

Statutory Consultation: Enabling consumers to make informed choices

Consultation

Publication date: 30 January 2017

Response deadline: 6 March 2017

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Overview:

Ofgem is committed to relying more on principles in the way we regulate the retail energy market. This will promote innovation and competition, place a greater onus on suppliers to deliver positive consumer outcomes and improve protection for consumers in an evolving market.

This statutory consultation confirms our intention to overhaul the sales and marketing licence condition, replacing the vast majority of prescription with five narrow principles – three on tariff comparability and two on sales and marketing. These changes will help ensure consumers are able to make informed choices.

This document also confirms our intention to make amendments to some of the 'Clearer Information' tools, originating from our 2013 Retail Market Review (RMR) reform package. These changes are being proposed in the context of our decision last September to remove certain RMR 'Simpler Tariff Choices' rules. We welcome views on these proposals.

Context

In Ofgem's 2014 Strategy we stated our intention to rely more on principles, rather than detailed prescriptive rules, when seeking to ensure suppliers are delivering good outcomes for consumers. Principles will give suppliers more freedom to innovate, while ensuring they are thinking hard about whether their actions are benefiting consumers.

In the proposed 2017-18 Ofgem Forward Work Programme (FWP), we reaffirmed our ambition to rely more on principles in the supply licence. In particular, the FWP highlights our commitment to remove the prescription around sales and marketing. This policy consultation sets out the licence changes we propose in order to fulfil these commitments.

Associated documents

[Findings from the 2016 Challenge Panel](#) (January 2017)

[Standards of conduct for suppliers in the retail energy market](#) (January 2017)

[Forward Work Programme 2017-18](#) (December 2016)

[Decision to modify electricity and gas supply licences to remove certain RMR Simpler Tariff Choices rules](#) (September 2016)

[Enforcement Guidelines](#) (updated September 2016)

[Working Paper on Broad Principles](#) (August 2016)

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

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

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

Standard conditions of the [electricity supply licence](#) and [gas supply licence](#) (current)

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Executive Summary

Context

Our ambition is to create a retail energy market where competition constrains prices, drives efficiency and delivers the quality of service and products that customers need and expect from an essential service. As part of this, we expect all suppliers to take into account – and respond appropriately to – the individual circumstances of customers in vulnerable situations.

One of our initiatives for delivering a better functioning retail energy market is our work on the future of retail market regulation. Through which we have committed, over time, to rely more on enforceable principles rather than detailed rules about how suppliers should run their businesses. We think this will better protect consumers' interests by:

- allowing more room for suppliers to compete and innovate;
- providing effective consumer protection in an evolving market; and
- putting responsibility firmly on suppliers to deliver good consumer outcomes

We have now made considerable progress in realising this vision. Last year, we removed around 30 pages of prescriptive Simpler Tariff Choices rules (eg the four tariff cap) that had originated from our 2013 Retail Market Review (RMR).¹ We also committed to overhaul the sales and marketing licence condition.

Proposals

This statutory consultation progresses this work further. It starts by confirming our intention to replace the majority of prescription from the sales and marketing rules with a package of narrow principles – three on tariff comparability and two on sales and marketing. Our aim is to require suppliers to enable consumers to make informed choices about their energy supply – something which is fundamental to our vision of a healthy retail energy market.

The principles we are proposing are:

1. *The licensee must ensure that the structure, terms and conditions of its Tariffs are clear and easily comprehensible.*
2. *The licensee must ensure that its Tariffs are easily distinguishable from each other.*
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 appropriate Tariffs within its offering, taking into account that Domestic Customer's characteristics and/or preferences.*
4. *The licensee must not, and must ensure that its Representatives do not, mislead or otherwise use inappropriate tactics, including high pressure sales techniques, when selling or marketing to Domestic Customers.*
5. *The licensee must only Recommend,* and must ensure that its Representatives only Recommend, to a Domestic Customer products and/or services which are appropriate to that Domestic Customer's characteristics and/or preferences.*

**Recommend means communicating (whether in Writing or orally) to a Domestic Customer information about products or services in a way which gives, or is likely to give the Domestic Customer the impression that a particular product or service is suitable for their characteristics and/or preferences.*

¹ The RMR was launched in 2010 to address barriers to effective consumer engagement in the retail market. See Ofgem, (2010) [Retail Market Review](#)

Alongside this statutory consultation, we are also publishing a separate policy consultation² which proposes changes to the domestic and non-domestic Standards of Conduct (SOC). The SOC are the requirements that sit at the heart of the energy supply licence, designed to build trust in the market by requiring suppliers to treat customers fairly in all their dealings with them. Given that the proposed changes to the SOC interact with the changes proposed in this statutory consultation, we summarise the key SOC proposals below:

- Add a broad principle to the domestic SOC that requires suppliers to **enable customers to make informed choices** about their energy supply. This would supplement the proposed narrow principles above that specifically relate to how a supplier should help consumers make informed decisions about tariffs that are being sold or marketed to them;
- Add a broad vulnerability principle to the domestic SOC that clarifies to suppliers that, in order to uphold their obligation to treat all Domestic Customers fairly, we expect they will need to make an extra effort to identify and respond to the needs of customers who are in vulnerable circumstances;
- Focus the definition of “Fair” used in the domestic and non-domestic Standards on the outcomes experienced by customers, and not the outcomes for suppliers;
- Remove the “all reasonable steps” threshold and instead focus on whether a supplier is achieving the outcomes expected under the domestic and non-domestic Standards.

Taken together, we believe this package of principles will help drive the transition to a regulatory framework that gives suppliers greater flexibility to innovate and deliver the quality of service and products that customers need and expect from an essential service, while continuing to provide robust and effective protection to consumers.

Consequential changes

This consultation also builds on our earlier proposals to make further changes to the RMR rules. Having removed the Simpler Tariff Choices rules last November, we are now taking forward our earlier proposals³ to make some consequential changes to the RMR Clearer Information Tools, and to remove various transitional provisions from the licence.

This consultation confirms our proposals to do the following:

- Tariff Comparison Rate (TCR): **Remove**
- Tariff Information Label (TIL): **Amend** to reflect the removal of the TCR and Ofgem annual consumption figures
- Transitional provisions covering end of fixed-term notices, rollovers and existing Fixed Term Supply Contracts: **Remove**

² Ofgem, (2017) [Standards of conduct for suppliers in the retail energy market](#)

³ Ofgem, (2016) [Helping consumers make informed choices](#)

This consultation does not set out proposals for making consequential amendments to the other two Clearer Information tools – the Personal Projection and Cheapest Tariff Message. We are still considering stakeholder feedback from our August 2016 consultation, where we proposed to remove the prescriptive requirements for how suppliers and Price Comparison Websites (PCWs) calculate the 'Estimated Annual Cost'. We will publish a separate statutory consultation in the spring on our proposals for increasing the role of principles to guide suppliers' actions in this area.

Adapting the way we operate

Stakeholders should be clear that the transition to principles is not a transition to a world of 'light touch' regulation. The rules and standards governing supplier behaviour will be just as rigorous and suppliers will still be required to comply with both the letter and the spirit of their licence conditions. The key difference is that they will have the flexibility to achieve positive consumer outcomes in a way that is less constrained by regulatory burden and more accommodating of innovation.

In applying the proposed principles, we will continue to apply the rules proportionately, in line with our Enforcement Guidelines and Better Regulation duties. We will continue to make sure that our own internal culture and processes evolve in order to support our move to a greater reliance on principles. Particular areas of focus are set out below:

- We have been improving the way we monitor the market so we are better able to spot and react quickly to poor supplier conduct. As part of this, we have established arrangements with Citizens Advice and the Ombudsman to ensure we are making better use of the information we collect.
- We are engaging more constructively with suppliers, particularly new entrants or those trying to innovate, to help them understand our expectations and apply them to possible new policies, processes or products. This engagement will also help suppliers with the culture change they need to make in order to consistently put customer needs at the centre of their business.
- We are continuing to review the way we work with suppliers to help them understand their obligations and we may publish further guidelines on our approach. We believe we already have a strong track record at managing technical or minor instances of non-compliance proportionately, while remaining ready to take swift action where needed.

We will continue adapting our operating approach throughout 2017-18. We are keen to hear from stakeholders on our proposals for operating in a way that will make principles-based regulation a success for consumers.

Next steps

This consultation closes on 6 March 2017. We welcome your views.

1. Introduction

- 1.1. As energy markets undergo profound change, we want to ensure that the regulatory framework is one that allows consumers to fully benefit whilst being effectively protected from risk. To achieve this, our approach to regulation must be more flexible, agile and responsive than it has been in the past.
- 1.2. We believe that we need to move away from uniform, prescriptive rules and instead rely more on enforceable principles. This will help achieve the following objectives:
 - i. **Promote innovation and competition that will lead to benefits for consumers.** Relying more on principles will enable us to remove prescriptive rules that are preventing suppliers from innovating in ways that will benefit consumers, including those in vulnerable situations. Prescriptive rules can also act as a barrier for businesses wanting to do things differently and bring about disruptive competition.
 - ii. **Protect consumers better in evolving markets.** Our experience shows that prescriptive rules are prone to loopholes and can also become ineffective over time as new ways of doing things emerge. The extent of change expected in the industry means that it will not be sustainable to manage new risks by continuously adding or amending prescriptive rules.
 - iii. **Put responsibility for thinking through what is best for consumers firmly on the industry.** We want to regulate a market where suppliers embrace and embed a consumer-centric culture. Under prescriptive rules, there is a risk that suppliers are too focused on 'box ticking', rather than focusing on what's right for consumers. Suppliers – who can have thousands of daily interactions with consumers – must understand and meet customer needs.
- 1.3. In 2015, we initiated an extensive programme of analysis, research and engagement with industry on the future of retail market regulation. This culminated in a policy consultation in December that year, where we identified the parts of the domestic retail supply licence that we felt best lent themselves to an early transition to principles.⁴
- 1.4. We then built on this last year, publishing a working paper on the broad principles that would sit at the core of the regulatory framework and provide a basis from which to remove prescription from the licence.⁵
- 1.5. In addition, we published a policy consultation in which we proposed to remove a significant amount of prescription from the sales and marketing licence condition (Standard Licence Condition (SLC) 25) and replace it with six principles – three on tariff comparability and three on sales and marketing.⁶ This consultation also

⁴ Ofgem, (2015) [The future of retail market regulation](#)

⁵ Ofgem, (2016) [Broad principles working paper](#)

⁶ Ofgem, (2016) [Helping consumers make informed choices – proposed changes to rules around tariff](#)

sought stakeholder views on our proposals to make necessary amendments to the RMR 'Clearer Information' tools following the removal of most of the RMR 'Simpler Tariff Choices' rules.⁷ All of these proposals were in line with a recommendation made by the Competition and Markets Authority (CMA) following its two year investigation into the GB gas and electricity markets.⁸ The consultation closed on 28 September and we received 27 responses from consumer groups, suppliers and other interested parties. We also held a workshop with consumer groups and charities in September to engage with them further. We have considered the outputs of this engagement carefully.

Structure of this document

- 1.6. Chapter 2 of this document sets out the changes we are proposing to make to SLC 25, transforming it from a licence condition that is largely based on prescriptive rules to one that is based on five 'narrow' principles and a record-keeping requirement. After presenting the new principles we are proposing to introduce to ensure consumers are able to make informed choices about their energy supply, it then sets out the licence conditions that we are proposing to remove. These changes will mean SLC 25 has a sharper focus on consumer outcomes we expect suppliers to achieve.
- 1.7. Chapter 3 focuses on the changes we are proposing to make to two of the Clearer Information tools. The RMR reforms were designed as an interconnected package of measures. The removal of the RMR Simpler Tariff Choices rules in November 2016 has affected the Clearer Information tools. We are also proposing to remove certain transitional measures which are now obsolete.

Related Publications

- 1.8. This consultation forms part of a wider package of related documents that we are publishing collectively today as we move to deliver our vision for the energy retail market. The other documents are:
 - A policy consultation⁹ setting out our proposals for the broad enforceable principles we plan to use to communicate our overarching expectations of supplier behaviour towards consumers. These will sit within the domestic SOC and include two new broad, enforceable principles – one around 'informed choices' and another that gives prominence to the special responsibilities suppliers have for consumers in vulnerable situations. This document also sets out our proposals to amend the 'fairness test' and remove the '*all reasonable steps*' threshold from the domestic and non-domestic SOC.

[comparability and marketing](#)

⁷ The RMR Simpler Tariff Choices rules were removed on 28 November 2016. See Ofgem, (2016) [Decision to modify the electricity and gas supply licences to remove certain RMR Simpler Tariff Choices rules](#)

⁸ CMA, (2016) [Energy Market Investigation, Final Report](#)

⁹ Ofgem, (2017) [Standards of conduct for suppliers in the retail energy market](#).

- A report¹⁰ setting out our views on suppliers' performance in our recent Challenge Panel, which assessed how suppliers are helping consumers make informed choices.

¹⁰ Ofgem, (2017) [Standards of conduct for suppliers in the retail energy market](#).

2. A new sales and marketing licence condition

Chapter Summary

We are proposing to overhaul the sales and marketing licence condition by removing the majority of the existing prescription and introducing five narrow principles to help ensure that consumers are able to make informed choices. Having taken stakeholder feedback into account, this chapter sets out the drafting of these principles, reiterates our rationale and explains any changes in drafting.

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

- 2.1. We want to see a retail market with more informed and engaged consumers, making better choices and getting better deals. As well as being a good thing for individual consumers, this will generate greater competitive pressures on suppliers, which in turn will result in a more efficient and innovative market.
- 2.2. The regulatory framework around information provision is critically important to this vision, particularly in the context of sales and marketing activities – arguably the front line of supplier-consumer interactions. When suppliers breach their obligations in this area, consumers risk being misled or feeling unable to make informed choices and may end up (or remain) on energy tariffs that are ill-suited to their characteristics and/or preferences. As such, they can suffer material harm, lose faith in the market and become disengaged, thereby hampering competition.
- 2.3. As set out in our August policy consultation, we believe that SLC 25, the sales and marketing licence condition, is a good fast-track case in the transition from prescriptive rules to principles. This is because we regard it as an area that is ripe for innovation and because it already contains a set of principles that suppliers must follow when conducting face-to-face and telephone sales.

What we proposed in August 2016

- 2.4. In August we stated that our policy objective was that ‘consumers are able to make informed choices by understanding which of a supplier’s tariffs offers the best value to them based on their characteristics and preferences’.
- 2.5. To deliver this objective, we proposed a package of six narrow principles – three on tariff comparability and three on sales and marketing activities. We invited stakeholder views on both the policy objective and the package of principles. We also sought views on our proposal to add the policy objective into the licence as a broad, enforceable principle.
- 2.6. Below we have set out the feedback we received from stakeholders on these proposals. We start by discussing the high-level points that were made, particularly in relation to three broad themes, and provide our response to these. We then move onto the individual principles themselves. Here we discuss the

detailed, specific comments on individual principles and set out the drafting we now propose to introduce into the licence in light of these comments.

High-level stakeholder feedback

- 2.7. The vast majority of respondents agreed with our proposed policy objective. Consumer groups broadly felt that it was comprehensive, though one noted that not all consumers may want to switch. Some stakeholders, whilst agreeing with the overall gist of the objective, suggested a change of emphasis or drafting – for example, from *'best value'* to *'best option'* or *'is most appropriate to suit their needs'* on the grounds that some consumers value tariff elements other than price.
- 2.8. Views were slightly more mixed on the extent to which the proposed principles were a sensible way of achieving the policy objective. A clear majority of consumer groups, along with some suppliers and Third Party Intermediaries (TPIs), were supportive. Consumer groups in particular suggested that the wording and scope of the principles was robust and workable for front-line advisors. Others, however, expressed some high level concerns which can be broken down into three broad categories:
- i) The threshold
- 2.9. Our August policy consultation proposed that a *'must ensure'* threshold be applied to all of the narrow principles. In their responses, a number of (generally larger) suppliers pushed back, stating a strong preference instead for *'must take all reasonable steps'*. They argued that the *'must ensure'* threshold was particularly problematic in so far as it extended to activities carried out by TPIs in principles 4, 5 and 6, stating that it would: (i) stifle the development of innovative relationships between suppliers and TPIs; (ii) lead to disproportionate compliance costs; and (iii) ultimately raise costs for consumers. They also requested that Ofgem clarify what suppliers could reasonably be expected to do beyond *'taking all reasonable steps'*.
- ii) Duplication
- 2.10. A number of suppliers also argued that the proposed principles duplicated either the Standards of Conduct (SOC), existing consumer protection regulations, or both. As an alternative, one supplier suggested adding a single, additional SOC relating specifically to tariff design (and dropping the six proposed narrow principles). It was argued that this single additional SOC needn't deal with sales and marketing as the behaviour and information limbs of the SOC already did that. Some suppliers also argued that, where duplication is introduced, principles should use the same terminology and have the same scope as existing legal provisions.
- iii) A broad 'informed choices' principle
- 2.11. The vast majority of stakeholders agreed that a high-level *'informed choices'* principle should be introduced into the licence as an addition to the narrow principles. Consumer groups were unanimously supportive, arguing that this would help future-proof the narrow principles by capturing any emerging issues, but do so in a way that did not add a significant regulatory burden. There was also

some support from a number of suppliers, who felt that a broad principle would add clarity and context to the narrow principles.

- 2.12. Others, however, qualified their support suggesting a broad principle as an *alternative* to the proposed narrow principles. Two suppliers thought the 'informed choices' objective should be introduced as an extra limb of the SOC, suggesting that the narrow principles could then be covered off through minor tweaks to the other SOC limbs (notably the behaviour and information limbs). Another supplier was supportive, as long as the reference to '*best value*' was reframed as something less price-focused.
- 2.13. Of the two suppliers who opposed a broad 'informed choices' principle, one felt it was unnecessary on top of the narrow principles, while the other favoured narrow principles over broad, arguing that they provided far greater certainty and guidance.

Our final proposals

i) The threshold

- 2.14. We have carefully considered the feedback we received around the threshold to be applied to the narrow principles. We have also built on our August 2016 working paper, where we signalled that we would consider whether the '*all reasonable steps*' threshold remained appropriate in the context of wider changes to the licence and how we operate it.
- 2.15. **We propose to retain the 'must ensure' threshold across all of the narrow 'informed choices' principles, including in their application to Representatives.** This is consistent with our proposals to remove '*all reasonable steps*' from the existing SOC, which we have put forward in the policy consultation mentioned above, which runs alongside this statutory consultation. Our rationale can be broken down into the following points:
- We believe the proposed principles set out basic, fundamental expectations that any competent, responsible supplier and their representative(s) should be able to achieve. We also consider that they set a standard which all consumers might reasonably expect to receive from any supplier or their representative engaged in sales and marketing activities. As such, we do not accept some suppliers' arguments that the principles are unreasonable or disproportionate.
 - We consider the provisions in the proposed principles to be absolutely essential to the healthy functioning of energy markets. When they are breached (as prescriptive provisions intent on achieving the same outcome have repeatedly been in the past) consumers risk being misled and misled to, resulting in them switching onto inappropriate or more expensive tariffs and thereby suffering detriment and/or losing confidence in the process. Over time, this can result in consumers losing the ability to make well-informed decisions, losing faith in energy markets and becoming disengaged, which in turn can hamper competition. Rather than focusing on the suppliers' internal processes and compliance measures, a '*must ensure*' threshold will oblige suppliers to ensure they achieve, and continue to achieve, positive consumer outcomes.

- Many of the prescriptive requirements set out in the marketing licence condition are, and have always been, of an absolute (ie 'must ensure') nature. As set out above, our aim in replacing these requirements with principles is to better future proof the licence and enable greater innovation. It does *not* represent a move to 'lighter touch' regulation. Given the critical importance of these provisions and the fact that we consider them within suppliers' gift to achieve, we consider that a 'must ensure' threshold is necessary to enable us to remove this prescription from this licence condition.
- 2.16. We want suppliers to ensure that representatives acting on their behalf operate in a way that is fair and compliant with the proposed principles. This is particularly true in a world where growing numbers of consumers are using TPIs to help them navigate the energy market.¹¹ We also want to encourage competition and facilitate innovative relationships and business models which have the potential to transform the energy market for the benefit of consumers. We are therefore particularly mindful of some stakeholders' concerns around the principles in so far as they extend to representatives.
- 2.17. When assessing any potential breach, we will take into consideration the nature of a supplier's relationship with a representative. This is because we recognise that the level of control and influence a supplier is able to exert on the conduct of a TPI depends on the proximity of the relationship. For example, we consider there to be obvious differences between a supplier's relationship with a Price Comparison Website (PCW) – when listing and making available tariffs from many suppliers – versus a supplier's relationship with a sales agent engaged specifically to sell its products (and often only products from that supplier). This includes where there are chains of sub-delegation arising from such a relationship (eg a sub-contracted agent of a directly appointed sales agent to carry out telemarketing or doorstep sales). In the case of the latter, we would expect a supplier to exert a higher level of control and influence over their representative. On this basis, depending on the circumstances of the case, we do not generally envisage focusing on the relationship between a supplier and a PCW which may arise via the payment of commission or other indirect arrangements, unless the PCW is selling energy on behalf of only a small number of suppliers.
- 2.18. Suppliers who are nervous about potential compliance and enforcement activity under these proposals should look at our track record when using the existing principles in the SOC. Our commitment to applying principles in a way that is proportionate is set out in our Enforcement Guidelines,¹² our Better Regulation duties and our statutory obligations.¹³ The Enforcement Guidelines also set out enforcement prioritisation criteria, which make clear that Ofgem is more likely to escalate issues giving rise to consumer harm, or which appear to be reckless or intentional. This should reassure licensees that we will deal proportionately with small or minor breaches.

¹¹ Over 50% of consumers who switched in the last 12 months did so through a Price Comparison Website (PCW). This figure is rising year on year

¹² Ofgem, (2016) [Enforcement Guidelines](#)

¹³ Under section 4AA(5A) of the Gas Act 1986 and section 3A(5A) of the Electricity Act 1989, when carrying out its actions the Authority (Ofgem) must have regard to: a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and, b) any other principles appearing to it to represent the best regulatory practice

2.19. Our proposals here are neither designed nor intended to result in enforcement action every time we see a negative consumer outcome. Rather, they are intended to target situations where there have been systemic failings. We consider it reasonable to expect that in these circumstances, suppliers should feel confident enough in their operational ability to detect problems on a systemic scale early and act accordingly.

ii) Duplication

2.20. We are committed to simplifying the licence and are keen to avoid any unnecessary duplication. We address stakeholders' comments on particular principles duplicating either other licence conditions or Consumer Protection from Unfair Trading Regulations 2008 (CPRs) when we outline our proposals on the individual principles further below.

2.21. Here, we address the more general challenge on duplication. It is worth noting more generally that Ofgem's powers under consumer law are administered differently from our equivalent sectoral powers. While our powers under consumer legislation can clearly be helpful for securing compliance and, importantly, can be used against parties which are not licensees, we still see the need to reinforce good sales and marketing practice amongst suppliers by adopting these principles as enforceable licence conditions. This will enable us: to act swiftly to put a stop to poor behaviour – through a provisional order – where we suspect or have identified conduct that we consider is causing, or is likely to cause, loss or damage to consumers; to compensate consumers who have suffered as a result of the conduct; and/or to deter such behaviour in future via financial penalties. In turn we believe this will promote trust in energy markets, which will ultimately lead to more effective competition and better consumer outcomes.

2.22. Because consumer law breaches are ultimately a matter for referral to the courts, they are subject to separate enforcement processes by Ofgem.¹⁴ This could mean that if the supply licence does not fully cover the relevant issues it could become necessary to run two concurrent investigations into suspected breaches – one under consumer law powers and one using our sectoral powers – in order to address an issue fully. While this could be appropriate in some cases, we think taking this course as a general approach could lead to inefficiencies and ultimately poorer outcomes for both suppliers and consumers. Instead, we consider it preferable to ensure that the licence is able to fully address relevant issues.

iii) A broad 'informed choices' principle

2.23. When we consulted on supplementing the proposed narrow 'informed choices' principles with a broad principle, we did so on the basis that this would: (a) provide an unambiguous and useful sign-post; (b) encourage suppliers to take proactive steps to understand what action they should take to help different categories of customers in this regard; and (c) provide us with an avenue for addressing any issues not covered by the narrow principles. In the light of stakeholder feedback, we still consider these points to be valid.

¹⁴ Ofgem, (2016) [Enforcement Guidelines](#), Section 2

- 2.24. We do not accept the argument made by some suppliers that a single, broad 'informed choices' principle, combined with the existing SOC, would render the narrow principles redundant. The proposed suite of principles is being introduced in the context of a significant amount of related prescription being removed from the supply licence. Given the importance of tariff comparability and responsible sales and marketing, we do not consider it prudent to leap directly from the previous level of prescription to a single broad principle in this area. Instead, we believe it is helpful to emphasise our overarching policy intent with a broad principle, and then to supplement this by setting out our more detailed expectations in specific (but related) areas. We note that once these principles have bedded in and suppliers have become more accustomed to operating in accordance with principles, we may wish to move to a single broad principle in this area. Were this to be the case, we consider that the proposed suite of narrow principles would, in the meantime, act as a useful stepping stone, helping suppliers to embed the required culture change and enabling Ofgem to assess the impact of principles in this area.
- 2.25. Further, in responding to our December 2015 consultation, many stakeholders argued that by clearly defining the policy intent and expected outcome of narrow principles, some of the challenges around operating narrow principles could be mitigated. We therefore consider that (i) the proposed narrow principles are appropriate in this area; and (ii) adding the broad 'informed' choices principle will help clarify their intent and expected outcome.
- 2.26. **We therefore propose to introduce a broad 'informed choices' principle into the licence.** Rather than introduce this into SLC 25, we are proposing to **introduce this into the SOC.** This is because we want suppliers to take responsibility for enabling their customers to make informed choices in *all* of their dealings with them – not just those relating to tariff choices. For example, suppliers should be helping a customer understand whether they may gain/lose entitlement to the Warm Home Discount by switching, whether a prepayment meter would be suitable for them, and what the different options are around payment methods etc.
- 2.27. As noted above, we are seeking stakeholder views on proposed changes to the SOC in a policy consultation running alongside this one.¹⁵ **We invite comments on the proposals.** For reference, the proposed broad informed choices principle is as follows:

"The Standards of Conduct are that... the licensee and any Representative provide information (whether in Writing or orally) to each Domestic Customer which... is sufficient to enable the Domestic Customer to make informed choices about their supply of gas and/or electricity by the licensee"

¹⁵ See Ofgem (2017), [Standards of conduct for suppliers in the retail energy market](#).

The narrow principles

Principle 1

What we proposed in August 2016

2.28. In our August policy consultation, Principle 1 read as follows:

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

- 2.29. This principle was proposed in the context of the CMA's recommendation for Ofgem to remove the majority of SLC 22B, the RMR Simpler Tariff Choices rules, and introduce a principle that would "require suppliers to have regard in the design of their tariffs to the ease with which customers can compare value for money with other tariffs they offer".¹⁶ Principle 1 was in part an attempt to address the issue that the CMA's proposed principle was designed to address tariff complexity, but to do so in a way that focused on the broader outcome of informed tariff choices.
- 2.30. The majority of SLC 22B (the RMR Simpler Tariff Choices rules) have now been removed from the supply licences. This means that suppliers are able to introduce tariffs such as multi-tier and Time of Use (ToU), whereby the price of energy may change dramatically at certain times of day or beyond certain consumption thresholds. They are also able to offer a wider range of bundles and discounts – some of which may be contingent on certain behaviours (eg staying on a certain tariff for a certain amount of time).
- 2.31. In order for a consumer to make properly informed choices about whether any given tariff is appropriate for them in this landscape, they will need to be able to understand what the tariff means and involves.¹⁷
- 2.32. Take the example of a dynamic ToU tariff with a bundle offer that is based on the customer behaving in a certain way (eg a free tablet computer if claimed on day 100 of signing up to the tariff). This tariff may be excellent value for a customer with elastic demand, who is willing and able to do what is necessary to claim the contingent bundle. However, for a customer who uses lots of power working from home during the day and wants the tablet computer immediately, such a tariff would be unlikely to represent good value.
- 2.33. Principle 1 puts a clear requirement on suppliers to ensure that tariff information is, and therefore is communicated in a way that is, '*clear and easily understandable*'. In a world of more sophisticated tariff structures, bundles and discounts, we consider this to be essential if consumers are to be able to make informed choices.

¹⁶ See CMA, (2016) [Energy Market Investigation, Final Report](#) page 57

¹⁷ We note that they will also need to be able to access the relevant information. We consider this to be covered by SLC 23 (Notification of Domestic Supply Contract Terms), SLC 25C (Standards of Conduct) and by the spirit of the proposed package of principles in SLC 25.

Stakeholder feedback

- 2.34. Responses to our August consultation revealed broad support for this principle. However, a number of suppliers criticised the drafting of '*clear and easily understandable*', arguing that it was similar to – but inconsistent with – existing provisions. The two main alternatives suggested were '*plain and intelligible*' (as used in the SOC)¹⁸ and '*clear and comprehensible*' (as used in the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013) (CCRs).¹⁹
- 2.35. One supplier commented that '*clear*' and '*easily understandable*' were subjective terms and suggested that Ofgem should undertake customer research to ensure its understanding was consistent with that of the general public.
- 2.36. A number of suppliers also argued that the application of the '*must ensure*' threshold to this principle would mean that suppliers must make *all* tariffs '*easily understandable*' to *all* customers. This, they said, would stifle innovation by preventing suppliers from developing innovative tariffs which could legitimately be targeted at a particular subset of customers (as opposed to the mass market). An example was given of a supplier wanting to offer a tariff aimed at smart meter customers, but being prevented from doing so on the basis that those without smart meters may not be able to understand it. It was argued that Principle 1 should be afforded some relativity in its drafting to counter this risk. Meanwhile, consumer groups overwhelmingly supported the '*must ensure*' threshold, with some suggesting that suppliers should conduct consumer research to check consumer understanding and then spread best practice.

Our final proposals

- 2.37. Regarding the comments made about the threshold of Principle 1, we recognise that consumers are heterogeneous and that some will be better equipped to engage with certain products (eg dynamic ToU tariffs) than others. In a world of smart meters, half-hourly settlement and unlimited tariff offerings, we consider it reasonable for certain tariffs to be targeted at specific customer segments – for example, those with smart meters – so long as the group targeted are able to make informed choices about whether or not the product is suitable for them. Equally, we consider it important that customers are able to identify which tariffs are *not* suitable for them. For example, a customer who does not have a smart meter or the ability to shift their load is unlikely to want to sign up to a smart tariff or another ToU tariff that requires load shifting.
- 2.38. In other words, Principle 1 does not require suppliers to ensure that *all* tariffs can be understood perfectly by *all* customers at *all* times. Rather, it places the onus on suppliers to be proactive in thinking about how to present information in a way that ensures that the customers to whom any given tariff is marketed are able to understand its core features and that customers for whom a tariff is unsuitable are

¹⁸ SLC 25 4(b)(ii): Requirement for information to be "...communicated (and, if provided in writing, drafted) **in plain and intelligible language**"

¹⁹ [The Consumer Contracts \(Information, Cancellation and Additional Charges\) Regulations 2013](#): Part 2 (9)(1): "...the trader must give or make available to the consumer the information described in Schedule 1 in a **clear and comprehensible manner**, if that information is not already apparent from the context".

able to reach that conclusion easily. A key outcome that we are pursuing here is that consumers are able to understand the information necessary to make informed tariff choices.

- 2.39. We are therefore not proposing to amend the threshold of Principle 1. We are also not proposing to define '*easily comprehensible*' or introduce an 'average consumer test', as we consider that this would restrict the flexibility we are keen to maintain.
- 2.40. We agree with suppliers that terminology should be used consistently (particularly within the supply licence) where the policy intent is the same. We also agree that, where this is not the case, we should be able to clearly articulate and justify the difference. On the comments made about similarities with the SOC, we consider there to be a meaningful difference in the proposed language and therefore do not agree with the responses received from some suppliers. The thrust of '*plain and intelligible*' is around the language provided by suppliers and their representatives being straightforward English (ie not opaque or unnecessarily complex). Conversely, '*clear and easily understandable*' is more focused on ensuring that consumers are able to understand the tariffs within a supplier's offering (including their pricing structure and relevant conditions, for example in relation to eligibility for any bundles or discounts or termination), enabling them to then make informed choices off the back of it.
- 2.41. However, for the comments made on similarities with Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, we agree with suppliers and consider '*comprehensible*' to be virtually identical in meaning to '*understandable*'. We are therefore proposing to change the drafting from '*clear and easily understandable*' to '*clear and easily comprehensible*'.
- 2.42. We propose to retain the prefix '*easily*' because we want to emphasise the importance of consumers being able to make informed choices without having to make difficult calculations in the particular context set out above. And in order to make it clearer that, when we say '*structure*', we are referring to the structure of the tariff as opposed to the structure of the terms and conditions, we are changing the order of the wording to '*...structure, terms and conditions of its Tariffs*'.
- 2.43. As such, we now propose to insert Principle 1 into the licence as follows:

The licensee must ensure that the structure, terms and conditions of its Tariffs are clear and easily comprehensible.

Principle 2

What we proposed in August 2016

- 2.44. In our August policy consultation, Principle 2 read as follows:

The licensee must ensure that its Tariffs are easily distinguishable from each other.

- 2.45. As stated in our August policy consultation, we agree with the CMA on the potential benefits of greater tariff innovation and want to encourage suppliers to

come forward with new products in this space. Nevertheless, we remain mindful of the confusion caused before the RMR reforms by some suppliers flooding the market with almost identical tariffs, which consumers found it virtually impossible to distinguish between.

- 2.46. Suppliers are already required to use only one name per tariff in each region.²⁰ Principle 2 is designed to supplement this by ensuring that tariffs are easily distinguishable by all of their features (including their name) so that consumers are able to tell the difference between them.

Stakeholder feedback

- 2.47. Principle 2 attracted broad support from stakeholders. Of those who made specific comments, one TPI argued that it may not go far enough, pointing to the allegedly common problem that tariff names on bills often fail to correspond with tariff names on PCWs. This, it was argued, is the result of deliberate gaming by suppliers who dictate tariff names to PCWs and then purposefully use different names on bills. In order to tackle this, the TPI suggested that prescription should be introduced that explicitly banned tariffs with confusingly similar names.
- 2.48. Meanwhile, two suppliers commented that '*easily distinguishable*' should only apply to available tariffs, as opposed to tariffs that are no longer offered.

Our final proposals

- 2.49. We strongly agree with the TPI that tariff names on bills should correspond with tariff names on PCWs. Where this is not happening it would suggest that a supplier is not complying with existing rules and we would encourage any party with evidence of such practices to alert us to this. We consider that Principle 2, in conjunction with the SOC, would clearly capture such behaviour, and so do not agree with this respondent that a prescriptive rule beyond the current TIL requirements is necessary.
- 2.50. We do not agree with the suppliers who suggested that Principle 2 should only apply to available or 'live' tariffs. If this was the case, a customer on a closed or 'dead' tariff may have considerable difficulty identifying which tariff they are on when they go to switch. We do not consider that this principle, applied to both 'dead' and 'live' tariffs, would limit innovation or tariff competition. Rather, it introduces a simple, straightforward obligation that is designed to prevent consumers being confused by unnecessary complexity when they go to compare and select a tariff. We note, however, that this requirement would not apply to fully expired tariffs that were no longer in use by any customers.
- 2.51. As such, we do not propose to make any changes to the drafting of Principle 2, which we propose to insert into the licence as follows:

The licensee must ensure that its Tariffs are easily distinguishable from each other.

²⁰ See SLC 22A.3A

Principle 3

What we proposed in August 2016

2.52. In our August policy consultation, Principle 3 read as follows:

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.

2.53. As set out above, the removal of the majority of the RMR Simpler Tariff Choices rules from the supply licences means that suppliers are now able to introduce a wider range of tariffs, bundles and discounts, some of which may be contingent on certain behaviours.

2.54. Principle 3 sends a clear message to suppliers that they have a responsibility to help consumers by facilitating comparison across their tariffs and enabling consumers to select one that is appropriate for them. We expect suppliers to be proactive in giving customers – be they existing or prospective – the information, services and tools they need to make informed choices.

Stakeholder feedback

2.55. The majority of stakeholders supported this principle, though some suggested drafting alterations. One large supplier proposed that '*needs and preferences*' be changed to '*needs or preferences*' to make it consistent with Principle 6. Another argued that '*needs*' should be changed to '*characteristics*' on the basis that the latter was less subjective.

2.56. Consumer groups were extremely supportive, though some made qualifying comments – for example, that the requirement should be extended to include all information (beyond just the tariff) relevant to the final bill, citing eligibility for Warm Home Discount as an example. The risks around hyperbolic discounting were also noted, with a suggestion that suppliers should give consumers information on the total cost of the package for the duration of the contract, including the financial value of any products/discounts. There were also calls to make acquisition tariffs more transparent, with one stakeholder suggesting that suppliers should make clear that existing customers are ineligible for them rather than trying to conceal them.

2.57. One respondent suggested that this principle could pose a barrier to energy security and sustainability by disincentivising suppliers from offering more complex (but beneficial from an energy security and sustainability perspective) tariffs which are harder to compare. Dynamic ToU tariffs were cited as an example.

Our final proposals

2.58. As stated in August, we consider that a customer's characteristics – for example, their energy consumption profile and personal factors that may influence choices about payment method, metering arrangements, billing methods and account management (such as access to the internet) – are likely to become increasingly

important in the context of smart meters and dynamic tariff offerings. Suppliers should reasonably be expected to vary the kinds of tools and services they put in place to reflect the kinds of tariffs that they offer, as well as the likely characteristics of the customers to whom their tariffs are marketed.

- 2.59. We note that there may be instances whereby the tariff that best aligns with a customer's *characteristics* does not necessarily align with their stated *preferences*. For example, a customer's *characteristics* may indicate that they would be better off choosing a tariff with a higher standing charge and lower unit rate (due to their relatively high consumption). They may, however, state a strong *preference* for 'the Green Tariff', a tariff with 100% certified renewable electricity, but which has a low standing charge and slightly higher unit rate.
- 2.60. We therefore propose to:
- change the drafting of Principle 3 from 'needs' to 'characteristics';
 - change the drafting of "their" to "that Domestic Customer's";
 - change the drafting from "and" to "and/or", thereby giving suppliers the necessary flexibility to enable a customer to select a Tariff when that customer's characteristics and stated preferences are not necessarily aligned.
- 2.61. In addition, we propose to change the drafting from '*...which Tariff(s) within its offering is/are appropriate to their needs and preferences*' to '*...appropriate Tariff(s) within its offering, taking into account that Domestic Customer's characteristics and/or preferences*'. This is because we recognise that it may not always be possible for a supplier to ascertain all of a Domestic Customer's characteristics and/or preferences in order to meet the standard set by the '*must ensure*' obligation. However, we would expect suppliers and their representatives to seek to understand consumers' characteristics and preferences, for example by asking relevant questions, as appropriate in the circumstances.
- 2.62. As such, we propose to insert Principle 3 into the licence as follows:

The licensee must ensure that it puts in place information, services and/or tools to enable each Domestic Customer to easily compare and select appropriate Tariff(s) within its offering, taking into account that Domestic Customer's characteristics and/or preferences.

Principle 4

Context

- 2.63. In our August policy consultation, Principle 4 read as follows:

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.

- 2.64. Principle 4 was proposed in the context of us also proposing to remove both “the Objective” and the majority of prescription from SLC 25. Amongst other things, the Objective requires that *‘the licensee’s Marketing Activities and Telesales Activities...are conducted in a fair, transparent, appropriate and professional manner’*.²¹
- 2.65. Meanwhile, the prescriptive rules we propose to remove include those around management and training arrangements, the provision of estimates, the requirement to always provide PPM customers with comparisons, point of sale information provision and post-sale contact. We discuss these proposals in more detail later in the chapter.

Stakeholder feedback

- 2.66. Consumer groups supported this principle. However, a number of suppliers felt strongly that it was duplicative, both of the SOC and of CPRs.
- 2.67. The ‘behavioural limb’ of the SOC²² requires that *‘the licensee and any Representatives behave and carry out any actions in a Fair, honest, transparent, appropriate and professional manner’*. Stakeholders were particularly concerned that Principle 4 duplicated the language used in the SOC, but confused things by using ‘fair’ as an undefined term in Principle 4 as opposed to ‘Fair’ as a defined term in the SOC.²³

Our final proposals

- 2.68. We note that the proposed requirements are virtually identical to those in the SOC. Our rationale for proposing Principle 4 was that, in light of the particularly egregious sales and marketing behaviour we have seen from some suppliers in the past, we considered it appropriate and proportionate to reiterate this behavioural requirement in the area of the licence that relates specifically to sales and marketing.
- 2.69. However, we are committed to simplifying the licence and are keen to avoid unnecessary duplication. We also note that any concerning behaviour by suppliers (or their Representatives) in respect of unfair sales and marketing activities would clearly be captured by the behavioural limb of the SOC, which applies to all interactions with customers.
- 2.70. **We therefore propose to drop Principle 4 from the proposed package of principles to be introduced into SLC 25.**

²¹ See SLC 25.1(b)

²² See SLC 25C.4(a)

²³ The SOC defines fairness by stating that *“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; (b) give rise to a likelihood of detriment to the Domestic Customer”*. We note that this definition is currently under review.

Principle 5

Context

2.71. In our August policy consultation, Principle 5 read as follows:

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

- 2.72. We note that a number of suppliers have resumed face-to-face selling, including doorstep selling. We recognise that direct selling has the potential to deliver significant benefits around engaging otherwise disengaged consumers, particularly those who are offline. Nevertheless, we are also extremely mindful of the risks associated with these channels and the critical importance of high standards in this area.
- 2.73. Principle 5 was proposed against a backdrop of persistent misselling issues that have included, but are not limited to: (i) providing misleading information to consumers, including inaccurate estimates and comparisons of charges; (ii) making misleading claims during face-to-face and telephone marketing activities; (iii) poor sales training; (iv) commission structures that incentivised non-compliance with sales and marketing requirements under SLC 25; (v) inadequate monitoring and auditing of sales activities; and, (vi) misleading consumers as to a supplier's identity.
- 2.74. This principle is therefore intended to send a very clear signal to suppliers about the fundamental importance of good behaviour in this area.

Stakeholder feedback

- 2.75. Consumer groups overwhelmingly supported Principle 5. Some suggested it should be broadened to ensure suppliers consider situations where it is inappropriate to sell to a consumer – for example, where circumstances mean it would be hard for them to make a genuinely informed choice, regardless of the information provided. One respondent requested clarification over whether 'misleading' included information omitted as well as provided, as per the SOC.
- 2.76. A small number of suppliers again suggested that this principle was already covered by the SOC and existing CPRs. Some stakeholders asked us to be more explicit about which specific behaviours or concerns this principle sought to address.

Our final proposals

- 2.77. Consumers are entitled to receive information that is clear, accurate and fair in both its content and its presentation. When consumers receive inaccurate information, their ability to make informed choices is hampered and their trust in the market is inevitably dented, with negative knock-on effects for competition. Consumers are also entitled to minimum standards of behaviour when they are being marketed and sold to. Similarly, breaches of basic obligations in this respect

can have a profoundly negative effect on consumers' trust in and engagement with the market.

- 2.78. We do not propose to make any changes to the drafting of Principle 5, which we propose to insert into the licence as follows:

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

Principle 6

Context

- 2.79. In our August policy consultation, Principle 6 read as follows:

The licensee must only recommend, and must ensure that its Representatives only recommend, products or services which are appropriate to that Domestic Customer's needs or preferences.

- 2.80. There are clearly close links between Principles 3 and 6. The former (which should be read in the context of the prescriptive Simpler Tariff Choices rules we have removed) is geared towards helping create simplicity around tariff choice by giving consumers the means to navigate a supplier's offering.
- 2.81. Meanwhile, the latter (which should be read in the context of the prescriptive sales and marketing rules being removed) requires suppliers to ensure that, before recommending a specific product or service to a customer, they have satisfied themselves that they know enough about the customer to make the recommendation.

Stakeholder feedback

- 2.82. Consumer groups were universally supportive. Some suggested that 'recommend' should be a defined term in the licence and that it should be broad enough to cover all information that suppliers send to, or share with, a customer which might influence their tariff choice. Others argued that any recommendation should not only consider what is appropriate, but what is *most* appropriate, noting that this would typically mean suppliers recommending the cheapest of any available tariffs they considered appropriate.
- 2.83. A small number of suppliers requested clarification that Principle 6 would only apply where suppliers or their representatives *choose* to make recommendations, as opposed to it introducing a requirement that recommendations are made.
- 2.84. Two stakeholders questioned whether Principle 6 was compatible with the Cheapest Tariff Message (CTM). This was because the former requires a recommendation based on '*needs and preferences*' whilst the latter requires suppliers to highlight '*the cheapest*' tariff only, which may or may not be appropriate for a customers' preferences.

- 2.85. One stakeholder suggested that Principle 6 should be caveated to cater for the fact that consumers' historical consumption profiles may not be an accurate reflection of their future needs and/or preferences – particularly in the context of ToU tariffs, which may be designed specifically to change the ways and times at which people consume energy.
- 2.86. In addition to these general comments, some respondents made specific drafting comments/suggestions. Specifically:
- As with Principle 3, changing 'needs' to 'characteristics';
 - Changing 'needs or preferences' to 'needs and preferences';
 - Changing 'products or services' to 'tariffs', as per Principles 1-3 (although another respondent expressed a preference for the opposite on the basis that this would capture non-energy bundles and discounts).

Our final proposals

- 2.87. We agree with some consumer groups that there may be merit in defining 'recommend'. This is partly because a definition would provide greater regulatory certainty to suppliers and representatives. It is also because, in the absence of a clear definition, the utility of this principle could be reduced by arguments with suppliers or their representatives about whether any given written or verbal statement had constituted a 'recommendation'.
- 2.88. We confirm that Principle 6 would only apply where suppliers or their representatives actually make recommendations. It does not introduce a new requirement on suppliers to make recommendations.
- 2.89. We do not consider that Principle 6 is incompatible with the CTM. As per above, Principle 6 requires suppliers to only recommend tariffs that are appropriate to a customer's characteristics or preferences. It is designed to send a clear signal to suppliers and their representatives that they should only recommend a product or service to a customer where they have satisfied themselves that they know enough about that particular customer to make the recommendation. Meanwhile, the CTM requires suppliers to provide its customers with a personalised message about what the cheapest available tariff is with that supplier. By helping consumers identify cheaper tariffs and encouraging them to switch, it was introduced under RMR as a prompt to engage. Suppliers should not be concerned that these two obligations place conflicting requirements on them. Further, we note that we will be reviewing the effectiveness of the CTM in our upcoming prompts to engage work.
- 2.90. We agree with the respondent who argued that past consumption should not be taken as an automatic proxy for future consumption, particularly in the context of load shifting ToU tariffs. In the event where a supplier or their representatives were recommending such a tariff, we would expect them to make the implications clear.
- 2.91. Regarding the specific drafting suggestions, we agree that drafting should be consistent where the policy intent is the same. We therefore propose to change

the drafting of Principle 6 from 'needs' to 'characteristics'. We also propose to change the drafting from 'and' to 'and/or', thereby giving suppliers the necessary flexibility to recommend a Tariff when that customer's characteristics and stated preferences are not necessarily aligned. We do not propose to change 'products and/or services' to 'tariffs', as we consider tariffs to be encapsulated by 'products and/or services'.

2.92. As such, we propose to insert Principle 6 into the licence as follows:

The licensee must only Recommend*, and must ensure that its Representatives only Recommend, to a Domestic Customer products and/or services which are appropriate to that Domestic Customer's characteristics and/or preferences"

**** "Recommend" means communicating (whether in Writing or orally) to a Domestic Customer information about products or services in a way which gives, or is likely to give, the Domestic Customer the impression that a particular product or service is suitable for their characteristics and/or preferences.***

Removing prescription from the marketing licence condition

2.93. We believe that the principles outlined above, combined with the broad 'informed choices' principle we are proposing to introduce into the SOC, will future-proof our regulation, place responsibility firmly on suppliers for delivering positive consumer outcomes, and better protect consumers. It is within this context that we are proposing to remove the majority of existing prescription from SLC 25.

What we proposed in August 2016

2.94. In August, we proposed to remove the requirements around selection and training, pre-contract, time of contract and post-contract obligations and management arrangements. We also proposed to remove the Objective from SLC 25 and the obligation to achieve it. The only prescriptive rule which we proposed to retain was the requirement to keep sales records for two years, which we also proposed to extend to include records of telephone sales. Finally, we proposed to expand SLC 25 to cover all sales and marketing activities (as opposed to limiting it to face-to-face and telephone sales).

Stakeholder responses

2.95. Stakeholders were almost unanimous in welcoming the replacement of prescriptive rules with principles, arguing that this would allow for greater competition and innovation while ensuring appropriate safeguards remain for consumers. Suppliers in particular were supportive, arguing amongst other things that much of the prescription in SLC 25 was already covered by the SOC.

2.96. Others, whilst broadly supportive, provided some qualifications. For example, a number of consumer groups sought reassurance that the principles would not represent a lowering of protection – particularly in relation to face-to-face sales and vulnerable consumers. Others, whilst broadly agreeing, suggested that the requirement to make post-sales contact after face-to-face sales should be retained

on the basis that this is an area where misselling complaints continue to be received. Another argued for the inclusion of a specific requirement on suppliers to provide vulnerable customers with extra support. Just one respondent felt that the transition to a greater use of principles was not in the best interests of consumers.

- 2.97. Stakeholders were also supportive of the proposal to expand the scope of SLC 25 so that it covers all sales and marketing activities (for example, online and any other channels that may emerge). Many highlighted the importance of consumers having confidence that online sales were conducted in a fair and transparent way, given their growing proportion. Some suppliers, however, caveated their support for this proposal. A few of the larger suppliers expressed concern around the prospect of becoming liable for breaches by TPIs. One called for greater clarity around what constitutes a *'Representative'*, whilst two suggested that SLC 25 should apply directly to TPIs, possibly through direct licensing. Another supported the proposal – so long as the threshold of the proposed principles was changed from *'must ensure'* to *'all reasonable steps'*.
- 2.98. Stakeholders could not agree on our proposals to retain the record keeping requirement for 2 years and extend this to also cover telesales. Consumer groups were unanimous in their support, along with five suppliers and two TPIs. Reasons given included that it would not be excessively onerous – particularly for smaller suppliers. Two of the smaller suppliers justified it as a reasonable step in the context of our proposed changes to the sales and marketing rules. One of the larger suppliers qualified their support by recognising the rationale but saying it would come with additional cost. One PCW pointed out that they already keep records for two years, but suggested that TPIs should not be obliged to transfer their records to suppliers.
- 2.99. Others – typically the larger suppliers – disagreed strongly. Most of the arguments were around the associated costs of this proposal, which a number of suppliers alleged would be significant and disproportionate. Some also argued that the proposal ran counter to the spirit of principles-based regulation, that it represented a breach of the data protection principle of keeping records no longer than necessary, and that there was no evidence to support it. Two of the larger suppliers suggested that a comprehensive Impact Assessment should be conducted to explore the associated costs. Another advocated a requirement to keep records for 18 months, after which time there were very low chances of a consumer complaint being raised.

Our final proposals

- 2.100. As made clear above, the proposed principles provide at least the same degree of consumer protection, but do so in a way that facilitates greater competition and innovation.
- 2.101. We disagree that the prescription around post-sales contact after face-to-face sales should be retained. This is because we consider that the proposed package of principles, combined with the SOC, achieve the desired consumer outcome in an equally effective way.

2.102.Regarding the inclusion of a specific requirement on suppliers to provide extra support to vulnerable consumers, we refer stakeholders to the policy consultation running parallel to this statutory consultation.²⁴ As set out above, this policy consultation proposes to introduce an additional principle into the SOC that makes it clear to suppliers that, in order to uphold their obligation to treat all domestic customers fairly, they will need to make an extra effort to identify and respond to the needs of customers who are in vulnerable circumstances.

2.103.In light of the mixed views around record keeping requirements, we engaged further with those who expressed opposition to this proposal. Virtually all of the suppliers who had claimed this would lead to significant additional costs subsequently withdrew such arguments, with some suggesting that they had initially misunderstood the detail of the proposal. Some asserted that they were, in fact, already compliant with this requirement. One maintained that, whilst the proposal would not lead to significant additional costs, it should only be pursued if there was evidence that additional prescription in this area was necessary.

2.104.As set out above, sales and marketing is an area where we have seen some particularly egregious behaviour in the past. We note that, in some instances, widespread problems may not always become apparent immediately, resulting in a lag between the problem occurring and Ofgem being able to take action. Given that suppliers have now almost unanimously confirmed that the marginal costs of meeting this requirement are not particularly high, we consider this requirement to be proportionate.

2.105.We therefore propose to:

- **Proceed with the removal of all of the prescription from SLC 25, other than the requirement to keep sales records for two years, which we propose to retain and extend to telesales. We propose that this obligation will read as follows:**

The licensee must maintain, for a period of two years, a record of the information which it or its Representative provided to a Domestic Customer during the course of its sales and marketing activities conducted face-to-face or via telephone, which resulted in that Domestic Customer entering into a Domestic Supply Contract.

- **Remove the “Objective”;**
- **Expand the scope of SLC 25 to cover all sales and marketing activities.**

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

²⁴ Ofgem, (2017) [Standards of conduct for suppliers in the retail energy market](#).

3. Changes to the Clearer Information Tools

Chapter Summary

In this chapter, we confirm our intention to:

- Remove the Tariff Comparison Rate (TCR)
- Amend the Tariff Information Label (TIL)
- Remove various transitional provisions covering rollovers, end of fixed term notices and existing Fixed Term Supply Contracts

In light of feedback to our August 2016 consultation and further stakeholder engagement since, we are still considering how the current Personal Projection methodology could best be adapted to accommodate the wider range of more innovative tariffs that suppliers will be offering. We will set out our proposals for these tools this spring, along with our proposals for the Cheapest Tariff Message.

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

- 3.1. On 28 November 2016, we removed the majority of the RMR Simpler Tariff Choices rules.²⁵ Prior to this, we had highlighted that because the RMR reforms were designed as an interconnected, self-reinforcing package, the removal of these rules would necessitate some amendments to the RMR Clearer Information tools.
- 3.2. We consulted on our proposed amendments to the Clearer Information tools last August. We also held an industry-wide workshop in November to discuss these proposals with stakeholders further. This chapter sets out our final proposals in relation to two of these tools – the TCR and the TIL – and confirms our intention to remove further prescription where it is no longer necessary.

Removal of the Tariff Comparison Rate

What does it do and how does it work?

- 3.3. The TCR (SLC31C) was designed to enable consumers to make at-a-glance comparisons of different tariffs. By condensing all non-contingent (unavoidable) costs of every tariff into a single price per kWh rate, it sought to promote engagement by reducing complexity.

²⁵ Ofgem, (2016) [Modification of electricity and gas supply licences to remove certain RMR Simpler Tariff Choices rules](#)

What we proposed in August 2016

- 3.4. The TCR is always based on the consumption of a medium user. However, the more consumption-sensitive tariffs that we expect to see introduced following the removal of some of the Simpler Tariff Choices rules pose a significant challenge to the reliability of the TCR. There is also evidence to suggest that the TCR has not proved to be particularly useful to consumers – partly because it is not personalised.²⁶ We therefore proposed to remove the TCR completely.

Stakeholder responses

- 3.5. Stakeholders were near unanimous in their agreement that the TCR should be removed. Reasons cited included the limited awareness and understanding of the TCR by consumers, as well as the methodological limitations of the TCR (for example, that it is based on average as opposed to personalised usage). This is consistent with what stakeholders have previously told us when we have engaged with them.²⁷

Our final proposals

- 3.6. We still consider it important that consumers are not put off engaging with the retail market due to complexity. Chapter 2 sets out the principles we propose to introduce to ensure that consumers are able to make informed choices.
- 3.7. **We confirm our intention to remove the TCR and all references to the TCR from the supply licence.**

Changes to the Tariff Information Label

What does it do and how does it work?

- 3.8. The TIL (SLC 31B) sets out the key information about a tariff – to be included in certain customer communications (eg bills, annual statements, end of fixed term notices) and on supplier websites. This currently includes: name of supplier, tariff name and type, payment method, unit rate and standing charge, tariff duration, exit fees, assumed annual consumption, average estimated annual cost and TCR. By enabling consumers to access all the key information about their tariff in one place, it is designed to promote understanding and make comparison (and switching decisions) easier.

What we proposed in August 2016

- 3.9. In August, we proposed to retain the TIL as a central source of key information about individual tariffs and to update it to reflect changes to the other Clearer Information tools.

²⁶ Ofgem, (2016) [Consumer engagement in the energy market since the Retail Market Review](#)

²⁷ Ofgem, (2016) [RMR & Confidence Code Workshop](#)

Stakeholder responses

- 3.10. We received broad support for this proposal. A number of respondents however called for greater flexibility around how the information could be provided, with some respondents arguing for a principles-based TIL to cope with future changes and allow suppliers to better engage customers online or through mobile platforms. Two respondents highlighted specific issues relating to the requirement to publish all TILs on a supplier's website, numerous TILs per tariff depending on preferences (eg payment type) and the number of TILs that need to be sent with specific consumer communications (eg the end of fixed term notice).

Our final proposals

- 3.11. We think there is merit in suppliers having all TILs of tariffs that still apply to customers on their website and suppliers providing the relevant TIL when providing the Principal Terms. The current licence drafting already includes flexibility for multiple standing charges and unit rates.
- 3.12. However we appreciate that in specific situations suppliers might want to test changes to the Tariff Information. We want to encourage suppliers who have innovative new ideas of how the TIL can be improved to test alternative TIL formats and apply for a derogation where appropriate.
- 3.13. **We will not amend our initial proposal and still propose to amend the TIL (including the TIL templates) to work with amendments to the tariff rules and the removal of the TCR and the Ofgem annual consumption figures.**

The Personal Projection and Cheapest Tariff Message

What we proposed in August 2016

- 3.14. In August, we proposed to retain the requirement on suppliers to include an estimate of annual costs of a tariff (the Personal Projection (PP)(SLC 31E)) on customer communications where previously required. However, we proposed to give them greater freedom to develop their own methodologies for estimation by amending the definition of "Estimated Annual Costs" (EAC), removing the prescribed formula and introducing some high-level requirements instead. We proposed that the Cheapest Tariff Message (CTM) would be based on this new definition of the Estimated Annual Costs.

Stakeholder responses

- 3.15. The responses to the consultation were polarised, with a large number of suppliers in favour of our proposal, a large number of third party intermediaries against our proposal and a split among consumer groups. Suppliers welcomed the proposed flexibility in the methodology which would better accommodate future innovative tariffs. Conversely, TPIs were concerned about comparability across the market when suppliers used different methodologies. Consumer bodies' opinions were mixed. We explored these views further at an industry workshop in November where a range of options for the Personal Projection were discussed. Attendees preferred different options, including a mixture of prescriptive and principle-based rules.

Next steps

- 3.16. We recognise the importance of the PP as a tool and note the strength and variety of stakeholder views regarding how it should be amended. We are therefore keen to consider stakeholder feedback fully and come up with a robust solution. We aim to develop further options for the PP (and, by extension, the CTM) by spring this year.
- 3.17. In the meantime, our open letter from April 2016 will continue to apply.²⁸ Here, we made clear that we expect suppliers to adapt their approach to complying with the applicable 'clearer information' rules in a way which ensures that customers continue to receive appropriate prompts to engage, are not misled and are able to make properly informed decisions.
- 3.18. At the same time we will continue to develop trials of other ways to prompt consumer engagement. This is likely to include consideration of existing prompts, such as the CTM.

Removal of various transitional provisions (SLC 22CA and 22CB)

What we proposed in August 2016

- 3.19. Subject to checking whether these conditions were still necessary, we proposed to remove SLC 22CA and 22CB from the licence. This was because we thought it unlikely that suppliers had any customers on tariffs which were covered by the transitional provisions set out in these licence conditions.

Stakeholder responses

- 3.20. On 4 November we issued an information request to suppliers, designed to determine whether SLCs 22CA and 22BC were still relevant. We also asked if there were any unintended consequences of removing these conditions.
- 3.21. We received 9 responses to our information request. All respondents indicated that they had no customers on tariffs that would be affected by 22CA or 22CB. All respondents also confirmed that they had no concerns with the removal of these licence conditions, so long as there were no tariffs in the market that were still subject to them.

Our final proposals

- 3.22. **In light of responses to our information request, we propose to remove SLCs 22CA and 22CB from the supply licence as they are no longer relevant.**

²⁸ Ofgem, (2016) [CMA Provisional Remedies: removal of certain RMR 'simpler choices' rules](#).

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

Appendix 1 - Consultation Responses and Questions

We would like to hear the views of anyone interested in this document. We especially welcome responses to the questions at the beginning of each chapter and below.

Please respond by 06 March 2017 and send your response to the email address at the top of this document.

Unless you mark your response confidential, we'll publish it on our website, www.ofgem.gov.uk, and put it in our library. You can ask us to keep your response confidential, and we'll respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. If you want us to keep your response confidential, you should clearly mark your response to that effect and include reasons.

If the information you give in your response contains personal data under the Data Protection Act 1998, the Gas and Electricity Markets Authority will be the data controller. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. If you are including any confidential material in your response, please put it in the appendices.

CHAPTER: Two

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

CHAPTER: Three

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

Appendix 2 – Detailed changes to SLC 25

SLC	Recommendation	Reasoning	Nature of obligation
SLC 25.1 – 25.17	Remove	Remove prescriptive rules and replace with principles	Marketing gas and electricity to consumers
SLC 25.1 – 25.7	Add	Include principles in SLC 25	Sales and marketing

Appendix 3 – Detailed changes to the TCR, TIL, SLC 22CA and SLC 22CB

Tariff Comparison Rate

SLC	Recommendation	Reasoning	Nature of obligation
SLC 1 (Definitions of Ofgem Consumption Details)	Remove	We propose to remove this definition, as we propose to remove the TCR and this definition is only used for the TCR.	Definitions for standard conditions
SLC 1 (Definition of Tariff Comparison Rate)	Remove	We propose to remove this definition, as we propose to remove the TCR.	Definitions for standard conditions
SLC 22A.3	Amend	We propose to remove the text "without prejudice to the Tariff Comparison Rate", as we propose to remove the TCR.	Unit Rate and Standing Charge requirements
SLC 22C.16 Definition of "SLC 22C Exempt Information", subparagraph (c)	Remove	We propose to remove part of this definition as it references the Tariff Comparison Rate, which we propose to remove.	Definitions for condition 22C. Fixed Term Supply Contracts
SLC 22D.5(c) (xi)	Remove	We propose to remove this provision as it requires suppliers to provide the TCR. As we propose to remove the TCR, this provision is no longer required.	Dead Tariffs: Requirements to change the Ts&Cs that apply to a Dead Tariff and give Notice to Domestic Customers - obligation to provide TCR
SLC 22D.9(j)	Remove	We propose to remove this provision as it requires suppliers to provide the TCR. As we propose to remove the TCR, this provision is no longer required.	Dead Tariffs: Notification requirements where Domestic Customers are to become subject to the Relevant Cheapest Evergreen Tariff - obligation to provide TCR

SLC 22D.22 "SLC 22D Exempt Information" subparagraph (b)	Amend	We propose to remove part of this definition as it references the Tariff Comparison Rate, which we propose to remove.	Definitions for condition 22D. Dead Tariffs
SLC 22E.5(b) (electricity only)	Amend	We propose to remove the text "Tariff Comparison Rate and"	Unmetered Supply Arrangements - obligation to provide TCR and EAC
SLC 22F.3(b) (electricity only)	Remove	We propose to remove these provisions as they provide an exception to comply with 31D. As we propose to remove the TCR and SLC 31D, this exception is no longer required.	Bespoke Heating System Arrangements - obligation to provide TCR
SLC 22F.3(c) (electricity only)	Remove		Bespoke Heating System Arrangements - obligation to provide TCR
SLC 22F.12 - 22F.13 (electricity only)	Remove	We propose to remove these provisions as they provide powers for the Authority issue directions on the TCR in relation to bespoke heating systems. As we propose to remove the TCR, this power is no longer required.	Bespoke Heating System Arrangements: Power to direct the use of TCR in respect of Bespoke Heating System Arrangements
SLC 22F.14 "TCR Matters" (electricity only)	Remove		Definitions for condition 22F. Bespoke Heating System Arrangements
SLC 23.4(v)	Remove	We propose to remove this provision which requires the TCR to be included in a price increase notice. As we propose to remove the TCR, this requirement can be removed.	Notification of Domestic Supply Contract terms: Notification of increase in Charges for the Supply of Electricity and other unilateral variations - obligation to provide TCR
SLC 23.13 "SLC 23 Exempt Information", subparagraph (b)	Remove	We propose to remove part of this definition as it refers to a licence condition which we propose to remove.	Definitions for condition 23. Notification of Domestic Supply Contract terms

SLC 31A.1	Amend	We propose to amend the text from "Schedules 1-3" to "Schedules 1-2", as we are proposing to remove the TCR and Schedule 3 to SLC 31A.	Bills, statements of account and Annual Statements: Section A Bills and statements of account - obligation to provide TCR
SLC 31A.2(f)	Remove	We propose this provision which requires the TCR to be included on bills and statements of account, as we propose to remove the TCR.	Bills, statements of account and Annual Statements: Section A Bills and statements of account - obligation to provide TCR
SLC 31A.6	Amend	We propose to amend the text from "Schedules 1 to 3" to "Schedules 1 to 2" to reflect that we are proposing to remove the TCR and Schedule 3 to SLC 31A.	Bills, statements of account and Annual Statements: Section A Bills and statements of account - obligation to provide TCR
Schedule 3 to standard condition 31A	Remove	We propose to remove this schedule which sets out how the TCR needs to be presented on bills and statements of account. As we propose to remove the TCR, this schedule is no longer required.	Bills, statements of account and Annual Statements: Section A Bills and statements of account - features of the TCR
SLC 31A.9(w)	Remove	We propose to remove this provision which requires the TCR to be included on Annual Statement as we propose to remove the TCR.	Bills, statements of account and Annual Statements: Section B Annual Statements - obligation to provide TCR
SLC 31A.17 "SLC 31A Exempt Information", subparagraph (b)	Remove	We propose to remove part of this definition as it refers to a licence condition which we propose to remove.	Bills, statements of account and Annual Statements: Section B Annual Statements: Guidance - provision of TCR

Paragraph S4.15(p) of Part 2 of Schedule 4 to SLC 31A	Remove	We propose to remove this provision which requires the TCR to be displayed on the Annual Statement as we propose to remove the TCR.	Annual statement template - obligation to provide TCR
SLC 31C	Remove	We propose to remove this condition which covers the TCR, as we propose to remove the TCR.	Condition 31C. Tariff Comparison Rate

Tariff Information Label

SLC 31B.2	Remove	We propose to remove this provision as it refers to a SLC 31C which we propose to remove.	Tariff information label - obligation to provide TCR
SLC 31B.8 - 31B.10	Remove	We propose to remove these provisions, as we are proposing to remove the TCR so this is no longer required.	Tariff information label - obligation to provide TIL EAC
SLC 31B.13 Definitions of: "SLC 31B Relevant Staggered Charging Matters"; "SLC 31B Relevant Time of Use Matters; and "TIL Estimated Annual Costs"	Remove	We propose to remove these definitions, as we are proposing to remove the TCR, so these are no longer relevant.	Definitions for condition 31B: Tariff information label - definitions based on TCR
Paragraphs S1.15 - 1.21 of Schedule 1 to SLC 31B	Remove	We propose to remove the text referencing the EAC and the TCR, as we propose to remove the TIL PP and the TCR.	Template of the TIL - obligation to provide TCR and EAC
Paragraphs S1.22 - 1.23 of Schedule 1 to SLC 31B	Amend	We propose to renumber the entries to accommodate removed entries	
Paragraph S1.24 of Schedule 1 to SLC 31B	Remove	We propose to remove this provision which requires suppliers to explain what the TCR is on the TIL. This is no	Template of the TIL - obligation to provide explanation of the TCR

		longer required, as we propose to remove the TCR.	
Paragraph S1.25 of Schedule 1 to SLC 31B		We propose to renumber the entries to accommodate removed entries	

Templates

SLC	Recommendation	Reasoning	Nature of obligation
Paragraph S4.1 of Part 1 of Schedule 4 to SLC 31A	Amend	We propose to amend the templates to reflect that the TCR has been removed and implement changes to the TIL.	Annual statement template
Paragraph S4.14 of Part 2 of Schedule 4 to SLC 31A	Amend		Annual statement template - obligation to provide TCR and TIL
Paragraph S1.1 of Schedule 1 to SLC 31B	Amend	We propose to amend the text referencing the EAC and the TCR, as we propose to remove the TCR and Illustrative Estimated Annual Costs (which is based on the TCR)	Template of the TIL - obligation to display TCR and Illustrative Estimated Annual Costs (which is based on the TCR)

22CA and 22CB

SLC	Recommendation	Reasoning	Nature of obligation
22C.13	Amend	We propose to amend the text referencing 22CA as we proposed to remove this licence condition.	
22C.13A (g)	Amend	We propose to amend the text referencing 22CA as we proposed to remove this licence condition.	
22CA	Remove	We propose to remove this licence condition as it is an obsolete transitional measure.	Transitional provisions for standard condition 22C covering end of fixed term notices and rollovers.

22CB	Remove	We propose to remove this licence condition as it is an obsolete transitional measure.	Transitional provisions for certain existing Fixed Term Supply Contracts
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Appendix 4 – Summary of responses to August 2016 Policy Consultation

On 3 August 2016, Ofgem consulted on the principles we might use to require suppliers to help domestic consumers make informed choices about their energy supply. We sought stakeholder views on three tariff comparability principles and three sales and marketing principles. In light of the removal of most of the RMR Simpler Tariff Choices rules, we also invited comments on our proposals to amend the RMR Clearer Information ('RMR Clearer') tools. The consultation closed on 28 September and we received 27 responses from consumer groups, suppliers and other interested parties.

This document summarises the key themes contained in the responses. It also draws on key takeaways from a workshop we held with consumer groups in September. The first section sets out respondents' views on our proposals to remove or amend the RMR Clearer tools. The second outlines feedback on our proposed tariff comparability and sales and marketing principles.

Most respondents addressed the specific questions we set out in our consultation document, though some were of a more general nature. One respondent was generally supportive of all proposals.

Stakeholder	Stakeholder Type	
Individual consumer	Consumer	
Christians Against Poverty		
Citizens Advice		
Chartered Trading Standards Institute		
CMA (response to Confidence Code Consultation also referred to this consultation)		
Committee of Advertising Practice		
Ombudsman		
BGL Group (on behalf of Comparethemarket)		Third Party Intermediary
GoCompare		
MoneySuperMarket		
uSwitch		
MoneySavingExpert		
Bristol Energy	Supplier	
Centrica		
Ecotricity		
EDF		
E.ON		
Energy UK		
Npower		
OVO		
Scottish Power		
Scottish and Southern Energy (SSE)		
TONIK Energy		
Utilita		
Utility Warehouse		
Mobility		Other
University College London		

Changes to RMR Clearer Tools

Question 1(a): Do you agree with the proposed requirement that any calculation by a supplier of the estimated annual cost figure should be internally consistent (ie calculated in the same way by any given supplier for all tariffs and for all customers over time)?

The majority of respondents agreed that the estimated annual cost (EAC) figure should be calculated in a way that was internally consistent (ie consistent within a suppliers' own tariff offerings). Some felt that internal consistency was not enough, arguing that unless there was consistency across the entire market consumers would be left confused. A number of stakeholders had specific suggestions. For example:

- Introduce a 'primary default view' for the Personal Projection (PP), calculated on an estimate of usage for the next 12 months and based on actual historic consumption if known. Exclude additional one-off discounts, bonuses or loyalty offers to ensure like for like comparisons. Provide an option to separately view PP with discounts/bundles;
- Suppliers should be able to change the EAC methodology for new tariffs;
- The same methodology should be applied to all of a suppliers' tariffs at any given time;
- EAC calculations should be consistent across certain customer categories (eg ToU / non-ToU);
- Price Comparison Websites (PCWs) should have access to suppliers' calculations in order to compare across the market;

It will not always be appropriate to calculate costs on an annual basis (eg for ToU tariffs, 'power pack' tariffs etc). One consumer group argued that the benefits of providing customers with regularly updated cost projections outweighed the potential risks of confusion caused by the removal of a consistently calculated EAC formula. Two suppliers questioned whether the PP was still required, given the proposed tariff comparability principles (particularly Principle 3).

Question 1(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.

The vast majority of respondents stated that some flexibility should be provided, particularly when it comes to ToU tariffs, tariffs whose value is dependent upon behavioural change or tariffs with a duration of less than a year.

However, many respondents argued that, whilst flexibility would sometimes be necessary, there should be transparency around how any methodology is calculated and this should be clearly communicated to customers. One stakeholder went further, suggesting that Ofgem should require suppliers to justify their choice of methodology against the set criteria and that suppliers should provide evidence to show the criteria are being met.

Two respondents argued that no flexibility should be allowed as this could compound confusion.

Question 2: Do you support our proposal to require that, in the absence of a prescribed methodology, the EAC must be personalised, transparent, fair and as accurate as possible, based on reasonable assumptions and all available data?

Most respondents agreed with the introduction of some high level requirements around the calculation of the EAC. However, there were a number of concerns with the proposal put forward. Some of these related to the way in which the proposal in the consultation was worded:

- two stakeholders questioned the definition of 'fair', requesting clarification of whether it was the same definition of fairness as in the SOC;
- some suggested that 'all available data' and 'as accurate as possible' were disproportionate, arguing that suppliers should have more freedom to decide what is appropriate in specific situations;

Others were concerned that the introduction of a principles-based estimate would make it more difficult for PCWs to compare across suppliers, advocating a more prescriptive approach. One supplier suggested that consumers might be happy with an estimate based on an Ofgem-prescribed average rather than a personalised quote.

Question 3: 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?

A large number of respondents supported this proposal and agreed that this could be a way for consumers to be rolled onto cheaper deals at the end of their fixed term contracts, though some suggested this should be an option rather than a requirement. One consumer group argued that, were this to be introduced, suppliers should be required to justify the choice of tariff they rolled a consumer onto.

However, many also highlighted potential concerns or issues:

- some of the larger suppliers argued that exit fees should be allowed, noting their prevalence in other industries;
- some expressed a concern that this proposal could reduce engagement in the market and, therefore, competition;
- others highlighted links with the database remedy, but disagreed on whether consumers on a 'fixed-term roll-on contract' should be included in the database;
- one TPI argued that contractual arrangements between suppliers and PCWs were directly preventing PCWs from engaging consumers near the end of their fixed-term contracts;
- another questioned how PCWs would calculate the EAC if price information on rollover tariffs was not available.

Of the six respondents who disagreed with this proposal, one was strongly opposed, arguing that it required a full cost-benefit analysis and suggesting that suppliers may increase their prices to hedge the risk of customers leaving contracts early.

Two suppliers suggested that Ofgem should consider whether principles could play a role here instead of introducing additional prescription.

Question 4: Do you agree with our overall approach to managing the consequential impacts on the Clearer Information tools arising from the removal of the relevant Simpler Tariff Choices rules?

Of the general comments made in response to this question, one of the large suppliers argued that insufficient detail had been provided to comment. Others questioned the evidence base for the proposals, suggesting that any new measures should be tested before being implemented and calling for previous interventions (ie RMR) to be fully reviewed.

Others made comments specific to the information tools

CTM

A number of respondents highlighted issues with determining the CTM for new types of tariffs, such as ToU tariffs (which will include assumptions of behavioural change) or tariffs with non-price elements. Suppliers in particular argued that as these tariffs become more prevalent, the CTM would become increasingly misleading and should be replaced with a principle.

There were also calls from a variety of stakeholders for the testing of alternatives to the CTM, with many calling for this to be prioritised in Ofgem-led randomised control trials (RCTs).

Two consumer groups supported a market-wide CTM.

TIL

There was very broad support for keeping the TIL. However, many suppliers called for greater flexibility around how the information be provided, with some arguing that principles would enable greater innovation.

TCR

There was near unanimous support for removing the TCR, though one respondent suggested that the TCR had enabled consistent benchmarking across tariffs.

Further consequential amendments

Two suppliers commented on SLC 22CA and SLC 22CB. Both agreed that these transitional rules were no longer required.

Question 5: Have we identified the right benefits and risks associated with our preferred approach to managing the impacts of removing the relevant Simpler Tariff Choices rules on each of the Clearer Information tools?

Most stakeholders broadly agreed with our assessment of the risks and benefits. However, others had some concerns / comments:

- the proposals are over-cautious and have not fully considered the impact on tariff diversification as a result of smart metering and associated technological developments;
- differing EAC methodologies will result in customers getting inconsistent messages from different sources;
- the risks associated with the loss of cross-market consistency do not outweigh the benefits of flexibility around the calculation of EAC;
- following the removal of the Simpler Tariff Choices rules, the CTM is no longer a useful tool;
- Ofgem should carefully monitor the impacts of any changes to the rules.

Some of the larger suppliers requested that Ofgem undertake a robust impact assessment of the proposals.

Question 6: Are there any potential unintended consequences associated with our proposed approach?

The main concern expressed was around potential disengagement and customer confusion resulting from differing EAC methodologies. This, some stakeholders argued, would make it harder for consumers to compare across suppliers, which in turn could damage trust.

Tariff Comparability and Sales and Marketing Principles

Question 7: Do you agree that our proposed policy objective is the correct one? Please explain your answer

The vast majority of respondents agreed with our proposed policy objective – namely, that ‘consumers are able to make informed choices by understanding which of a supplier’s tariffs offers the best value to them based on their characteristics and preferences’.

A number of suppliers suggested that the objective would make an effective principle and that, combined with the existing SoC and consumer protection legislation, no further principles were necessary.

Some, whilst agreeing with the overall gist of the objective, suggested a change of emphasis or drafting. For example, two suppliers (and the Ombudsman) questioned the use of ‘best value’, proposing a change either to ‘best option’ or to ‘is most appropriate to suit their needs’ on the grounds that many consumers value tariff elements other than price. Another commented that ‘characteristics’ should be changed to ‘needs’ in order to align with Principles Three and Six.

Consumer groups felt that the objective was comprehensive, though one commented that a number of assumptions were necessary in order for it to be fulfilled: (i) consumers actually want to switch; (ii) there are a reasonable range of products in the market that satisfy all different consumer preferences.

Two respondents suggested that the objective should apply equally to TPIs such as PCWs.

Question 8: Do you consider that the proposed principles are a sensible way of achieving our policy objective?

Respondents across all stakeholder categories almost unanimously welcomed the replacement of prescriptive rules with prescription, arguing that this would allow for greater competition and innovation while ensuring appropriate safeguards remain for consumers. Just one respondent felt that the transition to a greater use of principles was not in the best interests of consumers.

The vast majority of consumer groups, along with some suppliers and TPIs, agreed that the proposed principles were a sensible way of achieving our policy objective, with consumer groups in particular suggesting that the wording and scope of the proposed principles were robust and workable for front-line advisors. Citizens Advice specifically supported the use of ‘must ensure’ as a threshold.

However, a number of concerns were also expressed – some high-level; others specific to the individual principles. The high-level concerns were as follows:

- **Duplication:** A number of suppliers suggested that the proposed principles duplicated either the SOC, existing consumer protection regulation, or both. As an alternative, one supplier suggested adding a single, additional SOC relating specifically to tariff design (and dropping the six proposed principles). It was argued

that this single additional SOC needn't deal with sales and marketing as the behaviour and information limbs of the SoC already do that. Some suppliers also called for a more detailed description of how the proposed principles, if introduced, would interact with the SOC. Others argued that, where duplication is introduced, principles should use the same terminology and have the same scope as existing legal provisions.

- **The standard:** Numerous large suppliers strongly opposed the use of 'must ensure'. A strong preference instead for 'must take all reasonable steps' was expressed. Many argued that an absolute standard could stifle innovation, lead to disproportionate compliance costs and ultimately raise costs for consumers. 'Must ensure' was perceived as being particularly problematic in relation to activities carried out by TPIs, with some suppliers requesting that Ofgem clarify what suppliers could reasonably be expected to do beyond 'taking all reasonable steps'. It was argued that this approach would have the unintended consequence of inhibiting suppliers' engagement with representatives – particularly those such as PCWs who act on behalf of more than one supplier. Specifically, suppliers pointed to challenges in agreeing a compliance approach with third parties who are also in discussions with other suppliers, each of whom might have a different perspective on compliance. This would likely result in suppliers taking a much more risk averse approach and choosing not to engage with third parties.
- **Compliance/monitoring/enforcement:** Consumer groups sought more information on how the principles would be monitored and enforced, with some questioning what concrete metrics suppliers should be assessed against. There were some questions around how consumer groups could best engage Ofgem where there was evidence that something had gone wrong. Numerous groups called for a coordinated and robust approach to information gathering. One supplier also requested a more detailed description of the compliance and enforcement model that would underpin the principles and called for a 'two-stage enforcement regime', enabling a 'without prejudice' exchange of views on what behaviours might constitute non-compliance. In a similar vein, another supplier called for the establishment of a 'regulatory sandbox' in which suppliers could test innovative tariffs under regulatory supervision. It was suggested that this would allow suppliers to innovate and experiment in a secure environment without fear of breaching principles, whilst preventing consumers from being exposed to potentially detrimental new tariffs.

Tariff Comparability Principles

Principle 1: 'The licensee must ensure that the terms and conditions of its Tariffs (including their structure) are clear and easily understandable'

A couple of large suppliers commented that the only difference between Principle 1 and the SoC was the use of 'easily understandable' rather than 'plain and intelligible'. One supplier commented that 'clear' and 'easily understandable' are subjective terms and suggested that Ofgem should undertake customer research to ensure its understanding was consistent with that of the general public.

Consumer groups overwhelmingly supported the use of 'must ensure', with one suggesting that suppliers should conduct consumer research to ensure they were compliant and then spreading best practice.

Principle 2: 'The licensee must ensure that its Tariffs are easily distinguishable from each other'

Citizens Advice argued that multiple tariffs should not be marketed at the same consumer group, suggesting that the scope of 'distinguishable' should therefore cover not just structure and name, but also the characteristics and benefits of a tariff.

One TPI suggested that this principle may not go far enough, pointing to the allegedly common problem that tariff names on bills often fail to correspond with tariff names on PCWs. The TPI claimed this was the result of deliberate gaming by suppliers, who dictate tariff names to PCWs and then purposefully use different names on bills, despite it being the same tariff. The TPI called for prescription explicitly banning tariffs with confusingly similar names.

Two suppliers commented that 'easily distinguishable' should only apply to available tariffs.

Principle 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'

The majority of stakeholders broadly supported this principle, though some suggested some drafting tweaks. One large supplier proposed that 'needs and preferences' be changed to 'needs or preferences' to make it consistent with Principle 6. Another argued that "needs" should be changed to "characteristics", on the basis that the latter is less subjective. This would also make it consistent with Ofgem's stated policy objective.

Consumer groups were supportive of this principle. Some argued that it should require suppliers to inform consumers that their tariff costs may increase or decrease over time – particularly in relation to ToU and multi-tier tariffs. One suggested that the requirement should be extended to include all information (beyond just the tariff) relevant to the final bill, citing eligibility for Warm Home Discount as an example. The risks around 'hyperbolic discounting' were also noted, with a suggestion that suppliers should provide consumers with information on the total cost of the package for the duration of the contract, including the financial value of any products/discounts. One consumer group called for transparency around acquisition tariffs, suggesting that suppliers should make clear that existing customers are ineligible for them rather than trying to conceal them.

One respondent suggested that this principle could pose a barrier to energy security and sustainability by disincentivising suppliers from offering more complex (but beneficial from an energy security / sustainability perspective) tariffs which are harder to compare (eg dynamic ToU).

Sales and Marketing Principles

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'

Consumer groups were broadly supportive of this principle. However, a number of suppliers felt strongly that it was duplicative of the SOC and proposed that it be dropped. Some requested that if it is to be retained, a clear explanation be provided as to how it adds to or builds upon existing requirements. Centrica commented that suppliers should not be asked to comment on principles which overlap so heavily with the SOC at a time when Ofgem was proposing changes to the SOC.

Principle 5: 'The licensee must not, and must ensure that its Representatives do not, mislead or otherwise use inappropriate tactics, including high pressure sales techniques, when selling or marketing to Domestic Customers'

Again, a couple of suppliers suggested that this principle was already covered by the SOC and existing CPRs. Ofgem was asked to be more explicit about which specific behaviours or concerns this principle sought to address.

Meanwhile, consumer groups were overwhelmingly supportive of Principle 5. Some suggested it should be broadened to ensure suppliers consider situations where it is inappropriate to sell to a consumer – for example, where circumstances mean it would be hard for them to make a genuinely informed choice, regardless of the information provided. It was also suggested that Ofgem should define 'inappropriate sales tactics' and 'high pressure sales techniques', and that the definition should take account of the different circumstances of individuals. Consumer groups requested clarification over whether 'misleading' included information omitted as well as provided, as per the SoC.

Principle 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'

A number of suppliers requested clarification that the principle would only apply where suppliers or their representatives choose to make recommendations, as opposed to it introducing a requirement that recommendations are made. Assuming this was the case, there was some conditional supplier support for this principle.

Consumer groups were universally supportive. Some suggested that 'recommendation' should be defined broadly enough to cover all information that suppliers send to, or share with, a customer which might influence their tariff choice. One argued that any recommendation should not only consider what is appropriate, but what is most appropriate, noting that this would typically mean suppliers recommending the cheapest of any available tariffs they considered appropriate.

Two stakeholders suggested that Principle 6 was inconsistent with Ofgem's proposal to retain the CTM. This is because the former requires a recommendation based on 'needs and preferences' whilst the latter requires suppliers to highlight 'the cheapest' tariff only, which may or may not be appropriate for a customers' preferences. One stakeholder suggested that Principle 6 should be caveated to cater for the fact that consumers' historical consumption profiles may not be an accurate reflection of their future needs/preferences – particularly in the context of ToU tariffs, which may specifically be designed to change the ways and times at which people consumer energy.

Another argued that it should only cover the products and services which Ofgem provide licences for if it is to avoid distorting the markets for other products. This supplier also questioned why the principle referred to "products and services", whilst the other principles referred to "tariffs".

Question 9: Are there any benefits, risks or unintended consequences associated with the proposed principles which we have omitted? If so, what are they and how could they be mitigated?

Only around half of respondents answered this question. Of those who did, some made general comments whilst others made comments that were specific to individual principles.

General Comments

A number of suppliers argued again that the absolute test of 'must ensure' would impose an unreasonably high burden, stifling innovation and preventing potentially beneficial tariffs coming to market. One suggested that this would also inhibit the development of relationships between suppliers and TPIs.

Some stakeholders argued that, taken as a package, the principles – particularly in relation to sales and marketing – introduced overlap, either with the SOC or with existing consumer protection law, creating unnecessary complexity and uncertainty. If retained, the principles should be redrafted to ensure consistency with existing law and include an explanation of how any interactions will work. Specifically, there were calls for Ofgem to confirm that suppliers would not be held to two different tests simultaneously.

One supplier suggested that 'Representative' should be clearly defined for Principles 4, 5 and 6, suggesting the definition should not extend beyond the point at which a supplier could end a contractual relationship were the representative behaving in an unacceptable manner. It must not, for example, cover third parties offering independent advice or family and friends. Another made the distinction between different categories of representatives: (i) organisations directly employed by a supplier as subcontractor (whose activities the supplier should be able to control by means of contractual relationships and reporting, monitoring and auditing controls), and; (ii) those who undertake sales on behalf of suppliers e.g. PCWs (whose activities are more difficult for a supplier to control). Particularly in relation to the latter, a supplier can have clear contract clauses, undertake regular monitoring and auditing and take remedial action when something goes wrong, but would still not be able to ensure that a representative acts in a particular way.

Another suggested that the principles were placing too much of an onus on consumers to find the best deal, arguing that the high levels of disengagement need to be more openly acknowledged. One TPI pointed out that PCWs acting as representatives for a range of different suppliers might need to deal with multiple interpretations of the same principles. A requirement for all PCWs to take a consistent approach to the presentation of tariffs in results tables and the switching process was proposed.

Principle 1

A number of suppliers argued again that this principle could prevent innovative tariffs being launched. One raised an example of a tariff that represented excellent value for a particular customer group not being brought to market in the fear that not all consumers would be able to understand it, arguing this would go against the spirit of the CMA's recommendation. Another suggested there should be an element of what is reasonable to expect a customer to understand. Consumer groups identified a risk that suppliers may prefer to exclude certain customer groups from some of the more complex or innovative products (eg ToU) rather than attempting to offer the necessary support.

Principle 5

One supplier suggested that this principle confused current consumer law on unfair and aggressive practices under the Unfair Trading Regulations 2008.

Question 10: Are these principles likely to result in differential impacts across different types of suppliers (eg large vs. small or medium)? Please explain.

Numerous respondents submitted that the principles would have a variable impact, with the general consensus being that they would favour larger suppliers. Some suggested that larger suppliers would be able to offer a wide range of tariffs catering for all consumers, whilst small/medium suppliers may be forced to specialise. One of the large suppliers suggested that small/medium suppliers would be disproportionately challenged by the absolute threshold of 'must ensure'.

Two respondents focused specifically on Principle 3, with one suggesting that it favours suppliers whose main method of marketing is the internet, where the customer chooses

the level of information they take in (as opposed to suppliers wishing to engage customers over the phone or face-to-face, which would have to talk at length about the various options and potentially disengage the customer from the market). One respondent suggested that Principle 3 would disadvantage small suppliers wanting to specialise in complex tariffs, proposing that appropriate leeway should be granted to such 'trailblazers'.

Consumer groups expressed concern that it may be harder for smaller suppliers to run research and invest in tools to help ensure consumers were able to understand tariffs. Echoing the point made by some suppliers, it was suggested that these smaller suppliers may need to focus on fewer offerings, which they could then expand as they grew.

Three of the larger suppliers and one other stakeholder thought the principles would have an equal impact, with one suggesting that they would allow suppliers of different sizes to apply them in a way that best suited their customers.

Question 11: Do you think that we should introduce a principle about 'informed tariff choices'?

A clear majority of respondents agreed that a high-level principle around informed tariff choices should be introduced into the licence. However, many qualified their support, suggesting this as an alternative to the proposed narrow principles.

Two suppliers thought the 'informed choices' objective should be introduced as an extra limb of the SOC. Of these, one suggested that the narrow principles could all then be covered off through minor tweaks to other SOC limbs, whilst another suggested that the narrow sales and marketing would fall away as they would already be covered by the behaviour and information SOC limbs. Another supplier was supportive, so long as the reference to 'best value' was reframed as something less price-focused.

Others, particularly consumer groups, unconditionally supported the introduction of a high-level 'informed tariff choices' principle, arguing that it would help future proof the principles by capturing any emerging issues not covered by the narrower principles, but without adding any additional burden. There was also some broad support from some suppliers, who argued that it would be a clear addition to the narrow principles.

Of the two suppliers who opposed a high-level 'informed tariff choices' principle, one felt it was unnecessary on top of the narrow principles, whilst the other actively favoured narrow principles over broad, arguing that they provided far greater regulatory certainty and guidance.

Question 12: Do you agree that we should expand the scope of SLC 25 to apply to all sales and marketing activities? Please explain your answer.

Stakeholders were almost unanimous in their agreement that SLC 25 should be expanded to cover all sales and marketing activities. Many highlighted the importance of consumers having confidence that digital sales were conducted in a fair and transparent way, given the growing proportion of online sales.

Meanwhile, some suppliers caveated their support. A few of the larger suppliers expressed concern around the prospect of suppliers becoming liable for TPI breaches.

One called for greater clarity around what constitutes a 'representative', whilst two suggested that SLC 25 should apply directly to TPIs, possibly through direct licensing. Another supported the proposal – so long as the standard was changed to 'all reasonable steps'.

Two respondents gave even more nuanced responses. One argued that all other sales and marketing activities were already captured under CPRs, but recognised the regulatory certainty provided by ensuring that all sales and marketing activities were captured under the proposed principles. Another recognised the increased consumer protection benefits but pointed to the potential challenges for PCWs when suppliers enforce different requirements around the same principle.

Only one supplier opposed this proposal, recommending that Ofgem delays its decision until new/revised principles have bedded in to allow time to determine whether there are potential issues in other sales channels.

Question 13: 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 of any increase in costs.

This question attracted extremely mixed views. Consumer groups were unanimous in their support, along with five suppliers and two TPIs. Reasons given included that it would not be excessively onerous – particularly for the smaller suppliers. Two of the smaller suppliers justified it as a reasonable step in the context of sales and marketing rules being “relaxed” or “liberalised” (which is not the policy intention).

Some qualified their support, for example, by recognising the rationale but saying it would come at additional costs. One PCW pointed out that they already keep records for two years, but suggested that TPIs should not be obliged to transfer their records to suppliers.

- Seven respondents – typically the larger suppliers – disagreed strongly. Arguments against the proposal included that:
- It ran counter to the proposed spirit of principles based regulation;
- It would result in significant costs which would fall disproportionately on small suppliers and, ultimately, be passed onto consumers;
- It represented excessively onerous regulation and a breach of the data protection principle of keeping records no longer than necessary;
- There was no evidence to support it. Two of the larger suppliers requested that a comprehensive Impact Assessment be conducted to explore the associated costs. One suggested that retaining records for 18 months went beyond the first anniversary of the contract, after which there were very low chances of a complaint being raised;
- It would not meet Ofgem’s test around only using prescription where it managed specific risks and delivered specific consumer outcomes;

Two of the larger suppliers suggested that Ofgem consider a six month default requirement, with the option of extending this based on risk.

Question 14: 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 requirement to online sales (eg impact on PCWs, increased costs)?

The majority of respondents supported our proposals. There was agreement that the requirement would be a disproportionate burden and that the cost implications of applying the record keeping requirement to online sales would outweigh the benefits. One supplier drew a distinction between online sales and F2F/telesales, suggesting that the former would leave an electronic audit trail in any case.

One larger supplier agreed with the proposal but disagreed with our rationale, arguing that the key point was that prescription should only be introduced where there was clear evidence to support an intervention.

However, there was some disagreement from consumer groups (and from one supplier) who argued that as online sales grew, the same standards should apply to PCWs and suppliers. It was recognised that this may increase costs, but not in a way that was excessively onerous.

One PCW said it was difficult to comment as insufficient detail had been provided.

Question 15: Do you agree with our proposal to remove the prescription from SLC 25? Are there any other areas where you think prescription still needs to be retained to maintain consumer protection?

Most suppliers gave unqualified support for this proposal, arguing amongst other things that much of the prescription is already covered by the SoC.

Others were supportive, but provided qualifications. For example:

- One expressed some concern about over-reliance on principles in circumstances where smart meter coverage (and the safeguards/benefits associated with it) is not yet comprehensive;
- Another broadly agreed – except for the requirement to make post-sales contact after F2F sales, which they felt should be retained on the basis that CitAd continue to receive cases of misselling by suppliers via F2F channel;
- Another suggested retaining prescription around the TIL to ensure comparability;
- Another agreed, subject to there just being a single, broad sales and marketing principle;
- Another agreed, but thought we should consider a “safe harbour” exemption;
- Another still supported the proposal, but disagreed that inadequate staff training could be considered an aggravating factor

Impact Assessment

Question 16: Do you agree with the methodology we intend to employ in our Impact Assessment?

The majority of respondents agreed with the methodology we used to assess the impacts of the changes, but noted that more work should be done to fully understand the impact of some reforms, such as reforms on the Clearer Information tools.

Two respondents argued that the methodology seems to be inconsistent with Ofgem’s guidance on conducting impact assessments. In developing our methodology we have taken into consideration our guidance and have followed the criterion of proportionality when considering the best approach to assessing the impacts of the reforms.

We have therefore tried to strike a balance between the need to conduct a robust assessment while confronting the inevitable uncertainty that any work on principle-based regulation carries. Given views from stakeholders that estimating the monetary impacts of moving towards a greater reliance on principles is difficult, we used responses to our December 2015 consultation, as well as feedback given to us in bilaterals and workshops to inform our discussion of the impacts of the proposed changes. We think this approach is appropriate for and proportionate to the types of changes we propose to make.

Question 17: have we captured all expected key impacts? If not, what else do you think we should include in our impact assessments?

The majority of respondents agreed that we have captured all key impacts, with some exceptions:

- Around half of the respondents noted that not all impacts of changing the PP methodology – and subsequent changes to other Clearer Information tools – have been identified. We agree that more analysis is needed on this area and analytical work on this is being carried out separately.
- One supplier noted that impacts on competition dynamics have not been fully captured. We have considered competition dynamics when discussing how the proposed reforms could have a positive impact on customer engagement and on innovation. We recognised, however, that we will need to closely evaluate whether these benefits are realised and how competition dynamics could change as a result of relying more on principles when regulating energy markets. We will feed this thinking into our work to establish an evaluation framework later this year.

Question 18: What costs do you expect to incur as result of the proposed changes (both to the RMR package and to SLC 25)? Please provide a description and a range, if possible

The vast majority of respondents confirmed that they will likely incur implementation and ongoing costs as identified in our draft impact assessment. However, they were not able to provide estimates of such costs. While we recognised that at this stage it may be difficult to provide estimates of the costs of replacing some prescriptions with principles, we are keen to review the impact of our reforms on a regular basis and will therefore consider costs implications of these reforms when developing the evaluation framework for the Future Retail Regulation work.

One supplier gave us some cost estimates of implementing the changes to the Clearer Information tools. We will be in touch with other suppliers to understand how our proposals for changes to the PP methodology could impact them as part of the work on PP taken forward separately.

Question 19: What benefits (including avoided costs) do you expect to realise as a result of the proposed changes? Please provide a description and a range, if possible

While the majority of suppliers agreed that the changes will deliver some benefits, they were not able to provide estimates of them, recognising that the scale of benefits would depend on how single suppliers and the market will react to the changes over the medium to long term.

Monitoring

Question 20: Do you think there are any other indicators we can use to monitor the impact of changes to the RMR rules on consumers?

Respondents generally supported our proposed approach here. Many indicated that current and proposed indicators would not only provide comparable data on supplier performance and consumer outcomes but also further incentivise suppliers to improve customer satisfaction, transparency and fairness. Some cautioned that purely monitoring volume of complaints for example, could be misleading and highlighted the importance of also monitoring other metrics, such as the time taken to resolve complaints amongst others.

Regarding additional indicators, one respondent highlighted the value of using high pressure sales and misselling as a metric, contending that the monitoring of erroneous transfers and cancellations during cooling off periods would allow the use of these tactics to be gauged. Another respondent proposed a system of 'red flags', comprising a range of indicators, which would enable us to take a holistic look at supplier performance and consumer outcomes, assess genuine intent and ultimately be proportionate in our approach. Overall, respondents agreed that there needs to be more effective communication between the regulator and the regulated, including holding more frequent and more open conversations to help Ofgem understand suppliers' businesses and enable open discussion about what they are doing.

Question 21: 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?

Overall, respondents supported our proposal for increased engagement with Citizens Advice and the Energy Ombudsman, asserting that this tripartite engagement will help to ensure insights are captured across whole customer journey. One respondent suggested that social media could potentially provide insights into consumer experiences of sales and marketing practices. It was also suggested that Ofgem should work to ensure that conditions supporting PCW investment in energy comparison are meaningful and sustainable.

Appendix 5 – Update on Impact Assessment

Responses to the draft impact assessment have highlighted that:

- While stakeholders support our proposals and think that overall the benefits will outweigh the costs, they are also keen to understand the scale of the impacts
- It is difficult to estimate these impacts now, as much will depend on how each company will adapt to the new regulatory regime. Companies who already put their customers at the heart of their business may need to change little - if anything - of their current practices. Other suppliers, however, may need to make fundamental changes.

Given that most stakeholders agree with our assessment of the impacts of the proposed changes as set out in the August draft impact assessment, we do not plan to further update it at this stage. But we are keen to continue reviewing how the benefits of moving towards a greater reliance on principles are realised and if these offset the costs of implementing and operating the new regime. We consider this a proportionate approach given that:

- Our work is not intended to change the policy intent, but to express it in a clearer and more effective way
- Market dynamics can affect the achievement of the policy objectives, so we should focus more on reviewing and evaluating the changes to ensure the benefits we expect are realised and continue to be realised as markets change.

We present our assessment of the expected impacts of the new tariff comparability and sales and marketing principles below. We have updated it in line with stakeholders' comments.

	Benefits (incl avoided costs)	Costs	Unintended consequences (incl risks)
Consumers	<p>Greater and better choices</p> <p>Improved consumers' engagement because of an increase in the number of innovative and more tailored tariffs</p> <p>Remedies will intensify competition between suppliers by amending elements of the regulatory framework to increase the incentives to engage disengaged customers</p> <p>Removal of the four-tariff rule improves scope for competition between PCWs for customers switching energy suppliers, to exert downward pressure prices</p>	<p>No costs associated with the proposed changes</p>	<p>Medium-term risks</p> <p>The new principles will require a certain degree of interpretation and suppliers may go through a process of 'trial and error' before settling on a firm interpretation. Some consumers may be impacted by this process <u>How we mitigate this risk:</u> we will endeavour to engage with suppliers to ensure that effective protection measures are in place while all parties adapt to the new principle-based regime. Importantly, the Standards of Conduct also to apply to supplier behaviour and require customers to be treated fairly.</p> <p>Increase in the complexity of information could lead to a reduction in ability of consumers to make more informed choices <u>How we mitigate this risk:</u> Our proposed changes to the information tools and the new principles should enable suppliers to provide tailored and relevant information to customers, combined with the incentives of PCWs to provide consumer-friendly information and cross-market comparisons</p> <p>Increasingly complex products and constraints on consumers' time means they may choose to make decisions by limiting their search, leading to a softening of competition <u>How we mitigate this risk:</u> PCWs have an incentive to facilitate switching, enabling consumers to find good deals</p>
Suppliers	<p>More scope for developing innovative offers to attract/retain consumers</p> <p>Decreased cost of seeking derogations and of complying with too many detailed rules</p>	<p>One-off</p> <p>Cost to develop a decision-making framework</p> <p>IT costs of updating their systems</p> <p>Training costs to bring staff up-to-date with both the new regulatory requirements and any internal changes resulting from the new regime</p> <p>Legal costs, eg for seeking legal advice on interpretation of the new licence requirements</p>	<p>Short-term</p> <p>Initial uncertainty about the new principles could initially inhibit innovation as it may take some time for suppliers to adapt to the new regulatory framework <u>How to mitigate this risk:</u> we have been engaging already with suppliers to ensure everyone understands our ambition for the new regulatory regime before putting it into place</p>

		<p>Ongoing</p> <p>Potentially and depending on individual supplier behaviour, additional costs to provide info to Ofgem for monitoring purposes besides what it is already conducted</p> <p>Potential additional costs of increased engagement with regulator</p> <p>Potential increased compliance costs for seeking legal advice on interpretation of/compliance with the licence</p>	
Ofgem	<p>More effective regulation through a more targeted approach to monitoring and engagement</p> <p>More efficient regulation through increased ability to spot issues and act only on those that could put consumers at risk</p> <p>Decreased cost of assessing derogation requests</p>	<p>Ongoing</p> <p>Potential costs linked with new monitoring requirements that might need to be introduced to keep pace with market changes, but overall burden of monitoring activities should not increase.</p> <p>Additional costs of increased engagement with suppliers – but this would be proportionate to the risk their activities could pose on consumers</p>	
TPIs/PCWs	<p>TPIs will be better able to compete with each other and with suppliers (eg through exclusive tariffs)</p>	<p>Ongoing</p> <p>PCWs may face costs of updating databases as fast as new tariffs and deals appear</p> <p>Potential costs of adapting methodologies to account for the wider variety of tariffs</p>	

Given the considerations above, we are committed to setting up a holistic post-implementation review of the licence changes where prescriptions have been replaced by principles. We have been doing initial thinking on the evaluation framework, which we plan to share in the following months.

We may carry out a separate impact assessment on the proposals on the personal projection methodology should this be necessary. We would include this as part of the consultation on this policy area.

Extending the two-years record keeping requirement in SLC25 to telesales: updating the impact assessment

In our August consultation we proposed to extend to telesales the requirement to keep records for two years of those sales and marketing activities which led to the signing of a contract. While many stakeholders agree with our proposal, a few suppliers strongly disagreed and argued that it would go against the spirit of principle-based regulation.

We have followed up with those suppliers and conducted more analysis to understand current practices. Talking to the suppliers who opposed the reform, we found that their concerns related to the type of records the prescription will cover.

The majority of suppliers interviewed confirmed that, if they conduct telesales, they keep records of all inbound and outbound calls, as well as of the quotes given to a customer which led to them signing a contract. Our prescription to retain records for 2 years on telesales activities will cover exactly this and therefore we expect that it will have little impact on the vast majority of suppliers.

The suppliers interviewed also confirmed that, should they make changes to their current record-keeping practices, these would not represent a critical cost for them. We consider that smaller and medium sized suppliers may be most impacted by our proposal should they need to invest in new systems. We note, however, that those suppliers who replied to our consultation agreed with our proposal, some noting that they would need to invest in new IT anyway should they start conducting telesales activities.

A supplier argued that it is not necessary to require suppliers to retain records for a period longer than the length of the contract as by then consumers would have noticed potential misselling cases. We note, however, that in the market there are tariffs with a longer than 2 years length of contract, even reaching 50 months.

Our proposal has more to do with the time lag we experienced when investigating misselling cases than with the length of contract. We note that it could take a long time from when recurring misselling practices have taken place and when these are spotted by the customer, reported and dealt with by us. Records of quotes given, although not the only evidence, are an essential piece of evidence when investigating misselling cases. We therefore consider our proposal proportionate: it represents a small cost for suppliers but will strengthen consumer protection.

Having considered all responses to our consultation we do not intend to make further changes to our impact assessment of SLC25 at this stage. Nevertheless, we are considering how best to monitor the new prescriptions in the context of the new sales and marketing principles, also exploring how to make best use of all opportunities to gather evidence to minimise the use of RFIs. We present below our assessment of the changes to SLC25.

	Benefits (incl avoided costs)	Costs	Unintended consequences (incl risks)
Consumers	<p>Sales and marketing activities targeted to them, thus improved understanding of offers available</p> <p>Removing the prescription around face-to-face sales may enable suppliers to develop innovative ways to engage with disengaged consumers (eg those without the internet)</p> <p>Suppliers may also be more willing to contract with TPIS to engage consumers</p> <p>More explicit protection against pressure selling</p>	<p>No costs associated with the proposed changes</p>	<p>Medium-term risks</p> <p>The new licence will require a certain degree of interpretation and suppliers may go through a process of 'trial and error' before settling on a firm interpretation. Some consumers may be affected by this process.</p> <p><u>How we mitigate this risk:</u> we will endeavour to engage with suppliers to ensure that effective protection measures are in place while all parties adapt to the new principle-based regime. Importantly, the Standards of Conduct also to apply to supplier behaviour and require customers to be treated fairly.</p>
Suppliers	<p>More scope for using innovative ways to attract consumers and sell products</p> <p>Lower enforcement costs than would have been the case as a result of focusing more on compliance, so suppliers are able to self-monitor, spot issues and resolve them before they become issues against which we would take enforcement actions</p>	<p>One-off</p> <p>IT costs of updating the systems</p> <p>Training and legal costs</p> <p>Any additional costs arising as result of the scope of sales and marketing being extended to include online activities.</p> <p>Ongoing costs</p> <p>Additional costs from requirement to keep records for two years</p> <p>Potentially, additional costs to provide info for monitoring activities besides what it is already conducted</p> <p>Potential additional costs of increased engagement with regulator</p> <p>Potential increased compliance costs or seeking legal advice on interpretation of/compliance with the licence</p>	
Ofgem	<p>More effective regulation through a more targeted approach to monitoring and engagement</p> <p>More efficient regulation through increased</p>	<p>Ongoing</p> <p>Potential additional monitoring costs if we decide to increase our monitoring activities on sales and marketing - but overall burden of monitoring activities should not increase</p>	

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	ability to spot issues and act only on those that could put consumers at risk	Additional costs of new approach to engagement with suppliers – but this would be proportionate to the risks their activities could pose on consumers	
TPIs/PCWs	Moving from a long list of rules to a focus on consumer outcomes may increase suppliers’ willingness to contract with TPIs to undertake sales and marketing activities on their behalf.	<p>One-off Increased complexity in the tariffs offered may require more training and updates to IT systems to display and calculate them correctly.</p> <p>Ongoing As suppliers gain confidence and develop innovative products, TPIs may need to keep updating their IT systems/websites</p>	

Appendix 6 - Feedback Questionnaire

We believe that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about how we've conducted this consultation. We are also keen to get your answers to the following:

- 1.** Do you have any comments about the overall process adopted for this consultation?
- 2.** Do you have any comments about the overall tone and content of the report?
- 3.** Was the report easy to read and understand? Or could it have been better written?
- 4.** Were the report's conclusions balanced?
- 5.** Did the report make reasoned recommendations for improvement?
- 6.** Please add any further comments.

Please send your comments to: stakeholders@ofgem.gov.uk