe the current process may result in consumer harm to customers who do not respond to fixed term end letters in a timely manner.

Q4. Do you agree with our overall approach to managing the consequential impacts on the Clearer information tools arising from the removal of relevant Simpler Tariff Choices rule?

We support the proposals to require consistency in the calculation of the cheaper tariff messaging, although in our view this would be presumed within the standard of conduct and does not need to be prescribed. It may be that suppliers will need to vary the calculation it uses when assessing how a customer may change their behaviour on a ToU tariff, as opposed to remaining on a single rate tariff. As long as the methodology is honest and transparent then we see no reason for the prescribed regulation.

More complex tariffs which require behavioural change for the customer to benefit make Cheaper tariff messaging difficult as the “cheapest” will depend on customer behaviour. We believe Ofgem need to consider this before deciding to retain the CTM, and maybe consider restricting it to single rate tariffs only.

We support the proposal to remove the TCR as we believe it provides no customer benefit.

With regard to the Tariff Information Label, we support the principle that customers should be able to find all the key information about their tariff in one place, but believe that a narrow principle about providing all key tariff information in an easily accessible manner would be more keeping than a prescribed regulation stating which specific items need to be placed in the TIL. With the advent of smart metering and other behind the meter technologies a prescribed TIL may result in mis-information being provided to customers, whereas a principle would put the onus on suppliers to ensure the information in the TIL is relevant.

Q5. Have we identified the right benefits and risks associated with our preferred approach to managing the impact of removing the relevant Simpler Tariff Choices rules on each of our Clearer Information tools?

We believe that the proposals are over cautious and have not fully considered the impact on tariff diversification as a result of smart metering and associated technologies. In particular, the over prescriptive regulation of the TIL could result in customers being provided with misleading or insufficient information regarding their product or any product they are considering switching too.

This also applies to the CTM as it fails to address the issue that more complex tariffs may be cheaper or more expensive than a customer’s current tariff depending on the degree of behavioural change they make on a new tariff.

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Q6. Are there any potential unintended consequences associated with our proposed approach?

As stated above, we are concerned about the proposal to retain prescription rather than moving to a principle based approach. This we feel means that the proposals are too rigid for complex tariffs that may result from smart and behind the meter technologies such as batteries and technology optimised to select cheapest periods for running certain appliances.

We strongly urge Ofgem to think beyond fixing the current issues with the Simpler Tariff Choices rules, and consider how they can remain relevant and appropriate as tariff structures become more diverse and complex, so they do not constrain innovation, which these proposals, whilst a step forward, may still do.

At Bristol Energy we are considering the introduction “care tariffs” and “social good” tariffs in which circumstances we envisage cheaper tariff messaging would not be helpful as price is not the characteristic the customer is primarily seeking.

Q7. Do you agree that our proposed policy objective is the correct one? Please explain your answer?

We support the policy objective although we disagree with the term “best value” being used. Whilst price is an important characteristic in today’s market (as demonstrated by the CMA), this is down in part to the limited availability of products other than a single rate tariff with no behind the meter technology. We believe that other elements of tariff products will become more important as time progresses and customers will start to consider other aspects of a tariff such as greenness or social good as suiting their characteristics and preferences. We therefore propose that “best value” is replaced by “best option”.

Q8. Do you consider that the proposed principles are a sensible way of achieving our policy objective? Please explain your answer.

Whilst we welcome the move to principles, the consultation does not sufficiently justify, and we cannot envisage what these principles add that is not already covered by the existing Standard of Conduct and the afore mentioned policy objective, which we would support as a principle (subject to the change mentioned above). We believe that the proposed principles are too prescriptive to be considered principles and should not be put into the licence.

If the six principles are put forward then our view on each are:

1. *The licensee must ensure that the terms and conditions of its tariffs (including their structure) are clear and easily understandable.*

We believe this is already covered by the SoC, and believe that this applies to principle terms. However, the scope of making the full terms and conditions clear and easily understandable are constrained by the fact that they are a legal contract and must be written as such.

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2. *The licensee must ensure that its tariffs are easily distinguishable from each other.*

Again this is covered by the requirement to be open and transparent with consumers as required by the SoC. However, our main concern is that in offering Fixed Term tariffs it is often the case that a particular tariff name is used at one point in time, but over time, the version number changes. This principle would need to be clear that it applies only to live tariffs otherwise naming conventions in use will need to be changed.

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 which tariff(s) within its offering is/are appropriate to their needs and preferences.*

We believe this is covered by the Fair and transparent requirements of the standard of conduct. We do support the fact that this principle recognises that a customer's needs and preferences may be something other than price, although this does not give sufficient cause for this as an additional narrow principle.

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.*

This is a duplication of the standard of Conduct and we believe the current SoC covers sales and marketing by ourselves and our representatives. We therefore see no reason for this principle.

5. *The licensee must not, and must ensure its representatives do not mislead or otherwise use inappropriate tactics, including high pressure sales techniques, when selling or marketing to Domestic Customers.*

We firmly believe this is not only covered by the SoC, but more generally in legislation around sales and marketing tactics. We also dislike the negative way the principle is worded as it demonstrates Ofgem's lack of trust in suppliers in that it is stating what is obvious, and not the correct way to operate.

6. *The licensee must only recommend, and must ensure that its representatives only recommend, to a domestic customer products or services which are appropriate to that Domestic Customer's needs or preferences.*

If a supplier is operating in line with the SoC or the 4th principle listed above then this should be happening by default. There is no need for this additional principle which again is stating the obvious.

We also note that in the principle it refers to products and services, rather than tariffs and believe it needs to be caveated to the products and services which Ofgem provides licences to suppliers for. It does not cover additional services which are not a licensable activity otherwise it distorts the market in those products and services.

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Q9. Are there any benefits, risks or potential unintended consequences associated with the proposed principles which we have omitted? If so, what are they and how could they be mitigated?

We are concerned that principle 2 could make it difficult for suppliers to maintain a sequential naming convention for its fixed rate tariffs, and thus the requirement should be only on live tariffs.

We also have concerns that principle 3 could result in suppliers opting for patronising and childlike language to ensure each domestic customer can understand and compare tariffs to meet the obligation. There must be an element of what it is reasonable to expect a customer to understand. Vulnerable Customers who require additional support can seek additional help from a supplier or third parties.

Ofgem would need to define “Representative” in the context of principles 4, 5 and 6. We believe this is where the supplier has a contractual relationship with the representative, which they could end if the representative behaves in an unacceptable manner. It cannot cover 3rd parties offering independent advice, or family and friend referrals.

As mentioned above the reference to products and services in principle 6 needs to be caveated to only cover activities covered by licence, otherwise it would distort the market with suppliers potentially having a regulatory risk in a way their competitors in that market were not.

Q10. Are these principles likely to result in differential impacts across different types of suppliers (eg. Large v small or medium suppliers)? Please explain your answer.

The principles are likely to be more onerous on innovative suppliers attempting to sell more complex products to more engaged customers, who are able to manage that complexity in their relationship with their supplier.

Smaller suppliers are more likely to be after niche customers rather than offering mass market products, and thus would be affected by these rules to a greater extent than mass market players.

Principle 3 would also favour suppliers whose main method of marketing is via the internet, where the customer can choose the level of information they take on (e.g. Reading the T&Cs) whereas suppliers wishing to engage customers by phone or face to face would have to talk at length about the various options and potentially disengaging the customer from the market.

Q11. Do you think we should introduce a principle about informed tariff choice?

We would support having the policy objective as a principle provided the words “best value” are amended to something less focussed on price for reasons stated above.

Q12. Do you agree that we should expand the scope of SLC25 to apply to all sales and marketing activities? Please explain your answer.

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We agree with this proposal as it ensures the same level of protection to customers whatever the marketing channel is. It is important however, that the principle is clear as to what constitutes a representative and that it refers only to licensed activities.

Q13. Do you support our proposal to extend the requirement to keep records for two years to include telephone sales and marketing? If not, please explain why, including the scope for any potential increase in costs.

We do not support this proposal or the intention to retain the requirement to keep records for face to face sales. One of the better elements of RMR was the requirement to allow customers to obtain quotes based on postcode and consumption only. If suppliers are obliged to keep records of quotes then they must identify the customer when doing so, which we believe hinders engagement.

It also runs counter to the proposed spirit of the new SLC25 mentioned above where it covers all marketing activities by prescribing record keeping onto certain activities.

The cost of record keeping falls ultimately on consumers and in a vast majority of cases the quote is never re-accessed. For Ofgem to require this record keeping, just in case it wants to take enforcement action against a supplier on the validity of its quotations seems to be an excessive burden of regulation, and a breach of the data protection principle of keeping records no longer than necessary.

Q14. Do you agree with our rationale for not applying the requirement to keep records to include online sales? What would be the implications of extending the requirements to online sales (eg. Impact on PCWs, and increased costs)

We agree that to extend this requirement to online sales would be a burden, and would have the unintended consequences of removing the ability of customers to have anonymous quotes by entering just a postcode and consumption, which we believe is important. Customers sometime request multiple quotes online, for example, they may use a PCW to identify the better deals and then get quotes direct from the supplier or vice versa, get a quote from their supplier about their next fixed term deal and then seek quotes elsewhere to compare.

If all these quotes needed to be kept then there would be a cost implication that far outweighs the benefit. As all suppliers would be required to keep these records just so Ofgem could take enforcement action against a few (if any) errant suppliers.

Q15. Do you agree with our proposal to remove prescription from SLC25? Are there any other areas where you think prescription still needs to be retained to maintain customer protection?

We strongly support the removal of prescription from SLC25 and encourage Ofgem to look again at the areas they intend to retain prescription. The idea behind principles is that suppliers need to embed fair treatment into their culture and each area of prescription

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including the six proposed principles seems to suggest Ofgem does not trust suppliers to act in this manner and thus need to spell out the way they must act.

Q16. Do you agree with the methodology we intend to employ in our impact assessment?

We agree with the methodology proposed, but feel it should also cover the costs & benefits of any prescription that Ofgem proposes to retain to ensure the decision to retain prescription is the right one.

Q17. Have we captured all expected key impacts? If not, what else should we include in our impact assessment?

If suppliers implement the right compliance regime in response to the principles, then the ongoing cost of compliance should fall if Ofgem holds true its pledge to “leave well performing companies alone”. Ofgem will need to assess the cost to suppliers (especially where it is not proportional to size), of their monitoring regime, especially ad-hoc requests for information to ensure this remains true.

Q18. What costs do you expect to incur as a result of the proposed changes (both to the RMR package and to SLC25)? Please provide a description and a range, if possible.

We would expect to incur additional costs of training sales staff in the new approach to SLC25. Training costs around the RMR package will be absorbed into the wider training regime around principle based regulation and focussing on customer outcomes in the way we work.

The removal of RMR functionality is likely to incur a cost from our software suppliers although hopefully this would be shared amongst all the users of the system.

The RMR changes will lead to a revamp of collateral including the web site, something that is not an insignificant cost to a small energy supplier like ourselves.

Finally there will be the cost of compliance with Ofgem’s monitoring regime. Whilst we welcome Ofgem’s proposals to monitor existing data we are concerned at the cost of responding to ad-hoc requests for Information such as the one recently issued as part of the challenge panel.

Suppliers need to know what data they need to collate ahead of the request to provide it. Otherwise the data is either, not available, or is not available in an easily assessable manner and thus the cost of creating new reports and validating the accuracy of the reported data can be significant, especially for smaller suppliers as there are no economies of scale in these cases. We welcome Ofgem’s decision to make responding to the challenge panel RFI voluntary for suppliers with less than 50,000 customers, but believe it needs to be more intelligent than a straight “above or below 50,000” decision.

Q19. What benefits (including avoid costs) do you expect to realise as a result of the proposed changes? Please provide a description and a range, if possible

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The principle benefit will be the freedom to innovate and deliver to customers a more rewarding experience in switching to Bristol Energy. The current RMR package and SLC25 mean that delivery is focussed on the regulations rather than the customer and this in our mind is the wrong approach.

We do not envisage there to be any significant cost saving in the new proposals. Indeed initially costs will rise in terms of training staff to develop an increasingly customer focussed way of working and thinking, rather than building to meet regulatory requirements. Ongoing, the costs are very much dependent on whether Ofgem increases its use of ad-hoc requests for information as one off reporting is an expensive burden on suppliers if the requested data was not stored in an easily assessable format, or requires 3rd party software providers to deliver new ad-hoc reports in short timescales.

Q20. Do you think there are any other indicators we can use to monitor the impact of changes to the RMR rules to customers?

We would expect some evidence to come out in complaints monitoring, hopefully in a reduction in complaints as suppliers become more customer outcome focussed, but any differential between suppliers should also highlight good practice and those less engaged with the principles.

Q21. Are there any other sources of information we could use to provide us with an early indication of potential issues with sales and marketing activities?

Other suppliers are often aware of bad practice by their peers from customer feedback with customers wishing to be returned to their original supplier. Ofgem should consider monitoring erroneous transfers and objections where a gaining supplier is required to return high levels of gains back to the original supplier, and potentially customers exercising their cooling off period rights. Suppliers will of course need advance notice that this data will need to be captured for reporting.

I hope you find this response useful. If you require any clarification or additional information, please do not hesitate to contact me.

Kind regards,



Chris Welby
Head of Regulation

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