



Making a positive difference
for energy consumers

To all domestic electricity and
gas suppliers, consumer groups
and other stakeholders

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Decision: Selection criteria for mandatory supplier testing of measures to promote domestic consumer engagement

On 24 June 2016, the CMA published the final report on its energy market investigation¹ where it recommended that Ofgem introduce a domestic licence condition requiring suppliers to participate in testing measures intended to improve consumer engagement. We have today issued a statutory decision to implement SLC 32A which will allow us to implement these trials². We consider SLC 32A will be valuable in enabling us to gather evidence in order to identify the most appropriate way of promoting the interests of existing and future consumers. This was based on the CMA's findings and consideration of Ofgem's principal objective and general duties.

To enable this testing, we committed to publish selection criteria, so that the process was transparent for establishing the most suitable supplier to take part in any trial. We consulted on these criteria via an open letter on 19 October³ and have made a decision, taking into account the feedback received.

We have decided that selection for a trial will be based upon:

1. Whether the supplier has enough of the types of customer of relevance to the specific research question(s) and;
2. Whether the burden of the trial is proportionate to the particular supplier, taking into account the supplier's existing capabilities including consideration of the supplier's efforts to participate in previous Ofgem-led trials or undertake its own testing to address the specific area identified in the research question(s). We will also take into account the extent to which a supplier or suppliers have already undertaken trialling work that is helpful to our policy design and research objectives.

A more detailed explanation of the scope of each of these categories is shown in the Annex.

We believe the revised criteria will provide a fair and proportionate method of selecting participants. The effect of this decision is that the selection criteria will constitute the published criteria for the purposes of paragraph 32A.7 of SLC 32A.

¹ CMA, Energy Market Investigation, Final report, 24 June 2016, <https://assets.publishing.service.gov.uk/media/5773de34e5274a0da3000113/final-report-energy-market-investigation.pdf>

² <https://www.ofgem.gov.uk/publications-and-updates/implementation-standard-licence-condition-32a-power-direct-suppliers-test-consumer-engagement-measures-decision-make-licence-modifications>

³ https://www.ofgem.gov.uk/system/files/docs/2016/10/selection_criteria_open_letter_-_final.pdf

General approach

We consulted upon a high-level set of criteria, with the intention that these would form a framework within which the detailed requirements for a particular trial would be applied, based upon the specific research question(s). We received a total of 16 responses including from the six large energy suppliers; 8 from small and mid-tier suppliers and one each from a consumer group and a trade body. In total, 7 responses gave feedback that the overall approach was appropriate and the criteria were reasonable and were at the right level of detail.

A large supplier requested a formal consultation on the selection criteria. Given that the criteria above are a framework and we intend to define them more closely for each trial, we do not consider this to be practical or necessary. We have taken responses to the consultation into account in our decision on the selection criteria and discuss specific responses to each criterion below.

Impact of trials on suppliers

A concern was raised by a large supplier that the selection criteria's impact would be disproportionate because they would cause an unequal impact on certain suppliers, based upon potential customer losses and damage to their commercial interests. A mid-tier supplier raised a concern over how costs of trials could be spread over a smaller customer base, particularly if the characteristics of that customer base meant it could be selected multiple times. We have considered these points in the context of the CMA's recommendation of the trials programme as part of the remedies to address the domestic weak consumer engagement adverse effect on competition. In its summary of remedies⁴, the CMA stated:

The above overarching feature of weak customer response, in turn, gives suppliers a position of unilateral market power concerning their inactive customer base. In relation to unilateral market power, our finding is that suppliers in such a position have the ability to exploit such a position...

The full report states:

The gains available to customers from promoting engagement are potentially high.... We recognise there will also be costs to suppliers of complying with the requirement to participate in the Ofgem-led programme (including, where used, RCTs) and implementing the resulting interventions. However, we note that our starting point for the proportionality of the Ofgem-led programme, and any individual decision subsequently taken by Ofgem in the context of the programme, is the scale of the detriment, which is very substantial.

The CMA recognises that Ofgem is already obligated to consider the cost and proportionality of all its activities.

In designing the programme, Ofgem will be required to assess the proportionality of the various stages involved in the programme, including the testing involved in each specific proposed measure.

To ensure proportionality, we will choose research questions for trials that we believe stand a good chance of seeing positive consumer outcomes. We will also ensure that the scale of the trial is no larger than necessary to obtain robust results. We have revised criterion 2) to clarify that the assessment of proportionality is linked to capability, which will include size of supplier in relation to the scale of the trial.

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https://assets.publishing.service.gov.uk/media/576c1910ed915d622c000085/FR_Summary_of_AECs_and_remedies-Section_20.pdf

A supplier questioned whether there was potential for trials to cause detriment to consumers, leading to complaints. We consider this concern to be reasonable and will mitigate this by developing appropriate metrics for identifying detriment within the detailed planning of the trial. We intend to publish guidance for suppliers in the coming months which will give more details of what we expect from a trial.

A question was raised about the prioritisation of work, particularly in relation to changes to IT systems required for trials. We are aware of the programme of change planned across industry and will take due consideration of this activity when planning trials and applying the selection criteria, being mindful of the potential consumer benefits. However, we may require suppliers to prioritise measures identified for trialling over discretionary activities.

The selection criteria

We consulted upon three selection criteria and address specific responses to these below.

1. Suppliers' customer base

Feedback on this point was focused on ensuring that the process targets disengaged consumers rather than those who have made a choice to remain with a supplier. We will be as specific as possible about the types of customers that we are targeting through the trial and use this to guide selection.

We received one response asking for the selection criteria for each trial to be published to allow challenge and another suggesting we allow suppliers to nominate themselves for trials. Where possible, we will consider sharing the target customer base and the desired outcomes and measures at an early stage in the trial development, to allow suppliers to assess how closely their own customer base matches the target group and give the opportunity for suppliers to nominate themselves for trials. We would aim to work in a collaborative way with suppliers to develop the trials, ensuring always that the trials support delivery of robust trial results.

2. Capabilities to undertake a trial

There was concern from larger suppliers that factors such as the number of employees a supplier has should not be assumed to equal capability. We have clarified this, to focus on systems and skills. There were also questions raised around the ability of smaller suppliers to make the necessary amendments to systems when they may be provided by a third party. We have taken these elements into account and amended the criteria to place greater emphasis on an assessment of capabilities.

Where an otherwise suitable supplier does not have a certain capability available in-house, we may expect them to acquire that capability (for example in IT or trialling) where this was necessary. We consider it is appropriate that development of internal capability is at the supplier's cost as it should provide a long-term benefit. To ensure that there is a fair allocation of trials between suppliers, we would encourage suppliers to nominate themselves for Ofgem-led trials, once Ofgem has shared the research question(s).

We received a request for more detail on how costs and proportionality will be assessed during selection, with responses questioning how difficulties in changing systems would be taken into account, particularly where these changes are to accommodate other regulatory requirements. We recognise this as a legitimate concern and will take representations from suppliers once specific requirements for trials are clear. However, where the criteria have identified a supplier as a suitable candidate for trials, we would expect them to make necessary changes to systems within the required timescale, acquiring capability or capacity where required.

3. Burden of the trial is proportionate to a particular supplier

A few respondents called for the costs of each trial to be shared between Ofgem and the supplier(s) involved. We do not consider it appropriate for Ofgem to fund the trial costs in part or in full. Our role in this area will be to supply the research question for trials, based upon desired consumer outcomes, and to provide guidance to suppliers on how to undertake robust trials. We would also monitor the progress and outputs of trials. None of this would be a substitute for suppliers using their own resource and expertise to carry out the specified trial.

In respect of the feedback on proportionality, we have already stated that we will take account of a supplier's participation in previous Ofgem-led trials and its activities in the area of the research question. This is to encourage suppliers to take proactive steps to engage consumers who are not currently taking advantage of the competitive market. To take a supplier's actions into account, there would need to be considerable alignment with the measures planned for the Ofgem-led trial and any supplier-led testing would need to have been undertaken in a robust manner.

We aim to implement this process in a collaborative way. For queries about this process, please contact Fiona Cochrane-Williams at DomesticRetailPolicy@ofgem.gov.uk.

Yours faithfully,

Neil Barnes

Associate Partner

Consumers & Competition

Annex – Process summary

For trials conducted under SLC 32A, Ofgem will select suppliers to participate in the trials using the following process. There will be interaction with the supplier at all stages of this process to review the assessment against these criteria and information may be requested to support the process.

1. Ofgem will prepare a research question(s). This will set out the objectives of the trial, including specific customer groups to be targeted, the routes to be used and an indication of the outcomes we are seeking to measure through the trial.
2. Where appropriate, Ofgem will share the research question and invite suppliers whose customer bases match those specified to put themselves forward for the trial. This participation would be based upon the selection criteria and a supplier who volunteers may not be selected.
3. Ofgem would consider comments on the research question.
4. Where the selection criteria need to be applied, Ofgem will apply the following tests to determine the appropriate supplier(s):
 - a. The supplier's customer base will be considered against the research question. This will include (but not be limited to): number of customers; demographic breakdown; tariff breakdown; current engagement levels; consumption profiles and payment methods used.
 - b. An assessment of whether the burden of the trial is proportionate to the particular supplier, taking into account the supplier's size and existing capabilities. This will include an initial assessment of the likely burden of implementation, including the length of trial and likely costs. Supplier capability will be assessed on factors including system functionality and relevant skills. It should be noted that we may expect a supplier to buy-in particular skills or capability where they do not have them. This will be at the supplier's expense.
5. As part of the assessment of proportionality we will take into consideration the quality and volume of previous testing done by the supplier. Specifically we will be less likely to select suppliers who have been active, collaborative participants in previous Ofgem-led trials or have made significant recent efforts to test ways to address the specific problem identified in the research question(s).
6. Ofgem would select suitable suppliers for the trial firstly from those suppliers who have volunteered and then those who had been identified via the selection criteria.