

Standards of Conduct for suppliers in the retail energy market

Statutory Consultation

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Overview:

The domestic and non-domestic Standards of Conduct (the Standards) are broad, enforceable principles that form the foundation stone of the supply licences. They require suppliers to treat customers fairly in the way they behave, provide information and deliver customer service.

To strengthen our ability to protect consumer interests, we will be removing unnecessary prescriptive rules from the supply licences and relying more on the Standards, and other principles. Relying more on principles will give suppliers more freedom to innovate, while making it clear that they are expected to ensure their actions and conduct benefit consumers. Improving the experiences consumers have when dealing with suppliers should boost trust and engagement levels in the retail market.

This statutory consultation sets out our final proposals to amend the domestic and non-domestic Standards. We intend to amend the *Fairness Test* and compliance threshold within the Standards so these principles have a much sharper focus on the impact a supplier's actions have on a consumer. For the domestic Standards only, we are also proposing to add broad principles that require suppliers to enable consumers to make informed choices and to have special regard for consumers in vulnerable situations.

This consultation also confirms our intention to amend our information-gathering powers in the supply licences. These changes will ensure we can continue to monitor the market effectively as we transition to a more principles-based regulatory framework.

Context

Ofgem's 2014 Strategy stated our intention to rely more on principles, and less on detailed prescriptive rules, when seeking to ensure suppliers are delivering good outcomes for consumers. Relying more on principles will benefit consumers by strengthening our ability to address poor supplier conduct, while also allowing suppliers more freedom to meet consumer needs in new, innovative ways.

In our 2017-18 Forward Work Programme, we committed to amending the principles-based Standards of Conduct licence conditions. This statutory consultation sets out the licence changes we propose in order to fulfil this commitment.

Associated documents

[Statutory Notices – gas supply licence and electricity supply licence](#) (June 2017)

[Final Decision – enabling consumers to make informed choices](#) (April 2017)

[2017-18 Forward Work Programme](#) (March 2017)

[Standards of Conduct for suppliers in the retail energy market – policy consultation](#) (January 2017)

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

[Enabling consumers to make informed choices – statutory consultation](#) (January 2017)

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

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

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

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

[Ofgem Corporate Strategy](#) (December 2014)

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

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

[Implementation of the Retail Market Review non-domestic proposals – decision to make licence modifications](#) (June 2013)

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

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Executive Summary

As the retail energy market goes through a period of substantial change, we need to ensure that it works for all consumers. We want a market where competition drives efficiency and delivers the quality of service and products that consumers need. A successful market also involves participants conducting themselves in a way that is befitting of an essential service and meets the needs of vulnerable consumers.

Key to delivering a better functioning retail market for all consumers is our commitment, over time, to rely more on enforceable principles rather than prescriptive rules. This regulatory approach does not represent a move to “lighter-touch” regulation. Rather, it will strengthen our ability to protect the interests of existing and future consumers 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 already made significant progress with our transition to a more principles-based regulatory approach. We have removed almost 50 pages of prescriptive rules from the supply licences and introduced five new principles that regulate how tariffs are sold and marketed to domestic customers. We are committed to removing further prescription and are now reviewing the large amount of rules regulating how suppliers communicate with consumers.

Standards of Conduct

The broad principles within the Standards of Conduct (“the Standards”) are the foundation stone of our regulatory framework. We refer to these as “broad principles” because they are high-level rules that are sufficiently overarching to apply across a range of supplier activities. The Standards require that suppliers behave, provide information and deliver customer service in a way that ensures customers are treated fairly. These obligations are intended to improve consumer outcomes, facilitate innovation, and boost trust and engagement in the market.

In January we proposed changes to the Standards that aim to ensure they fulfil their policy intent into the future. These changes reflect learnings from, and the maturing of, the principles-based approach we have used in the retail energy market since we introduced the Standards in 2013. We have taken on board the stakeholder views we received during our consultation period and this statutory consultation sets out our final licence change proposals. These proposals are to:

- Amend the **Fairness Test** in the domestic and non-domestic Standards so that it focuses on the outcomes experienced by consumers, and not the impact on suppliers.
- Remove the **all reasonable steps** threshold in the domestic and non-domestic Standards so that our assessment of whether a customer has been treated fairly is based on the outcomes a supplier has delivered, rather than their attempts to secure compliance.
- Add a broad **vulnerability principle** to the domestic Standards that clarifies to suppliers that to uphold their obligation to treat all domestic customers fairly, they need to make an extra effort to identify and respond to the needs of domestic customers who are in vulnerable situations.

- Add a broad principle to the domestic Standards that requires suppliers to help consumers make **informed choices** about their energy supply. This change would supplement the five narrower principles introduced into standard licence condition (SLC) 25 which require suppliers to enable domestic customers to make informed choices about the tariffs they offer.

The revised Standards will drive suppliers to take responsibility for treating customers fairly. We consider this is a standard of treatment that a competent, responsible supplier should feel confident in achieving. The changes also strengthen our ability to take swift action, including compliance action, where consumers need protection from harm. Finally, the changes will enable us to rely less on prescriptive rules, thereby freeing up more space for suppliers to innovate and compete. Given the importance of the Standards, we propose to move these obligations to the front of the supply licences so they are more prominent.

Our information-gathering powers

This statutory consultation contains our final proposals for amending our information-gathering powers provided by SLC 5. This change will ensure we can continue to monitor the market effectively as we transition to a principles-based world where suppliers have more freedom to achieve compliance in different, innovative, ways. In addition to our January proposal, we now propose to also remove other information gathering provisions in the supply licences that would be obsolete once our information powers were amended. Deleting these duplicative rules will make the supply licences more streamlined.

Operating a principles-based framework

If principles are to result in improved consumer experiences and more innovation, we need to operate them proportionately. We will continue refining our operating approach in order to reflect the increasing importance of the Standards, and other principles, in the supply licences. In our Forward Work Programme, we committed to reviewing the Enforcement Guidelines in Q3 2017/18. Through this review, we will seek to clarify the circumstances when we're likely to open an enforcement investigation, and how that may fit with suppliers putting things right when issues of non-compliance might arise. The vast majority of potential non-compliance cases get resolved without opening an enforcement case. We are considering how we can communicate practical examples of this so stakeholders have more clarity about how we act proportionately.

So we can identify and address any consumer harm as early as possible, we will continue strengthening our links with consumer groups and charities, including through our work with Citizens Advice and the Ombudsman Services: Energy. In order to support suppliers in the transition to a more principles-based framework, we will continue to engage with them proactively, including by sharing examples of good practice and lessons learned. Our upcoming annual report on consumer vulnerability is an example of the support we will give them.

Responding to this consultation

We would like to hear your views on the issues raised in this document. Please send your responses to futureretailregulation@ofgem.gov.uk by **24 July 2017**.

1. Introduction

- 1.1 The retail energy market is going through a period of substantial change. Emerging technologies are changing the way households and businesses use their energy and engage in the market. The number of new entrants with different business models and customer offerings is also growing. For us as a regulator, we need to be forward looking and flexible if we are to create a retail market where competition drives efficiency and delivers the quality of service and products that consumers need.
- 1.2 To achieve our principal objective of protecting the interests of existing and future energy consumers, we want to ensure all of them can benefit from changes in the market, while having in place a strong safety net that protects consumers from poor supplier conduct. To support the achievement of this objective we will be relying more on principles, and less on detailed prescriptive rules, to regulate the retail energy market. This will allow us to:
- **Promote innovation and competition that will lead to benefits for consumers.** Relying more on principles will enable us to remove prescriptive rules which might stop suppliers from innovating and present a barrier to new entrants.
 - **Provide effective consumer protection in an evolving market.** Our experiences show that loopholes can sometimes be found in detailed prescriptive rules. They can also become less effective over time as circumstances change. The extent of change expected in the retail energy market means that it will not be sustainable to manage new risks by continuously adding or amending prescriptive rules.
 - **Put responsibility firmly on suppliers to deliver good consumer outcomes.**¹ Under prescriptive rules, there is a risk that suppliers focus too much on “ticking boxes” rather than on what is right for consumers. We want suppliers to embrace and embed a consumer-centric culture.²
- 1.3 Our Future Retail Regulation project has made strong progress in transitioning the retail market to a more principles-based framework. The changes we have made to rules relating to tariff design are leading to more innovative products being available to consumers. We have also finalised changes to the licences that will see us remove prescriptive sales and marketing rules and introduce five principles that ensure consumers can make informed choices about tariffs.³ Our current priority is a review of the significant body of prescriptive rules relating to supplier-customer communications. We want to remove unnecessarily prescriptive rules that are preventing suppliers from using

¹ Our [Corporate Strategy](#) (p. 15) sets out five consumer outcomes Ofgem seeks to deliver through our work. Increasing our reliance on principles has a strong focus on delivering a “better quality of service” for consumers.

² These three objectives closely align with our [Regulatory Stances](#). Removing unnecessary prescriptive rules so suppliers have greater flexibility also aligns with the intentions of the Ofgem [Innovation Link](#).

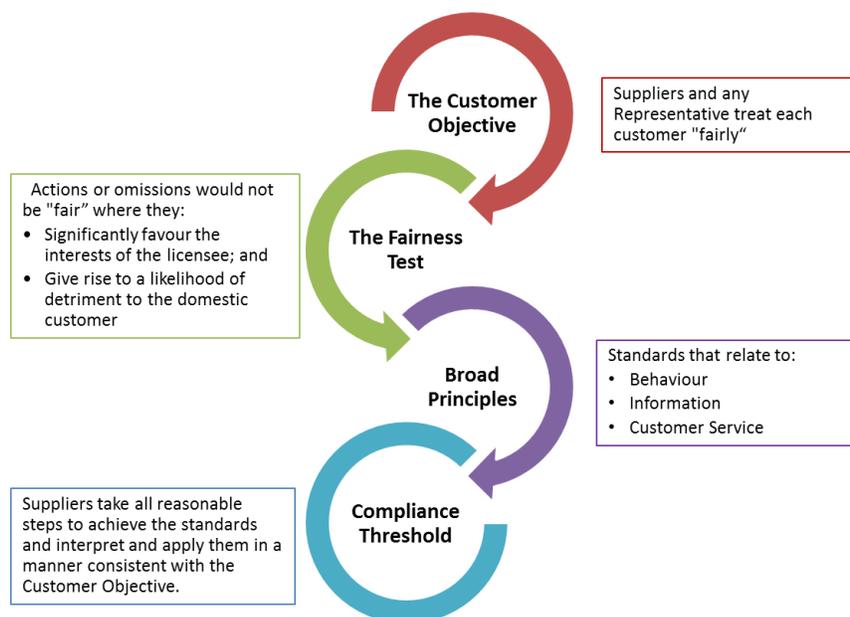
³ Ofgem (2017) [Final Decision: Enabling consumers to make informed choices](#).

innovative methods and technologies to engage with consumers and help them to understand their options.

Standards of Conduct

- 1.4 The domestic and non-domestic Standards of Conduct (“the Standards”) form the foundation stone of the supply licences. They were introduced in 2013 and contain “broad principles” that are sufficiently overarching to apply across a range of supplier activities.⁴ These enforceable principles require suppliers to behave, provide information and carry out customer service in a manner that ensures customers are treated fairly. The aim of these principles is to not only improve consumer experiences and facilitate innovation, but also boost trust and engagement in the market by driving suppliers to conduct themselves in a manner that is befitting of an essential service provider.
- 1.5 The current elements of the domestic Standards are set out in Figure 1. When applying the Standards we would look at the actions or omissions by a licensee that may be non-compliant and identify the broad principle(s) that is relevant. We would then consider whether these actions and/or omissions satisfy our *Fairness Test* definition of unfair. If the identified actions or omissions were unfair, we would then consider whether the licensee nonetheless took *all reasonable steps* to achieve the Standards. If the licensee did not do this then a breach can be considered to have occurred.

Figure 1 – Current domestic Standards of Conduct



⁴ Apart from any matters relating Deemed Contracts, the domestic and non-domestic Standards do not apply in respect of the amount or amounts of fees and charges. They do apply to the exercise of a licensee’s discretion to apply or waive any charge or fee. In addition, the non-domestic Standards only apply to the “Designated Activities” currently set out in standard licence condition (SLC) 7B.12 and do not apply to a licensee’s Representatives.

- 1.6 At the outset of the Future Retail Regulation reform agenda, we stated that we would consider modifying the Standards to ensure that they were a robust substitute for the prescriptive consumer protections we might remove from the supply licences in the future.⁵ Then in August 2016 we released a working paper setting out our preliminary thinking on how the Standards might need to change.⁶ Feedback from this working paper helped inform our policy consultation proposals that were published in January 2017.⁷
- 1.7 Our policy consultation closed on 13 March 2017 and we received 26 responses from consumer groups, suppliers and other interested parties (a summary of these responses is available in appendix 5.) During this consultation period we also discussed our proposals with stakeholders at a workshop in February⁸, held numerous bilateral meetings, and released an online survey which enabled a further eight stakeholders to send us their views on our policy proposals. We thank stakeholders for their responses and engagement. We have reflected on the feedback received. This statutory consultation sets out our final licence modification proposals.

Structure of this document

- 1.8 **Chapter 2** of this document sets out our final proposals for amending the Standards. For the domestic and non-domestic Standards, this includes amendments to the *Fairness Test* and *all reasonable steps* thresholds so these obligations are focused more sharply on consumer outcomes. For the domestic Standards only, we intend to add broad principles that require suppliers to enable consumers to make informed choices and to have special regard for consumers in vulnerable situations.
- 1.9 **Chapter 2** also sets out our final proposals regarding the Treating Customers Fairly statement obligation and the guidance relevant to the domestic and non-domestic Standards.
- 1.10 **Chapter 3** outlines our final proposals for amending SLC 5 so that our information gathering powers allow us to operate a more principles-based framework effectively. To help streamline the supply licences, we also propose to amend information gathering provisions within other SLCs that would be obsolete as a consequence of our SLC 5 proposals.

Next steps

- 1.11 Any representations with respect to the proposed licence modifications in this statutory consultation must be made on or before **24 July 2017**.

⁵ Ofgem (2015) [Future of retail market regulation consultation](#), p. 15.

⁶ Ofgem (2016) [Working paper on broad principles](#).

⁷ Ofgem (2017) [Standards of conduct for suppliers in the retail energy market](#).

⁸ Ofgem (2017) [Future of retail market regulation stakeholder workshop – 28 February 2017](#).

2. Standards of Conduct final proposals

Chapter Summary

In January we published a consultation proposing changes to the domestic and non-domestic Standards of Conduct (“the Standards”). We proposed to change the *Fairness Test* and compliance threshold used in the Standards so that these rules focus more sharply on consumer outcomes, rather than the impact on and efforts of suppliers. For the domestic Standards only, we also proposed to introduce an “informed choices” principle and a vulnerability principle so that our expectations of suppliers are clearer, and protections for consumers are more robust and future-proof.

This chapter sets out our initial licence proposals relating to the Standards, reiterates our policy rationale and explains any changes and clarifications in response to stakeholder feedback. It also sets out our final position on guidance relating to the Standards and the “Treating Customers Fairly” statement.

- 2.1 We want our rules to drive suppliers to achieve the conduct and service standards that are befitting of an essential service provider. Improving the interactions and experiences consumers have will help increase trust in the industry, which in turn will help to improve engagement and competition.⁹ The domestic and non-domestic Standards of Conduct¹⁰ (“the Standards”) are critical to ensuring that consumer experiences and trust improve. At the core of the Standards is the objective that all domestic customers and microbusinesses are treated fairly by suppliers.
- 2.2 Our 2016 Challenge Panel¹¹ showed that although suppliers are making progress with embedding the Standards into their way of operating, the level of ambition and effort being put into treating customers fairly and building trust in the industry needs to be higher. The Panel considered that few suppliers are pushing themselves to achieve a consumer-centric culture that is on par with the best service providers in other sectors of the economy. Too often, suppliers can treat customer service as a one-off “set and forget” exercise, rather than using metrics, insights and feedback loops to drive continual improvements in consumer outcomes.
- 2.3 Given this evidence, and the fact that we will rely on the Standards much more to protect consumers as we remove further prescription from the supply licences, we are proposing changes that will ensure these principles incentivise suppliers to keep their understanding of the consumer experience, and what it takes to treat all customers fairly, up-to-date. Our changes reflect learnings

⁹ The Competition and Markets Authority’s (CMA) 2016 [Energy Market Investigation Final Report](#) (pp. 30-37 & 64-67) found that there has been persistently low levels of domestic and microbusiness customer engagement in the retail energy market.

¹⁰ The domestic and non-domestic Standards are currently included in standard licence conditions (SLC) 25C and 7B respectively in both the [electricity](#) and [gas](#) supply licences.

¹¹ Ofgem (2017) [Findings from the 2016 Challenge Panel](#).

from, and the maturing of, the principles-based approach we have used in the retail energy market since the Standards were introduced in 2013. Taken together, we consider the changes will help ensure the Standards provide effective protection to consumers, and help to increase trust and engagement, as the retail energy market goes through a period of substantial change.

Making the Standards of Conduct simpler and more accessible

- 2.4 As we are proposing to amend key components of the domestic and non-domestic Standards, we consider there is an opportunity to reshape how these licence conditions are set out for the reader. We also want the Standards to be easy to understand for a wide range of stakeholders, not just suppliers and other energy market regulatory experts.
- 2.5 Under the new layout we propose (see appendices 3 and 4), the key compliance requirement for licensees has been moved towards the start of the Standards, straight after the Customer Objective. The use of the term “Fairly” in the Customer Objective activates the *Fairness Test* that a supplier would have to fail in order to be non-compliant. The specific drafting of this test has moved to the definitions section of the domestic and non-domestic Standards. We also intend to simplify the drafting of the broad principles within the Standards.¹² These broad principles will no longer make explicit reference to the licensee (non-domestic Standards) or licensee and representative (domestic Standards). Reference to these parties will instead be included in the drafting that precedes these broad principles.
- 2.6 To be clear, these changes are not designed to alter the effect of the proposals outlined in the January consultation. When applying the Standards, we will still look at the actions or omissions by a licensee or Representative that may be non-compliant and identify the broad principle(s) that is relevant. We would also consider whether the actions and/or omissions of the licensee or Representative meet our *Fairness Test* definition of unfair.
- 2.7 We also intend to move the domestic and non-domestic Standards from the middle of the supply licences to the front so they are easier to access. This move emphasises the overarching importance of the Standards, and should provide context for how stakeholders view many of the other binding rules within the supply licences. To move these obligations to the front of the licences, we propose that the domestic and non-domestic Standards become standard licence condition (SLC) 0 and 0A respectively.
- 2.8 Moving the Standards to the front of the supply licences will mean that the domestic Standards move from Section B of the supply licences, which only applies to licensees who can supply Domestic Customers, to a section of the licences that applies to all licensees. In order to make it clear that the

¹² The “broad principles” within the domestic and non-domestic Standards are currently set out in SLC 25C.4 and 7B.4 respectively (see the [electricity](#) and [gas](#) supply licences).

domestic Standards do not apply to suppliers who are permitted to supply non-domestic customers, we propose to add an express statement to that effect in this condition (see paragraph 0.4 in Appendix 3).

Amending the “Fairness Test”

Our initial proposal

- 2.9 Currently, the test of whether a customer has been treated fairly takes into account whether the licensee has gained an advantage of some kind through an act or omission which has “significantly favoured” their interests. This wording is based on the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs, which now form part of the *Consumer Rights Act 2015*). This legislation defines fairness by making reference to “a significant imbalance in the parties’ rights and obligations”.¹³
- 2.10 Our January consultation proposed revisions to the *Fairness Test* in the domestic and non-domestic Standards (see below) that would mean fairness is assessed against the impact on the consumer, rather than also considering the impact on the supplier. In addition, we want the Standards to be clearer to understand at first glance, including for consumers and newer market participants.

Proposed Fairness Test for the Domestic Standards

“For the purposes of this condition, the licensee or any Representative would not be regarded as treating a Domestic Customer Fairly if their actions or omissions give rise to a likelihood of detriment to the Domestic Customer, unless the detriment would be reasonable in all the relevant circumstances.”

Proposed Fairness Test for the Non-domestic Standards

“For the purposes of this condition, the licensee would not be regarded as treating a Micro Business Consumer Fairly if their actions or omissions give rise to a likelihood of detriment to the Micro Business Consumer, unless the detriment would be reasonable in all the relevant circumstances.”

- 2.11 It is important to note that the proposed introduction of the term “*unless the detriment would be reasonable in all the relevant circumstances*” would continue to recognise suppliers’ rights to carry out legitimate commercial activities in accordance with the supply licences, such as charging consumers for electricity or gas. It would also allow suppliers to exercise their rights under statute or the supply licences, as long as the supplier conducts these activities lawfully and proportionately.

¹³ Clarification on this term is available in: CMA (2015) [Unfair Contract Terms Guidance](#), pp 21-23.

- 2.12 We also proposed to amend the broad principle within the existing domestic and non-domestic Standards that requires information provided to customers to be “otherwise Fair” (see below).¹⁴ The principle currently within the Standards emphasises that unfair contract terms would be non-compliant. A consequence of removing the term “significantly favours” is that this policy intent is no longer embodied by the use of the word “Fair”. Our proposed wording aims to make it clear that unfair contract terms, and other unfair representations, are still captured under the revised Standards.^{15,16}

Proposed broad principle for the Domestic Standards
The licensee and any Representative provide information (whether in Writing or orally) to each Domestic Customer which:
“in terms of its content and in terms of how it is presented, does not create a material imbalance in the rights, obligations or interests of the licensee and the Domestic Customer in favour of the licensee.”

Proposed broad principle for the Non-domestic Standards
The licensee provides information (whether in Writing or orally) to each Micro Business Consumer which:
“in terms of its content and in terms of how it is presented, does not create a material imbalance in the rights, obligations or interests of the licensee and the Micro Business Consumer in favour of the licensee.”

Stakeholder feedback

- 2.13 Consultation responses and other stakeholder feedback showed unanimous support for maintaining a *Fairness Test* in the domestic and non-domestic Standards, as well as considerable support for our proposed revisions. Most small and medium-sized suppliers who responded said it was clearer than the current drafting, while most consumer groups supported the test hinging on the outcome to the consumer, rather than the impact on the supplier.
- 2.14 The two large suppliers who were comfortable with the new drafting welcomed that the revised test continues to recognise a supplier’s ability to carry out legitimate commercial activities and exercise their rights under statute or the supply licences, as long as these activities are conducted lawfully and proportionately. Non-domestic suppliers generally supported the change, and the majority of stakeholders considered that the *Fairness Test* should be consistent between the domestic and non-domestic Standards.

¹⁴ SLC 25C.4(b)(iv) and SLC 7B.4(b)(iv) states that the licensee (and for the domestic Standards only, any Representative) provide information (whether in Writing or orally) to each customer which “is otherwise Fair both in terms of its content and in terms of how it is presented, (with more important information being given appropriate prominence)”.

¹⁵ The principle capturing unfair terms has a particularly important role to play in the non-domestic Standards, as microbusinesses do not benefit from the same level of protection from unfair terms as domestic customers under consumer law. Our proposed revision to the current SLC7B.4(b)(iv) continues to ensure suppliers cannot use unfair contract terms to prevent microbusiness consumers switching away.

¹⁶ As a consequence of this proposed change, the requirement to ensure “*more important information is given sufficient prominence*” is being moved to another position within the Standards.

- 2.15 However there were also stakeholders (particularly large suppliers) who were concerned about moving away from the current *Fairness Test* and with our proposed drafting. These concerns can be summarised as:
- The current *Fairness Test* does not require changes, as it has been applied successfully in the past to protect consumers and the legal principles which underpin “significantly favours” have not lost relevance.
 - The proposed *Fairness Test* is not proportionate, as it does not consider the impact on the supplier, or the cause or intent of their actions.
 - It is unclear what acts or behaviours would and would not breach the revised *Fairness Test*.
 - The need for there to only be a “likelihood” of detriment under the *Fairness Test* means that the Standards are too broad in scope.
- 2.16 In relation to our proposed consequential changes to the information principle in the Standards (SLC 25C.4(b)(iv) and SLC 7B.4(b)(iv) – see paragraph 2.12), we note that one non-domestic supplier did not consider that the concept of a “material imbalance” was a better way of defining “Fairness”. They considered that this created ambiguity about how we view the relative size of the supplier and the microbusiness consumer.

Final proposal

- 2.17 **We intend to proceed with the revised drafting of the *Fairness Test* text for both the domestic and non-domestic Standards**, noting that we propose to position this test in the “definitions” table of these licence conditions (see appendices 3 and 4). **We also intend to proceed with consequential changes to the broad information principle that refers to the term “Fair”.**
- 2.18 We welcome the unanimous support stakeholders have shown for us to keep a *Fairness Test*. However, we note that some stakeholders did not support us changing the current drafting of the test. We think it is appropriate that a test of whether a domestic or microbusiness consumer is treated fairly should hinge on the outcome to the consumer, rather than the impact on the supplier. Although the current test has proven effective and enforceable, we do not think it places an adequate focus on the consumer outcomes expected under the Standards. We think the revised wording does achieve this, while also being simpler for a wider range of stakeholders to understand at first glance.
- 2.19 We disagree that it is less proportionate to focus the *Fairness Test* on the likelihood of customer detriment that results from a supplier’s acts and/or omissions. The *Fairness Test* continues to recognise that there are circumstances in which a likelihood of detriment may arise without unfairness to the consumer (such as a supplier carrying out legitimate commercial activities or exercising their rights under statute or the supply licence, as long as it is done so lawfully and proportionately). We also think that proportionality depends on us ensuring that we take action in the most serious cases where there is harm, or potential harm, to consumers. Our Enforcement

Guidelines set out the policies and processes we will follow to ensure we do act proportionately.¹⁷

- 2.20 Some suppliers felt that moving away from the premise of a licensee needing to be “significantly favoured” in order to fail the Standards is a material shift in approach. While we acknowledge this view, we do not intend to issue guidance on the revised *Fairness Test* – the onus is on suppliers to understand their customers and treat them fairly. We have said we will continue to support suppliers through things like sharing examples of good practice, lessons learned, challenge panels and bilateral engagement.
- 2.21 Potential non-compliance with the Standards will always be considered on the facts of the case. The drafting of the revised test clearly leaves open the possibility that there may be circumstances in which a likelihood of detriment should not be construed as unfair treatment, for example in the case of a supplier’s proportionate and lawful exercise of its statutory rights. The *Fairness Test* therefore encourages suppliers to think actively about the impact for each consumer, and whether their conduct aligns with the principles within the Standards. If a likelihood of customer detriment does arise, a supplier will have an opportunity to set out a compelling reason for why this was “reasonable in all the relevant circumstances”.
- 2.22 In relation to our consequential changes to the information principles within the Standards (see paragraph 2.12), we wish to make clear that the term “material imbalance” does not seek to define “fair”. This definition is provided by the *Fairness Test* and this is the definition that would apply to these, and all other, broad principles within the revised Standards.

Removing “all reasonable steps”

Our initial proposal

- 2.23 In our January consultation, we proposed to remove the *all reasonable steps* compliance threshold from the domestic and non-domestic Standards of Conduct. Instead of *all reasonable steps*, we proposed to require that licensees **“must achieve, interpret and apply the Standards of Conduct in a manner consistent with the Customer Objective”**.
- 2.24 We think that removing *all reasonable steps* so that the Standards themselves (and our engagement with suppliers concerning the Standards) focus more firmly on consumer outcomes will help drive suppliers to adopt and embed a consumer-centric culture. We want suppliers to be continually striving to ensure their conduct results in all customers being treated fairly. This means

¹⁷ As per our [Enforcement Guidelines](#), whether there was harm or potential harm to a consumer, that resulted or could have resulted from the alleged breach, is one of the several criteria we currently consider when deciding how serious any wrongdoing is and whether an enforcement case should be opened. Our case opening criteria are available at: Ofgem (2014) [Enforcement Guidelines](#), pp. 32-33.

that compliance measures have to be not only present, but also adequate and effective at delivering the consumer outcomes expected under the Standards.

- 2.25 We think that fair treatment of a customer is an achievable standard for a competent, responsible supplier to meet. Nevertheless, without an *all reasonable steps* threshold, more supplier conduct could (all else being equal) be non-compliant with our rules. As was the case with our SLC 25 proposals¹⁸, which have now been implemented, having a “must ensure” or “must achieve” threshold is not designed nor intended to result in enforcement action every time we see a negative consumer outcome. Under the Enforcement Guidelines, we expressly state that the efforts a supplier has made to achieve compliance with the Standards are relevant to how serious we consider a potential non-compliance to be, and consequently when it is appropriate to take enforcement action.¹⁹ Whether a contravention or failure of the Standards was deliberate or reckless also continues to have bearing on the amount of any penalty where a case is concluded.²⁰

Stakeholder feedback

- 2.26 Stakeholders had mixed views around our proposal to remove the *all reasonable steps* threshold from the domestic and non-domestic Standards. All consumer groups who responded supported this change and agreed it was appropriate to focus the Standards more sharply onto the consumer outcomes a supplier achieves. Five suppliers, including two large suppliers, were also comfortable with our proposal, with a couple qualifying this support by saying it was in the context of us maintaining a *Fairness Test* and upholding our commitments to act proportionately, in line with our Enforcement Guidelines and Better Regulation duties.
- 2.27 One stakeholder did not specifically support or oppose our proposal, but instead considered that the revised *Fairness Test* would have a similar effect to *all reasonable steps*. This stakeholder thought that the proposed *Fairness Test* requires us to assess if any likelihood of detriment was reasonable. To apply this test, they posited that Ofgem may need to identify “reasonable resolutions” that would have avoided detriment to customer/s, and that this closely mirrored how we currently consider the possible steps a supplier might have reasonably taken. We would like to make clear that the revised *Fairness Test* would not have the same effect as *all reasonable steps*, and we address this point in greater detail in paragraphs 2.38 - 2.39.
- 2.28 The majority of suppliers who responded to our consultation did not support the removal of *all reasonable steps*. The main reasons given were:

¹⁸ Ofgem (2017) [Statutory Consultation: Enabling consumers to make informed choices](#) p. 14.

¹⁹ When assessing the seriousness of a potential breach, we will consider whether a reasonable person, intent on complying with the Standards, would have acted in the way the supplier did in its interactions with consumers (see Ofgem (2014) [Enforcement Guidelines](#), p. 10.).

²⁰ Ofgem (2014) [Statement of policy with respect to financial penalties and consumer redress](#), pp. 6-8.

- The proposal would not increase suppliers' focus on consumer outcomes, as internal supplier processes are intertwined with the outcome delivered, and therefore keeping such a threshold would not disadvantage consumers (alternative reasonableness tests suggested were to take "*reasonable steps*" or take "*all reasonably practicable steps*").
 - The removal of *all reasonable steps* provides suppliers with less certainty about how to comply with the requirement and this could deter innovation, make investment decisions more difficult and result in spiralling costs as suppliers take unreasonable steps to meet "unachievable" standards.
 - Suppliers would face increased enforcement risk, as Ofgem could disregard the positive intentions of a supplier, or whether they acted in good faith, when seeking to uphold the Standards.
 - One non-domestic supplier contended that our proposal should not apply to the non-domestic Standards of Conduct, as microbusiness consumers do not require strengthened protection (especially since the removal of prescriptive non-domestic rules is not currently a priority for Ofgem).
- 2.29 A theme raised in a couple of stakeholder responses was that the proposed removal of *all reasonable steps* would mean that suppliers may always be non-compliant. We also note that stakeholders would welcome more information from Ofgem regarding how we will ensure we monitor and manage potential non-compliance with the Standards proportionately. Two suppliers preferred that this clarity be provided before *all reasonable steps* were removed from the Standards.

Final proposal

- 2.30 **We intend to proceed with the removal of the *all reasonable steps* compliance threshold from the domestic and non-domestic Standards, but propose minor drafting changes to what we proposed in the January consultation** (see below).

Domestic Standards

"The licensee must, and must ensure that its Representatives, achieve, ~~interpret and apply~~ the Standards of Conduct in a manner consistent with the Customer Objective."

Non-Domestic Standards

"The licensee must ~~ensure it achieves, interpret and apply~~ the Standards of Conduct in a manner consistent with the Customer Objective."

- 2.31 We intend to remove the words "interpret and apply" from the text proposed in our January consultation. We consider that the term "achieve" by itself is sufficient as a compliance threshold (replacing *all reasonable steps*). We also intend to move this compliance threshold towards the start of these licence conditions, before the broad principles within the Standards, so that the operative obligation licensees must comply with is more prominent.

- 2.32 Our proposal to remove *all reasonable steps* strongly aligns with the objectives of our move to rely more on principles. It will help strengthen our ability to protect the interests of existing and future consumers by:
- **Allowing more room for suppliers to innovate and compete for consumers.** Most of the prescriptive one-size-fits-all rules in the licences are of a “must ensure” nature. As we have said previously, removing many of these rules and relying more on principles does not represent a move to “lighter-touch” regulation of an essential service.²¹ Instead, we consider that a “must ensure” threshold reflects that “fair” customer treatment is an appropriate outcome for the supply licences to mandate. Making this expectation clear in the supply licences will provide us with greater scope to remove prescriptive rules, as well as help us to avoid adding new rules (applying to domestic and non-domestic suppliers) in the future.
 - **Providing effective consumer protection in an evolving market.** We think our compliance conversations will be most effective if their focus is on limiting any risk of harm to consumers, and less centred on the efforts a supplier has taken or is taking to get there.²² While we understand that outcomes can sometimes be unpredictable, suppliers who can’t or won’t address risk of harm to consumers quickly should expect that the issue is more likely to be considered as an enforcement matter. Removing *all reasonable steps* enables us to respond more swiftly to support and compel compliance measures, including through alternative actions²³, when our expectations under the Standards are not being met.
 - **Putting responsibility firmly on suppliers to deliver good consumer outcomes.** Removing *all reasonable steps* will better incentivise suppliers to embed a consumer-centric culture. This includes understanding the experiences of consumers and acting upon that insight. We maintain the view put forward in our policy consultation that fair treatment is something that domestic and microbusiness consumers are right to expect, and which a competent, responsible supplier, and their representatives, should feel confident in achieving.²⁴
- 2.33 We welcome that all consumer groups and some suppliers supported the policy intent behind our proposal to remove *all reasonable steps*. However, we also appreciate that a majority of suppliers were concerned that the proposal might increase regulatory uncertainty and risk, and this could drive up costs and deter innovation. We are alive to the risks and concerns these suppliers have raised and fully recognise that disproportionate action from Ofgem could

²¹ See Ofgem (2017) [Statutory consultation: enabling consumers to make informed choices](#), p. 13.

²² As highlighted at our [2016 Enforcement and Compliance Conference](#) (p. 51), we already resolve the majority of potential breaches through compliance activity. We see this emphasis on constructive engagement with suppliers continuing in future.

²³ Ofgem (2014) [Enforcement Guidelines](#), pp. 29-30.

²⁴ Ofgem (2017) [Standards of Conduct for suppliers in the retail energy market](#), p. 18.

deter innovation. We are therefore committed to build on our strong track record of acting proportionately.

- 2.34 We consider that keeping *all reasonable steps* (or a similar reasonableness threshold) would mean there is a higher risk that the objectives outlined in paragraph 2.32 are not fulfilled. Although maintaining such a threshold may provide comfort to some suppliers, we do not consider this should be at the expense of our other objectives. Rather, the best way to manage this risk is to ensure we continue to act proportionately when managing non-compliance. Our approach for doing this is clearly set out in our Enforcement Guidelines case opening criteria²⁵ and our bespoke approach for enforcing the Standards of Conduct.²⁶ We also note that we must uphold our general Better Regulation duties set out in our statutory obligations.²⁷

Operating the Standards proportionately

- 2.35 Several respondents to our consultation considered that the bespoke approach in the Enforcement Guidelines provides clarity on what we consider when assessing whether suspected non-compliance with the Standards warrants the opening of an enforcement case. Nevertheless, we do recognise that many other suppliers would like further clarity and assurance regarding how we will operate the Standards into the future.
- 2.36 In our Forward Work Programme, we outlined our commitment to review our approach to opening investigations by Q3 2017-18. This review will explore how we can give greater clarity around case opening in light of past enforcement experience.²⁸ Over 2017-18, we will also be seeking to provide greater transparency regarding the actions we are taking with suppliers to address compliance issues.²⁹
- 2.37 We note that some suppliers preferred that we do not progress with the removal of *all reasonable steps* until we had provided additional clarity on how we would operate the revised Standards proportionately. We do not agree with this approach, as it will delay the benefits our proposals will deliver for consumers. We also consider there are already appropriate safeguards in place that clearly oblige us to act proportionately (see paragraph 2.34 above).

²⁵ In particular, paragraph 3.37 of the [Enforcement Guidelines](#) (pp. 32-33)

²⁶ Ofgem (2014) [Enforcement Guidelines](#), pp. 10-11.

²⁷ 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.

²⁸ Ofgem (2017) [Forward Work Programme 2017-18](#), pp. 32-33.

²⁹ Ofgem (2017) [Forward Work Programme 2017-18](#), pp. 12-13.

Differences between “all reasonable steps” and the proposed “Fairness Test”

- 2.38 During our engagement with stakeholders we noted that there was some confusion between the current *all reasonable steps* threshold and the new terminology proposed for the *Fairness Test* (which sets out that unfairness will be found if there is a likelihood of detriment to a customer – unless the detriment would be “reasonable in all the relevant circumstances”). We wish to be clear that the revised *Fairness Test* does not attempt to replace the *all reasonable steps* threshold.
- 2.39 The proposed *Fairness Test* focuses attention on the consumer’s perspective, and whether they have been, or are likely to be, caused detriment that isn’t reasonable³⁰ – not what steps the supplier took to achieve compliance. Suppliers therefore have a strong incentive to think carefully about why the outcome they are delivering for the consumer is acceptable from the outset and throughout any interactions with a consumer. As per our Enforcement Guidelines, the reasonableness of a supplier’s efforts to comply with the Standards remains relevant to compliance conversations and potential enforcement action – along with the steps a supplier took to put things right promptly, and to offer redress to affected consumers where appropriate.

Adding a broad “informed choices” principle to the domestic Standards of Conduct

Our initial proposal

- 2.40 Our January consultation proposed adding a broad “informed choices” principle to the domestic Standards only (see proposed drafting below). This proposal relates to a recommendation that came out of the CMA’s Energy Market Investigation.³¹ The principle would also work alongside the five narrow principles added to SLC 25, relating to tariff comparison and sales and marketing conduct.³² We note that our proposed changes to the *Fairness Test* and the removal of the *all reasonable steps* compliance threshold are relevant to the effect this proposed “informed choices” principle will have on licensees.³³

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.”

³⁰ The revised Fairness Test will still allow suppliers to carry out legitimate commercial activities and exercise their rights under statute or the supply licences, if they do so lawfully and proportionately.

³¹ CMA (2016) [Energy Market Investigation Final Report](#), p. 57.

³² Ofgem (2017) [Final Decision: enabling consumers to make informed choices](#).

³³ Under our proposed changes, licensees need to ensure they achieve the proposed “informed choices” principle and would be considered to be in breach if their acts or omissions rise to a likelihood of detriment to a Domestic Customer, unless this detriment is reasonable in all the relevant circumstances.

- 2.41 The rationale for introducing the broad “informed choices” principle is to:
- provide an unambiguous signpost of our policy objective that consumers are able to make informed choices;
 - emphasise our expectation that suppliers should proactively seek to understand the information consumers need, and then act on these insights; and
 - provide effective, future-proof protection that helps ensure consumers can make an informed choice about a range of products, services or information relevant to their energy supply.³⁴

Stakeholder feedback

- 2.42 There was strong support for the policy objective of consumers being able to make informed choices, and introducing a principle along these lines into the domestic Standards. Several stakeholders agreed that this principle would clarify the consumer outcome that the new SLC 25 principles and the existing information principles within the domestic Standards aim to achieve.
- 2.43 Consumer groups also supported this proposal and were keen for us to monitor and communicate supplier performance against this “informed choices” principle, particularly in the context of how suppliers are engaging vulnerable consumers. Some consumer groups considered that an informed choices principle would provide valuable protection to microbusinesses and should therefore be added to the non-domestic Standards. In contrast, other stakeholders felt that the proposed principle would not add any protection for domestic customers which the existing domestic Standards and new SLC 25 principles did not already provide.
- 2.44 A few stakeholders requested that we further clarify our expectations of suppliers in particular scenarios. We do not wish to provide detailed guidance on how suppliers should respond in specific circumstances, as suppliers should be well-placed to work out for themselves how to enable consumers to make informed choices. However, we are keen for our overarching expectations to be clear to stakeholders, and address some general questions in paragraphs 2.50 to 2.59. Some stakeholders also raised the following points regarding the proposed principle (these points are also addressed below):
- One stakeholder questioned whether we should emphasise that consumers should not be hurried when facing a decision.
 - Two consumer groups were concerned that the use of the word “sufficient” could encourage suppliers to overload consumers with information, and pointed out that less information can sometimes enhance consumer decision-making.

³⁴ The original policy objective 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” was put to stakeholders in our August 2016 [Helping consumers make informed choices](#) consultation (p. 21). In our January 2017 [Standards of Conduct policy consultation](#) (pp. 21-22) we outlined our intent for this policy objective to extend to a wider range of factors, not just “tariffs”. These factors include, but are not limited to, customer service standards, ethics, privacy or environmental impacts.

- One supplier requested clarification on the scope of the term “supply of gas and/or electricity”, and how it differs to the scope of SLC 25.
- One supplier considered that the drafting could imply that suppliers must provide domestic customers with information about all tariffs offered by all suppliers.

Final proposal

- 2.45 After **considering stakeholder feedback, we intend to proceed with the broad “informed choices” principle as proposed in our January policy consultation**. We welcome the virtually unanimous support for our policy objective and are particularly encouraged that suppliers agree with the outcome this principle is aimed at achieving – namely, consumers being able to make informed choices.
- 2.46 The CMA recommendation to add a principle into the supply licences was triggered by its analysis and finding that many of the prescriptive Retail Market Review “Simpler Tariff Choices” rules should be removed. These rules, and the evidence upon which the CMA’s recommendation was based, related to the domestic market only. We do not consider we have an evidence base for including a broad informed choices principle in the non-domestic Standards at this time. Should the situation with regards to evidence change in the future, we may re-visit such a proposal.
- 2.47 We wish to point out that the term “supply of electricity/gas by the licensee” means that the broad informed choices principle applies to all information a supplier may provide to consumers, not just information relating to “Tariffs”.³⁵ We also wish to emphasise that the term “by the licensee” means that suppliers are not required to provide information about the products or services of other suppliers (although suppliers, or their Representatives, may deem this to be appropriate in some circumstances, such as facilitating comparison).
- 2.48 We note that one of the SLC 25 principles emphasises our expectation that suppliers do not use high-pressure sales techniques that might, amongst other things, “hurry” consumers into making a decision. In light of problems seen in the past, we consider these narrower principles will help suppliers understand the behaviour we expect when selling tariffs to consumers. We also note that the scope of the proposed “informed choices” principle is broader than the scope of SLC 25 and extends to factors such as customer service standards, ethics, privacy and environmental impacts.
- 2.49 Below we clarify our policy intent in response to further stakeholder questions.

³⁵ “Tariff” is defined in the supply licences as “Charges for the Supply of Electricity/Gas” combined with all other terms and conditions that apply, or are in any way linked, to a particular type of Domestic Supply Contract or particular type of Deemed Contract.

What do we expect from suppliers, over and above their existing obligations?

- 2.50 We have previously acknowledged the overlap between the policy intent of the proposed broad “informed choices” principle, the existing information principles in the domestic Standards³⁶ and the new SLC 25³⁷ tariff comparison and sales and marketing principles. We have also made clear that once these SLC 25 principles have bedded in and suppliers have become more accustomed to operating under them, we may wish to rely solely on the relevant Standards of Conduct broad principles in this area.³⁸
- 2.51 The proposed “informed choices” principle requires suppliers to ensure the information they provide is sufficient, in terms of both quality and quantity, to enable a consumer to make informed choices about a wide range of factors related to their energy supply. Take the example of a supplier who offers a complex dynamic price tariff. The proposed broad principle sends a very clear signal to suppliers that they need to make an extra effort to ensure consumers are enabled to make an “informed choice” about this tariff. Ensuring consumers can make “informed choices” about a more traditional tariff could be a more straightforward task in most cases, and therefore require relatively less effort. We acknowledge that the way different suppliers achieve this “informed choices” outcome will vary according to the circumstances.
- 2.52 One of the ways in which suppliers could satisfy themselves they are enabling consumers to make informed choices is by undertaking research to ensure they understand their customers’ experiences. Our engagement with suppliers, including during the 2016 Challenge Panel process, indicates there is limited evidence of this happening within the sector. We strongly encourage suppliers to utilise metrics, consumer insights and feedback loops to evaluate and improve their interactions with consumers.³⁹

Does the “informed choices” principle override existing prescriptive rules relating to supplier-customer communications?

- 2.53 A range of existing supplier-customer communications provide information that is designed to enable informed choices (eg bills, end-of-fixed-term notices, annual statements). What is included in these communications, and how it is presented, is mostly mandated through prescriptive rules. We are currently reviewing these rules and envisage that, if much of this prescription were to be removed, the proposed “informed choices” principle (along with any new principles relating to customer communications) would become more relevant in these areas.

³⁶ These information principles are currently set out in SLC 25C.4(b) of the domestic Standards.

³⁷ Ofgem (2017) [Final Decision: enabling consumers to make informed choices](#).

³⁸ Ofgem (2017) [Statutory consultation: enabling consumers to make informed choices](#), p. 15.

³⁹ Ofgem (2017) [Finding from the 2016 Challenge Panel](#), p. 10.

- 2.54 Until this review is complete, suppliers are required to comply with existing prescriptive rules unless notified otherwise. If a supplier considers that compliance with an existing prescriptive rule could lead to a conflict with a principle, we would encourage them to raise these specific concerns with us.

Does the proposed "informed choices" principle only require suppliers to enable informed choices when domestic customers are facing a decision?

- 2.55 We accept that in most instances, our proposed "informed choices" principle would be most relevant when a customer is facing a decision, such as contemplating changing tariffs or switching to a new supplier. In these instances, it is incumbent on the supplier to ensure they provide the right information, at the right time, in order to enable the consumer to make an informed choice.

- 2.56 However, we also consider that there will be circumstances where suppliers should proactively engage with customers who may not be facing a choice. Take the example of a supplier that marketed itself on a claim that 100% of its electricity was from renewable sources. If circumstances changed and this claim were no longer valid, we would expect the supplier to proactively inform their customers of this. Failure to do so would clearly deprive their customers of information that was relevant to their initial purchasing decision and therefore a prerequisite for them making an informed choice about their (ongoing) energy supply.

Does the "informed choices" principle require suppliers to increase the frequency or volume of information they provide to domestic customers?

- 2.57 Rather than setting prescriptive requirements around how much information suppliers provide and how often they provide it, the "informed choices" principle instead places an onus on suppliers to think carefully about, and be proactive in providing, the right information at the right time. This goes a step further than the existing principles in the domestic Standards, which require any information suppliers do provide to be, amongst other things, accurate, complete and appropriate. We note that some suppliers are starting to do their own consumer research to determine what volume and frequency of information suits consumers best. We encourage this practice.

Does the "informed choices" principle require suppliers to express information they provide a domestic customer in a particular way (eg express bundled products in monetary terms)?

- 2.58 The proposed principle gives suppliers flexibility to decide how to enable each domestic customer to make an informed choice. Subject to any prescriptive rules, it is for suppliers to consider whether expressing information in a particular way, such as a monetised figure, is the most effective method for ensuring consumers can understand the value a particular product or service offers them and make an informed choice. Again, we would encourage suppliers to monitor their own metrics, insights and feedback loops and use

these to satisfy themselves that they are enabling consumers to make an informed choice.

- 2.59 We will monitor the market in order to gain a clear sense about whether the policy intent of the “informed choices” principle is being satisfied. If our monitoring shows us that the principle is not achieving its policy intent, we would need to consider whether more specific rules are necessary to deliver the desired consumer outcome.

Adding a broad vulnerability principle to the domestic Standards of Conduct

- 2.61 Our Consumer Vulnerability Strategy⁴⁰ (CVS) sets out our expectations about how suppliers should identify and respond to vulnerability in the energy sector. Although we have seen the industry take steps to address vulnerability since we published our Strategy in 2013, this is not happening consistently. Our monitoring shows that often these consumers slip through the net because suppliers don’t identify them, don’t understand their circumstances or don’t anticipate what they need and adapt their behaviour or services accordingly. This is a concern, as vulnerable consumers are more susceptible to detriment, and this detriment is likely to be more substantial.
- 2.62 We want to see a step change in the attention given to addressing vulnerability across industry. In our January consultation, we said we wanted to align the domestic Standards with the overarching objectives of the Consumer Vulnerability Strategy by adding a broad vulnerability principle to this licence condition. We consider this a proportionate step that will help ensure protections for these consumers are robust and future-proof, while enabling vulnerable consumers to have an equal chance to benefit from the opportunities retail market developments will bring.

Our initial proposal

- 2.63 Our proposed vulnerability principle makes it clear to suppliers that they have a special responsibility to treat vulnerable customers fairly. Demonstrating a clear commitment to treat vulnerable customers fairly will require suppliers to understand how different vulnerable situations can affect customers at each stage of the consumer journey.
- 2.64 In our January consultation, we proposed to amend the Customer Objective within the domestic Standards (currently SLC 25C.2) to make clear that these broad principles apply to the dealings a supplier has with all domestic customers, including those who are vulnerable. This would emphasise that suppliers must make the extra effort needed to treat vulnerable customers fairly. To do this, it is essential that suppliers are able to find out who is

⁴⁰ Ofgem (2013) [Consumer Vulnerability Strategy](#).

vulnerable in a way that is sensitive to a consumer's needs and interests. We therefore proposed to introduce a broad principle to the domestic Standards that reflects our expectation that suppliers must work hard to identify each domestic customer in a vulnerable situation, and respond to their needs to ensure they are treated fairly. Our proposed definition of a vulnerable situation retains the spirit of the definition set out in the CVS.

Proposed Customer Objective

"The objective of this condition is for the licensee and any Representative to ensure that each Domestic Customer, including each Domestic Customer in a Vulnerable Situation, is treated Fairly ("the Customer Objective")."

Proposed Vulnerability Principle

***"(d)(i) implement, review and update processes which are, and continue to be, fit for the purpose of identifying each Domestic Customer in a Vulnerable Situation; and
(ii) when applying the Standards of Conduct in paragraphs (a) to (c) above, do so in a manner which takes into account any Vulnerable Situation of each Domestic Customer identified in accordance with the processes in (d)(i) above or otherwise."***

Proposed Definition of a Vulnerable Situation

"A Vulnerable Situation means the personal circumstances and characteristics of each Domestic Customer create a situation where he or she is:

- ***Significantly less able than a typical Domestic Customer to protect or represent his or her interests; and/or***
- ***Significantly more likely than a typical Domestic Customer to suffer detriment, or that detriment is likely to be more substantial."***

- 2.65 Our proposed changes to the Fairness Test and the removal of the "all reasonable steps" compliance threshold (see pages 11-19) are relevant to our vulnerability principle proposal. To be compliant a licensee (and any representative) must treat each customer fairly. This means ensuring their acts or omissions don't give rise to a likelihood of detriment to a domestic customer, unless this detriment would be reasonable in all the relevant circumstances.
- 2.66 We know identifying vulnerability can sometimes be difficult. Nevertheless, we expect suppliers to embed a flexible approach that ensures they account for the signs and triggers that a customer might be in a vulnerable situation. As is the case with the current domestic Standards, we would deal with potential non-compliance with the vulnerability principle proportionately, as per the Enforcement Guidelines⁴¹ and our Better Regulation duties.

⁴¹ While we will tend to focus on systemic failings, the [Enforcement Guidelines](#) (p. 11) already make clear that we will not rule out investigating instances of particular detriment affecting small groups or individuals, especially when those affected are vulnerable.

- 2.67 The Priority Services Register (PSR) rules require suppliers to identify vulnerable customers who may benefit from free non-financial “priority services” relating to safety, access and communication (eg quarterly meter readings). The approaches used to identify PSR-eligible customers should provide a starting point for suppliers when considering how to identify customers in vulnerable situations.⁴² However, it is important to note that the vulnerability principle is a broader obligation that requires suppliers to seek to identify all types of customers in vulnerable situations and treat them fairly.
- 2.68 Suppliers can develop their understanding of the range of vulnerable situations – and how to identify and respond to these – in a variety of ways. In particular, we urge suppliers to become familiar with our Consumer Vulnerability Strategy⁴³, which sets out risk factors that can create a vulnerable situation and indicates our expectations of energy companies. Our Social Obligations Report⁴⁴ is another important resource for suppliers. This summarises domestic suppliers’ performance on debt, disconnection, prepayment meters and services for consumers in vulnerable situations. It also sets out good practice and areas for improvement.

Stakeholder feedback

- 2.69 There was virtually unanimous support for a vulnerability principle from consumer groups and domestic suppliers. Stakeholders considered that such a principle could create a strong incentive for suppliers to have a special regard for consumers in vulnerable situations and to treat them fairly. Stakeholders saw the principle as a logical development of our Consumer Vulnerability Strategy.
- 2.70 Domestic suppliers and consumer groups sought clarification on our proposed drafting, policy intent and definition of a “vulnerable situation”. These points are addressed in paragraphs 2.75 – 2.85.
- 2.71 There were also calls from stakeholders for us to set out how we will monitor compliance with the vulnerability principle, including how we will use qualitative intelligence from consumer groups. These points are addressed in paragraphs 2.88 – 2.89.
- 2.72 Many stakeholders considered additional guidance and good practice examples would clarify our expectations. However, stakeholders emphasised that industry must be given the flexibility to innovate and avoid setting prescriptive standards or unintended benchmarks. We respond to these points in paragraph 2.88, and paragraphs 2.103 –2.105.

⁴² The PSR rules are set out in standard condition 26 of the [electricity](#) and [gas](#) supply licences. SLC26.7 provides a non-exhaustive list of personal characteristics that indicate a domestic customer could be vulnerable and might benefit from free, non-financial services.

⁴³ Ofgem (2013) [Consumer Vulnerability Strategy](#), pp. 12-19.

⁴⁴ Ofgem (2016) [Domestic Suppliers’ Social Obligations 2015 annual report](#).

- 2.73 There were conflicting views about the enduring role of prescriptive vulnerability rules. One large supplier stated that to maximise the effectiveness of the vulnerability principle, prescriptive rules should be reviewed as soon as possible. On the contrary, two consumer groups did not want us to strip out prescriptive rules that were put in place to address market failures. No examples of prescriptive rules that could be reviewed were provided in response to the consultation. We respond to these points in paragraphs 2.86 – 2.87.

Final proposal

- 2.74 **After considering stakeholder feedback, we intend to proceed with our proposals, with some drafting changes to the broad vulnerability principle** (the proposed Customer Objective and definition of “vulnerable situation” remain unchanged). The most significant changes relate to the first part of the broad principle. In response to stakeholder feedback, we propose to redraft this so our policy intent and expectations regarding the identification of vulnerable consumers is clearer. The rationale for these changes is explained in more detail below.

Proposed vulnerability principle

~~“(d)(i) implement, review and update processes which are, and continue to be, fit for the purpose of identifying each Domestic Customer in a Vulnerable Situation; seek to identify each Domestic Customer in a Vulnerable Situation, in a manner which is effective and appropriate, having regard to the interests of the Domestic Customer; and~~
(ii) when applying the Standards of Conduct in paragraphs (a) to (c) above, do so in a manner which takes into account any Vulnerable Situation of each Domestic Customer identified in accordance with ~~the processes in (d)(i) above or otherwise.~~

What is the intent behind the requirement to identify “each” Domestic Customer in a Vulnerable Situation?

- 2.75 Some stakeholders asked us to clarify our expectations about identifying “each” vulnerable customer. We have responded to this by changing our drafting to require suppliers to “*seek to identify each Domestic Customer in a Vulnerable Situation*”. This conveys our expectation that, as an essential service provider, suppliers must be alive to all kinds of vulnerable situations when having dealings with domestic customers. We think it is within a supplier’s gift to do this and expect suppliers to think broadly about how to identify and respond to vulnerability. This means going beyond employing “tick-box” processes. Instead, it requires suppliers to embed an understanding of the circumstances, characteristics and needs of vulnerable customers throughout their business.
- 2.76 The term “*seek to identify*” acknowledges the challenges suppliers face in identifying each vulnerable customer. Nevertheless, we expect suppliers to carefully consider how to overcome these challenges. For example, vulnerability can be transient and suppliers may not have contact with a

consumer in the time it takes that customer to fall in and out of a vulnerable situation. Yet it might be relevant for a customer advisor to record the situation if they do learn about it retrospectively. Some customers may not wish to disclose their circumstance to their supplier, or they may not know they are vulnerable. In this case, suppliers can listen for subtle or unspoken signs that a customer is vulnerable.

- 2.77 We expect suppliers to monitor the effectiveness of their approach to identifying vulnerability and make necessary changes to reflect lessons learned. We also expect suppliers to consider research, good practice and consumer feedback when developing and adapting their approach. We would seek evidence of attempts to identify vulnerability – and whether suppliers are learning from experience – in our monitoring and compliance discussions.

How proactive do we expect suppliers to be in identifying domestic customers in vulnerable situations?

- 2.78 Several stakeholders asked us to clarify how proactive we expect suppliers to be in identifying domestic customers in vulnerable situations. As with the narrower Priority Services Register rules, there is an onus on suppliers to determine how far they should go to a) effectively identify consumers in a vulnerable situation and b) ensure they act in a manner that is sensitive to consumers' needs and interests.

- 2.79 We have clarified this expectation by inserting "*in a manner which is effective and appropriate, having regard to the interests of the Domestic Customer*". For example, it is unlikely to be in the interests of a Domestic Customer if licensees apply scripts that begin each phone call with a long list of probing, overly intrusive questions, irrespective of the reason for the call. This drafting takes into account a customer who has just suffered a bereavement and who may benefit from being contacted again in a few weeks. The drafting therefore emphasises the need to be sensitive to customers' situations.

What does the proposed vulnerability principle require a supplier to do over and above their current obligations?

- 2.80 While the domestic Standards continue to apply to each domestic customer, our proposal makes it very clear that this includes customers who are in vulnerable situations. To ensure these customers are treated fairly it is essential that suppliers seek to identify them and take their vulnerability into account. What is required to treat a vulnerable customer fairly, over and above existing obligations, will depend on the individual customer's circumstances. Ultimately, it is for suppliers to understand the characteristics, circumstances and needs of vulnerable customers and satisfy themselves that their actions are resulting in vulnerable consumers being treated fairly.
- 2.81 The proposed principle places a firm responsibility on suppliers to build on the progress they may have already made towards embedding the Consumer

- Vulnerability Strategy⁴⁵ and to think for themselves about what is required in different circumstances. Suppliers might consider how they can:
- Create an organisational culture that is sensitive to the additional strains vulnerable consumers may face, and reflect this culture in their customer interactions.
 - Help customer-facing staff to identify signs of vulnerability through training and collaborating with relevant charities.
 - Be continually alert to signs of a change in a customer's circumstances that may affect their ability to engage.
 - Be transparent about how, when and where vulnerable consumers can get extra help.
 - Be sensitive and flexible in dealing with vulnerable consumers.
 - Test approaches used to identify and respond to vulnerability in other sectors.
- 2.82 To address queries raised by a minority of suppliers, we wish to reiterate that the pricing of products and services (except for deemed tariffs) will continue to be outside the scope of the domestic Standards. The Standards do apply to a determination of whether it was fair to charge for a given product or service, including the circumstances in which a charge is levied.
- Why does the proposed definition of a Vulnerable Situation not refer to "aspects of the market"?*
- 2.83 In the policy consultation, we proposed to delete "*combine with aspects of the market*" from the CVS definition of a vulnerable situation. This term reflects our view that the energy market has the potential to cause or exacerbate a vulnerable situation. We proposed to delete this because the domestic Standards and the proposed vulnerability principle already contain a link – set out in paragraph 2.85 – to the energy market. It is therefore unnecessary to have two references to the market – this creates duplication and detracts from our aim to be clear about our expectations.
- 2.84 Most suppliers agreed with the definition although two suppliers said removing this term could create uncertainty about where the suppliers' role starts and ends. Conversely, most consumer groups felt strongly that removing this phrase breaks the link between the idea that suppliers can create or exacerbate vulnerability.
- 2.85 We wish to emphasise that the proposed vulnerability principle would require suppliers to seek to identify vulnerability and take this into account, whether it was created or exacerbated by a supplier's actions or not. We also wish to reiterate that our vulnerability proposal does provide a strong link between suppliers' actions and the impact on vulnerable consumers:
- The domestic Standards apply to the dealings that licensees and their representatives have with each "Domestic Customer".

⁴⁵ Ofgem (2013) [Consumer Vulnerability Strategy](#).

Standards of Conduct for suppliers in the retail energy market

- A domestic customer is a participant in the retail energy market (“Domestic Customer” is defined in the supply licence as a customer that is supplied, or is requiring to be supplied, with electricity or gas at a Domestic Premises).
- The term “Domestic Customer” is included in our definition of a Vulnerable Situation, therefore providing a link to the concept of energy markets.

Will the vulnerability principle replace existing prescriptive rules?

- 2.86 Existing prescriptive rules would only be removed (or replaced by narrow principles) if we were confident that this would improve consumer outcomes. We propose to allow time to evaluate the effectiveness of the broad vulnerability principle before reviewing whether prescriptive rules are getting in the way of delivering better outcomes.
- 2.87 Until this review is complete, suppliers are required to comply with existing prescriptive rules unless notified otherwise. If a supplier considers that compliance with an existing prescriptive rule could lead to a conflict with a principle, we would encourage them to raise these concerns with us.

Operating the proposed vulnerability principle

- 2.88 The social obligations monitoring we undertake will continue to help us understand how well suppliers are supporting vulnerable consumers to engage in the market, and how they are being empowered and protected. This year’s report will include more examples of good practice, and it will highlight poor outcomes and the reasons they might be occurring. We are currently reviewing the social obligations data we collect and are considering whether to request evidence of how suppliers are identifying and responding to vulnerability.
- 2.89 Our current approach to monitoring the Standards includes analysing contacts and complaints data from the Ombudsman Services: Energy and Citizens Advice (including the Extra Help Unit). We use this data to identify systemic issues and emerging trends, including those relating to debt and disconnection. Social obligations data also feeds into this approach. This market monitoring underpins our compliance and engagement with suppliers. We supplement this with on-the-ground insights from charities and consumer groups as well as the insights we obtain from our consumer research.

Treating Customers Fairly Statement

Our initial proposal

- 2.90 The current domestic and non-domestic Standards place an enforceable requirement on suppliers to publish a “Treating Customers Fairly” (TCF) statement. This statement aims to help consumers to understand the service

and treatment they can expect from a supplier, which should then build consumer trust and engagement in the sector. The statement needs to be updated annually and suppliers must also provide a copy of the TCF statement to any person upon request, free of charge.

- 2.91 In our January consultation we sought views on whether the TCF statement was achieving its objectives sufficiently or whether it could be more effective if these requirements were amended.

Stakeholder feedback

- 2.92 Suppliers generally felt that, although wanting to ensure consumers expect fair treatment from a supplier is well-intentioned, the TCF statement itself was not the best way to achieve this desired consumer outcome. All consumer groups were also supportive of the statement's intent, but three considered that this requirement was not effective at engaging consumers and therefore offered little value. One consumer group felt that supplier actions were more important than a rarely-viewed statement on a website.
- 2.93 Most suppliers told us that an extremely small number of customers viewed their TCF statement online or asked for a hard copy. Most suppliers also stated that if the obligation were removed, they would still think about how to deliver the messages found in the TCF statement to consumers. Some suppliers said they would continue to use this sort of statement internally to engrain awareness of the Standards through all levels of their businesses, and to empower front line advisors to think about treating customers fairly in their day-to-day decision making.
- 2.94 A small number of respondents supported retaining the TCF statement obligation in its current form. One highlighted that the Challenge Panel process showed how the statement can be a useful tool for holding suppliers to account, while also reminding Ofgem about how suppliers can interpret the Standards in very different ways. Another respondent thought that the obligation should be maintained because it is healthy for firms to refresh their approach to TCF annually. One consumer group felt the obligation should not be removed before a review exploring how to increase the consistency and usefulness of the statement had been completed.

Final proposal

- 2.95 Evidence from our annual consumer survey generally aligns with the evidence from suppliers regarding consumer interest in the TCF statement. Survey results indicated that consumer recollection of these communications is relatively low, and has been marginally decreasing over the last three years.⁴⁶

⁴⁶ Ofgem (2014) [Retail Market Review 2014 Baseline Consumer Survey](#), pp. 213-214.

Furthermore, our review of supplier TCF statements as part of the 2016 Challenge Panel process showed that the quality of the statements varied considerably, with only a small number of suppliers using them as an opportunity to explain why consumers should choose them and to make firm commitments about service levels.⁴⁷ At the other end of the spectrum, some suppliers treated the obligation as a tick-box exercise, and only did the bare minimum by publishing statements that were brief and appeared to have been given limited consideration.

- 2.96 **Given the evidence that consumer interest in, and the effectiveness of, the TCF statement is low, our final proposal is to remove this obligation from the domestic and non-domestic Standards.** We consider that our other proposed changes to the Standards, which place clear obligations on suppliers to ensure customers are treated fairly, will be more effective at building consumer trust and engagement in the energy industry than the rarely viewed, or requested, TCF statement.
- 2.97 Although we propose to remove the TCF statement requirement, we are continuing to develop our thinking on how to gain assurance that suppliers are complying with the Standards and treating customers fairly. It is very important to us that we are gaining this assurance, and we are pleased to hear that many suppliers would think hard about how to effectively promote the messages from the TCF statement, internally and externally, if the mandatory requirement were removed. We encourage suppliers to share these statements or charters with us during the course of our engagement with them, as this will allow us to build our understanding about how they are ensuring they treat customers fairly.

Guidance for the revised Standards of Conduct

Our initial proposal

- 2.98 In our January consultation we said that we did not consider that additional Standards of Conduct guidance⁴⁸ is required in light of our proposals. We did, however, indicate we would be reviewing the Enforcement Guidelines in light of our move to rely more on principles and our developing approach to compliance.

Ofgem (2015) [Retail Market Review Evaluation Survey](#), pp. 683-685.

Ofgem (2016) [Consumer Engagement Survey 2016](#), pp. 910-919.

⁴⁶ Ofgem (2016) [Request for information and challenge panel: Enabling consumers to make informed choices](#).

⁴⁷ Ofgem (2017) [Finding from the 2016 Challenge Panel](#), p. 6.

⁴⁸ Current guidance on the Standards provides additional clarity on the terms “appropriate”, “honest and transparent”, “professional manner” and “plain and intelligible”. This guidance is contained within appendix 1 of the 2013 Final Decisions for the [domestic](#) (pp. 8-10) and [non-domestic](#) (pp. 11-13) Standards.

Stakeholder feedback

- 2.99 Suppliers generally agreed that it was important that guidance materials avoid providing detailed direction that sets prescription “by the backdoor”. Instead, most suppliers supported a more holistic and substantive approach. Relying more on case studies that outline good practice, while making it clear that this does not set requirements that must be adhered to, was supported. One supplier asked how past guidance relating to prescriptive rules would be treated by Ofgem if these rules were replaced with principles.
- 2.100 In the context of our proposed removal of *all reasonable steps*, many suppliers called for more guidance on how they should approach compliance with the Standards. Guidance on how Ofgem considers supplier “intent” in non-compliance cases, and how suppliers should approach situations that were not foreseeable, were highlighted in particular. Practical examples of how cases of non-compliance, that did not result in any enforcement action, were managed was also suggested as a useful tool. We discuss our intentions concerning the Enforcement Guidelines in paragraphs 2.35 – 2.37.
- 2.101 Consumer groups also warned us to avoid guidance that sets prescription “by the backdoor”, while also cautioning that without any guidance, suppliers might not feel comfortable to move away from the status quo under existing prescriptive rules. Consumer groups also considered that guidance which clearly sets out our policy intent would help them to make sense of the many ways in which suppliers are delivering the outcomes required under our principles. One consumer group thought that formalising any explanations of policy intent we have provided in consultations or final decisions, by presenting this in a permanent, easily accessible document, could be a helpful tool.
- 2.102 Several stakeholders raised the point that accessing guidance on the Ofgem website can be challenging, with one smaller supplier suggesting that we establish a central portal with clear sections relevant to different themes. We are looking to improve how we make guidance more accessible and will continue to engage with stakeholders to understand what changes would be most helpful.

Final Proposal

- 2.103 **After considering responses to our policy consultation, we maintain the view that additional guidance on the domestic and non-domestic obligations is not required.** We think the drafting of the Standards, and the clarifications in this statutory consultation, provide a clear description of our policy intent. We will consider how to make these messages more accessible to stakeholders as we progress with these licence changes. In light of our intentions to move the domestic and non-domestic Standards to the front of the licences (thereby changing the numbers of these licence conditions from SLC 25C and 7B to 0 and 0A respectively), we will also consider whether

existing guidance should be updated to reflect changes to the numbering of these SLCs.

- 2.104 As industry continues embedding the Standards within their business operations, we will continue to publish “good practice” and “lessons learned” materials.⁴⁹ These materials will provide suppliers with steers and ideas on how to uphold our principles. We will also be facilitating more engagement with suppliers, particularly if suppliers are considering new products or business models. This engagement is an opportunity for suppliers to test with us their understanding on how to comply with our principles.
- 2.105 As we move forward with our review of prescriptive rules, we will decide on a case-by-case basis whether we should remove any relevant existing guidance. If we decide to keep existing guidance, we will also consider how we can make it more accessible online. We are committed to supporting suppliers to understand their obligations. Improving the accessibility of the licences, guidance and other related materials is a priority for us.

Scope of the Standards of Conduct

- 2.106 In the January consultation we said that we feel the Standards could be made clearer, on the face of the rule, in relation to their scope in respect of charges and fees. We therefore proposed changes to the Standards that clarified that although the amount of a charge or fee (except for Deemed Contracts) is out of scope, the Standards do apply to a determination of whether it was fair to charge for a given product or service, including the circumstances in which a charge is levied.
- 2.107 We intend to proceed with our proposal to clarify what is within scope for both the domestic and non-domestic Standard of Conduct. The current drafting, and our proposed changes, are set out in appendix 2. The final drafting of SLCs 0.5 – 0.7 (the domestic Standards) and 0A.4 – 0A.7 (the non-domestic Standards) is set out in appendices 3 and 4 respectively.
- 2.108 To be clear, these amendments do not signal a change in policy intent and are consistent with the policy positions put forward during our original consultations on the Standards of Conduct licence conditions.

⁴⁹ Ofgem (2017) [Lessons learned from enforcement and compliance activity – sales and marketing](#).

3. Our information gathering powers

Chapter Summary

In our January consultation we set out our proposal to amend standard licence condition (SLC) 5, which relates to our information gathering powers. We intend to proceed with this amendment as we think it will enable us to continue to monitor the market effectively as we move to a more principles-based regulatory framework. We also propose to remove reporting obligations contained in several other SLCs. We think that these obligations would be obsolete once SLC 5 is amended.

Amending standard licence condition 5

Our initial proposal

- 3.1 Currently, SLC 5 allows us to compel information from licensees for the purpose of performing all our statutory functions⁵⁰, except our market monitoring function. In our January consultation we proposed an amendment to SLC 5 (set out below) that would extend the scope of this licence condition and allow us to gather information under SLC 5 for the purpose of this market monitoring function.

5.1 *After receiving a request from the Authority for Information that it may reasonably require or that it considers may be necessary to enable it to perform any functions given or transferred to it by or under any legislation, including any functions conferred on the Authority by or under the Regulation, the licensee must give that Information to the Authority when and in the form requested.*

5.2 *The licensee is not required to comply with paragraph 5.1 if:*
a) the Information is required by the Authority to enable it to perform its functions under section [34 of the Gas Act 1986 / section 47 of the Electricity Act 1989]; or
b) the licensee could not be compelled to produce or give the Information in evidence in civil proceedings before a court.

- 3.2 Although the Gas and Electricity Acts currently give us powers to gather information for our market monitoring function, this is limited to matters falling within the scope of our duties and powers as a National Regulatory Authority pursuant to the EU Third Energy Package.⁵¹ We consider that there may be scope for interpretation of these activities. Therefore, to remove uncertainty around our information gathering powers and ensure we are able to compel licensees to provide information for the purposes of all our

⁵⁰ Examples of functions for which we can currently gather information under SLC 5 includes our publication and enforcement functions.

⁵¹ Section 47A of the Electricity Act 1989 and section 34A of the Gas Act 1986.

monitoring activities, we propose to amend SLC 5 so it allows us to gather information for activities that fall within our market monitoring function.

- 3.3 Our reasons for amending SLC 5 align closely with our reasons for adapting how we monitor suppliers. The change will improve our ability to operate a principles-based regulatory framework by allowing us to:
- be confident that suppliers are achieving good consumer outcomes;
 - better understand the effectiveness of principles by assessing their impact on consumers and suppliers; and
 - engage proactively with suppliers on any non-compliance as early as possible, in order to allow us to act quickly in order to minimise or prevent consumer harm.

Stakeholder feedback

- 3.4 The majority of respondents broadly supported the proposed amendments to SLC 5. Consumer groups were supportive as they considered the change would enable us to monitor the market more effectively. Suppliers were also generally supportive of the proposal, but sought more information from us about the effect of the amendments. We address these points in paragraphs 3.5 - 3.6.

Final proposal

- 3.5 **After considering stakeholder feedback, we intend to proceed with our SLC 5 proposal.** Although most stakeholders generally supported this proposal, several suppliers who responded sought further information on how the proposed amendment would affect the volume of information we request from suppliers. We acknowledge that our move to principles requires us to engrain a risk-based, structured and proportionate monitoring approach that is consistent with our Better Regulation duties. To deliver this approach, we have been seeking to improve in two broad areas:
- continuing to strengthen the links we have with consumer groups and charities so that we can collect and share information more efficiently (our tripartite data sharing arrangements with Citizens Advice and the Ombudsman Services: Energy are key to this)
 - reviewing our own internal data architecture to ensure that we fully understand the data we need to gather, and where there may be scope for streamlining, so we are making best use of the information we hold.⁵²
- 3.6 Reducing overlap and duplication will minimise the burden information requests place on market participants. Over time, we will reduce our monitoring of suppliers that are able to demonstrate that they have a well-developed, consumer-centric approach, have robust risk management processes in place, and are engaging openly with us. Conversely, suppliers who give us more cause for concern will face greater scrutiny.

⁵² Ofgem (2017) [Forward Work Programme 2017/18](#), p. 37.

- 3.7 One supplier was concerned that we are seeking to give ourselves similar information gathering powers to other regulators without being subject to the same parliamentary scrutiny. However, we note that following significant parliamentary scrutiny we have been given broad powers to modify gas and electricity licence conditions in accordance with our principal objective of protecting the interests of existing and future gas and electricity consumers. Accordingly, we consider proposed modifications to SLC 5 clearly fall within those powers.
- 3.8 Another supplier queried whether the proposed SLC 5 amendment would result in us having the power to require suppliers to conduct costing exercises for fundamental market developments which have not been implemented. We consider we currently have that power and, therefore, the proposed amendment would not change our powers in that respect.

Consequential amendments to other supply licence conditions

- 3.9 Throughout the electricity and gas supply licences there are provisions which place an information reporting obligation on the licensee. Many of these obligations duplicate the effect of a revised SLC 5. We are keen to reduce unnecessary duplication throughout the licences so they are shorter and more streamlined. Table 1 sets out the amendments we propose to make to SLC 5, and other licence conditions.
- 3.10 We will continue to explore opportunities for streamlining obligations as we progress with our work to improve the accessibility of the supply licences and associated guidance.

Table 1 – Summary of changes to our information gathering obligations

SLC	Nature of obligation	Recommendation	Reasoning
SLC 5.2(a)	States that a licensee is not required to comply with paragraph 5.1 if the information is required by the Authority to enable it to perform its market monitoring function under the Gas and Electricity Acts.	Remove	Removing this provision will enable the Authority to monitor the market more effectively.
10.2	Requires a licensee to give the Authority information it requests regarding its efforts to ensure continuity of supply for Applicable Customers as per SLC 10.1.	Remove	This provision can be removed as a revised SLC 5 would have the same effect.
12A.14 and 12A.15 (electricity supply licence).	Requires a licensee to provide the Authority with information to enable it to monitor the licensees compliance with	Remove	This provision can be removed as a revised SLC 5 would have

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SLC	Nature of obligation	Recommendation	Reasoning
12A.15 and 12A.16 (gas supply licence)	SLC 12A (Matters relating to Theft of Electricity/Gas).		the same effect.
14A.9	Requires a licensee to give the Authority information it requests regarding its obligations under SLC 14A.6 and the number of customer transfers that have taken place within 21 days of the "Relevant Date".	Remove	This provision can be removed as a revised SLC 5 would have the same effect.
21.14 (electricity supply licence only)	Requires a licensee to give the Authority information it requests for the purpose of establishing whether the licensee is or has been in compliance with its obligations under SLC 21 (Fuel mix disclosure arrangements).	Remove	This provision can be removed as a revised SLC 5 would have the same effect.
25B.14, 25B.15	Requires a licensee to provide the Authority with information to enable it to monitor the licensee's compliance with SLC 25B (Interoperability of Advanced Domestic Meters).	Remove	This provision can be removed as a revised SLC 5 would have the same effect.

Appendix 1 – Consultation response

Any representations with respect to the proposed licence modifications in this statutory consultation must be made on or before 24 July 2017 to:

Future Retail Regulation, Office of Gas and Electricity Markets, 9 Millbank, London, SW1P 3GE or by email to FutureRetailRegulation@ofgem.gov.uk

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 will 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.

Appendix 2 – Changes to the Standards of Conduct

In Table 2 below we compare the current Standards of Conduct (“the Standards”) with our statutory consultation proposals. Key changes are highlighted and discussed below. A more detailed explanation of these changes is provided in Chapter 2 of this consultation. As we intend to move both the domestic and non-domestic Standards (SLCs 25C and 7B respectively) to the front of the supply licences, the number of these licence conditions has changed. Our proposal to change the layout of the Standards has also meant that the ordering of some provisions within the Standards has also changed.

Table 2 – Comparison of the current and proposed drafting of the domestic and non-domestic Standards

Current Standards of Conduct ⁵³		Statutory consultation proposed drafting		Reasoning behind proposed changes
SLC		SLC		
DOMESTIC STANDARDS				
25C.1	Subject to paragraph 25C.6, standard condition 25C applies to all activities of the licensee and any Representative which involve, or otherwise relate to, dealings with a Domestic Customer.	0.4	Standard condition 0 only applies to the licensee if: (a) the Secretary of State has provided, by a scheme made under Schedule 7 to the Utilities Act 2000, that Section B of the standard conditions will have effect; or (b) the Authority has issued a Domestic Supply Direction to the licensee under paragraph 3.3 of standard condition 3.	Paragraph 0.4 is a new provision which makes it clear that SLC 0 only applies to licensees who are authorised to supply Domestic Customers. Paragraph 0.5 (previously 25C.1) has been grouped with other provisions relating to the scope of domestic Standards.
		0.5	Subject to paragraph 0.6 standard condition 0 applies to all activities of the licensee and any Representative which involve, or otherwise relate to, dealings with a Domestic Customer.	
25C.2	The objective of this condition is for the licensee and any Representative to ensure that each Domestic Customer is treated fairly (“the Customer Objective”).	0.1	The objective of this condition is for the licensee and any Representative to ensure that each Domestic Customer, including each Domestic Customer in a Vulnerable Situation, is treated Fairly (“the Customer Objective”).	We have moved this provision to the start of the supply licences for prominence and to reflect the importance of our expectation that suppliers treat their customers fairly. We have also amended this provision to reflect our vulnerability proposal. We wish to make it clear

⁵³ Please note the licence drafting contained in appendix 2 relates to the electricity supply licence. Our proposed changes to the Standards apply to both the electricity and gas supply licence. The drafting used in the electricity and gas licence is materially the same.

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				that suppliers must have special regard for vulnerable customers and treat them fairly.
25C.3	For the purposes of this condition, the licensee or any Representative would not be regarded as treating a Domestic Customer fairly if their actions or omissions: (a) significantly favour the interests of the licensee; and (b) give rise to a likelihood of detriment to the Domestic Customer.	0.9	For the purposes of this condition: "Fair" and cognate expressions The licensee or any Representative would not be regarded as treating a Domestic Customer Fairly if their actions or omissions give rise to a likelihood of detriment to the Domestic Customer, unless the detriment would be reasonable in all the relevant circumstances.	We have amended this provision as per our proposal to revise the <i>Fairness Test</i> . These proposed changes reflect our view that the test of fair customer treatment should focus on the outcome for the consumer, and not also on the impact to the supplier. The test also continues to recognise a licensee's rights to undertake legitimate commercial activities and exercise their rights under statute or the supply licence, if done so lawfully and proportionately. We have also moved the <i>Fairness test</i> to the definitions section of this licence condition. It is applicable where the term "Fair" (and cognate expressions) is used.
25C.4	The Standards of Conduct are that: (a) the licensee and any Representative behave and carry out any actions in a Fair, honest, transparent, appropriate and professional manner; (b) the licensee and any Representative provide information (whether in Writing or orally) to each Domestic Customer which: (i) is complete, accurate and not misleading (in terms of the information provided or omitted); (ii) is communicated (and, if provided in Writing, drafted) in plain and intelligible language; (iii) relates to products or services which are appropriate to the Domestic Customer to whom it is directed; and (iv) is otherwise Fair both in terms of its content and in terms of how it is presented (with more important information being given appropriate prominence); (c) the licensee and any Representative: (i) make it easy for a Domestic Customer to contact the licensee; (ii) act promptly and courteously to put things right when the licensee or any Representative makes a mistake; and	0.3	The Standards of Conduct are that the licensee and any Representative: (a) behave and carry out any actions in a Fair, honest, transparent, appropriate and professional manner; (b) provide information (whether in Writing or orally) to each Domestic Customer which: (i) is complete, accurate and not misleading (in terms of the information provided or omitted); (ii) is communicated (and, if provided in Writing, drafted) in plain and intelligible language with more important information being given appropriate prominence; (iii) relates to products or services which are appropriate to the Domestic Customer to whom it is directed; (iv) in terms of its content and in terms of how it is presented, does not create a material imbalance in the rights, obligations or interests of the licensee and the Domestic Customer in favour of the licensee; and (v) is sufficient to enable the Domestic Customer to make informed choices about their supply of electricity by the licensee;	We have amended sub-paragraph b(iv) as a consequence of our changes to the <i>Fairness Test</i> . The use of the term "material imbalance" makes it clear that unfair terms are captured under the Standards (this policy intent was previously embodied by the word "Fair"). As a consequence of this change, the requirement to ensure "more important information is given sufficient prominence" would be moved to sub-paragraph b(ii). We have added sub-paragraph b(v) to the domestic Standards as per our proposed broad principle that requires suppliers to enable consumers to make informed choices. We think that informed consumers are central to a well-functioning market and wish to make our expectations of suppliers clear within the domestic Standards. This change also relates to a proposal the CMA made in their Energy Market Investigation final report (relating to their recommendation to remove many of the prescriptive "simpler tariff choices" rules). We have added sub-paragraph (d) to the Standards as per our broad vulnerability principle proposal. In order to treat vulnerable

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	(iii) otherwise ensure that customer service arrangements and processes are complete, thorough, fit for purpose and transparent.		<p>(c) in relation to customer service arrangements:</p> <ul style="list-style-type: none"> (i) make it easy for a Domestic Customer to contact the licensee; (ii) act promptly and courteously to put things right when the licensee or any Representative makes a mistake; and (iii) otherwise ensure that customer service arrangements and processes are complete, thorough, fit for purpose and transparent; <p>(d) in relation to Domestic Customers in Vulnerable Situations:</p> <ul style="list-style-type: none"> (i) seek to identify each Domestic Customer in a Vulnerable Situation, in a manner which is effective and appropriate, having regard to the interests of the Domestic Customer; and (ii) when applying the standards in paragraphs (a) to (c) above, do so in a manner which takes into account any Vulnerable Situation of each Domestic Customer identified in accordance with (d)(i) above or otherwise. 	customers fairly, we consider it is fundamental that suppliers seek to find out who these customers are, and take into account their needs. Our proposed drafting reflects this expectation.
25C.5	The licensee must take all reasonable steps to achieve the Standards of Conduct and ensure that it interprets and applies the Standards of Conduct in a manner consistent with the Customer Objective.	0.2	The licensee must, and must ensure that its Representatives, achieve the Standards of Conduct in a manner consistent with the Customer Objective.	We have amended the compliance threshold as per our proposal to remove <i>all reasonable steps</i> from the Standards. We've also amended the threshold to highlight that licensees must ensure their representatives achieve the domestic Standards. Removing <i>all reasonable steps</i> will mean that our assessment of whether a customer has been treated fairly is based on the customer outcomes a supplier has delivered, rather than their attempts to secure compliance. We have also moved this compliance provision toward the start of this licence condition so that it is more prominent.
25C.6	Apart from any matters relating to Deemed Contracts, standard condition 25C does not apply in respect of the amount or amounts of any Charges for the Supply of Electricity or any other type of charge or fee.	0.6	Apart from any matters relating to Deemed Contracts, standard condition 0 does not apply in respect of the amount or amounts of any Charges for the Supply of Electricity or any other type of charge or fee, applied or waived.	We have amended 0.6 as per our proposal to clarify the scope of the Standards. We wish to make it clear, on the face of the licence condition, when the domestic Standards do and do not apply. This does not represent a change

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		0.7	Standard condition 0 applies to the exercise of a licensee's discretion to apply or waive any fee or charge.	in policy intent and is consistent with the scope of the current domestic Standards. We have added 0.7 as per our proposal to clarify the existing scope of the Standards.
25C.7	The licensee must prepare and update annually information (hereafter referred to as the "Treating Customers Fairly Statement") which: (a) is set out in Writing; (b) uses a heading which clearly highlights that the information relates to how the licensee is seeking to treat customers fairly; and (c) includes the following information: (i) the main actions taken and being taken by the licensee in line with the Customer Objective and Standards of Conduct; and (ii) the service and treatment Domestic Customers can expect from the licensee and any Representative.	n/a	[We have proposed to delete this provision]	We have removed this provision as per our Treating Customers Fairly (TCF) statement proposal. We do not think it is necessary to retain this obligation. There is little evidence that the TCF statement is used by consumers and we think our other proposed changes to the Standards, which place clear obligations on suppliers to focus on outcomes and ensure customers are treated fairly, will be more effective at building consumer trust and engagement than the existing TCF statement requirements.
25C.8	If the licensee or any Affiliate Electricity Licensee has a Website, the licensee must publish the Treating Customers Fairly Statement on that Website in a position that is capable of easily being accessed by any person.	n/a	[We have proposed to delete this provision]	We have removed this provision as per our TCF statement proposal. The rationale is the same as for our proposed changes to 25C.7 (set out above).
25C.9	If any person requests a copy of the Treating Customers Fairly Statement, the licensee must provide a Written copy to that person free of charge as soon as reasonably practicable.	n/a	[We have proposed to delete this provision]	We have removed this provision as per our TCF statement proposal. The rationale is the same as for our proposed changes to 25C.7 (set out above).
25C.10	The licensee must have regard to any guidance on standard condition 25C (including in respect of definitions which appear in standard condition 1) which, following consultation (which may be conducted before this condition takes effect), the Authority may issue and may from time to time revise (following further consultation).	0.8	The licensee must have regard to any guidance on standard condition 0 (including in respect of definitions which appear in standard condition 1) which, following consultation (which may be conducted before this condition takes effect), the Authority has issued, may issue and may from time to time revise (following further consultation).	No substantive changes.
25C.11	For the purposes of this condition: Customer Objective Is to be interpreted in accordance with paragraph 25C.2. Fair and cognate expressions	0.9	For the purposes of this condition: Customer Objective Is to be interpreted in accordance with paragraph 0.1. Fair and cognate expressions	As per our <i>Fairness Test</i> proposal, we have moved this provision to the definitions section of the domestic Standards. This change allows for the compliance provision, and the broad principles within the Standards, to be more prominent at the start of this licence condition.

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	<p>Are to be interpreted in accordance with paragraphs 25C.3.</p> <p>Standards of Conduct Means one or more of sub-paragraphs 25C.4(a) to (c).</p> <p>Treating Customers Fairly Statement Is to be interpreted in accordance with paragraph 25C.7</p>		<p>The licensee or any Representative would not be regarded as treating a Domestic Customer Fairly if their actions or omissions give rise to a likelihood of detriment to the Domestic Customer, unless the detriment would be reasonable in all the relevant circumstances.</p> <p>Standards of Conduct Means one or more of sub-paragraphs 0.3(a) to (d)</p> <p>Vulnerable Situation Means the personal circumstances and characteristics of each Domestic Customer create a situation where he or she is: (a) significantly less able than a typical Domestic Customer to protect or represent his or her interests; and/or (b) significantly more likely than a typical Domestic Customer to suffer detriment or that detriment is likely to be more substantial.</p>	<p>As per our vulnerability principle proposal (mentioned above), we have added a definition of "vulnerable situation" to the domestic Standards. This drafting retains the spirit of the Consumer Vulnerability strategy definition, and we think it appropriately reflects the multi-dimensional and transient nature of vulnerability.</p> <p>Consistent with our TCF statement proposal mentioned above, we have removed the TCF statement definition from the domestic Standards.</p>
NON-DOMESTIC STANDARDS				
7B.1	Standard condition 7B applies to all Designated Activities in respect of a Micro Business Consumer.	0A.4	Standard condition 0A applies to all Designated Activities in respect of a Micro Business Consumer.	We have grouped paragraph 0A.4 (previously 7B.1) with other provisions relating to the scope of the non-domestic Standards.
7B.2	The objective of this condition is for the licensee to ensure that each Micro Business Consumer is treated fairly ("the Customer Objective").	0A.1	The objective of this condition is for the licensee to ensure that each Micro Business Consumer is treated Fairly ("the Customer Objective").	No change.
7B.3	For the purposes of this condition, the licensee would not be regarded as treating a Micro Business Consumer fairly if their actions or omissions: (a) significantly favour the interests of the licensee; and (b) give rise to a likelihood of detriment to the Micro Business Consumer.	0A.9	For the purposes of the condition: "Fair" and cognate expressions The licensee would not be regarded as treating a Micro Business Consumer Fairly if their actions or omissions give rise to a likelihood of detriment to the Micro Business Consumer, unless the detriment would be reasonable in all the relevant circumstances.	We have amended this provision as per our proposal to revise the <i>Fairness Test</i> . These proposed changes reflect our view that a test of fair customer treatment should focus on the outcome for the consumer, and not also on the impact to the supplier. The test also continues to recognise a licensee's rights to undertake legitimate commercial activities and exercise rights under statute or the supply licence, if done so lawfully and proportionately.

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				We have also moved the <i>Fairness test</i> to the definitions section of this licence condition. It is applicable where the term "Fair" (and cognate expressions) is used.
7B.4	<p>The Standards of Conduct are that:</p> <p>(a) the licensee behaves and carries out any actions in a Fair, honest, transparent, appropriate and professional manner;</p> <p>(b) the licensee provides information (whether in Writing or orally) to each Micro Business Consumer which:</p> <p>(i) is complete, accurate and not misleading (in terms of the information provided or omitted);</p> <p>(ii) is communicated (and, if provided in Writing, drafted) in plain and intelligible language;</p> <p>(iii) relates to products or services which are appropriate to the Micro Business Consumer to whom it is directed; and</p> <p>(iv) is otherwise Fair both in terms of its content and in terms of how it is presented (with more important information being given appropriate prominence);</p> <p>(c) the licensee:</p> <p>(i) makes it easy for a Micro Business Consumer to contact the licensee,</p> <p>(ii) acts promptly to put things right when the licensee makes a mistake, and</p> <p>(iii) otherwise ensures that customer service arrangements and processes are fit for purpose and transparent.</p>	0A.3	<p>The Standards of Conduct are that the licensee:</p> <p>(a) behaves and carries out any actions in a Fair, honest, transparent, appropriate and professional manner;</p> <p>(b) provides information (whether in Writing or orally) to each Micro Business Consumer which:</p> <p>(i) is complete, accurate and not misleading (in terms of the information provided or omitted);</p> <p>(ii) is communicated (and, if provided in Writing, drafted) in plain and intelligible language with more important information being given appropriate prominence;</p> <p>(iii) relates to products or services which are appropriate to the Micro Business Consumer to whom it is directed; and</p> <p>(iv) in terms of its content and in terms of how it is presented, does not create a material imbalance in the rights, obligations or interests of the licensee and the Micro Business Consumer in favour of the licensee;</p> <p>(c) in relation to customer service arrangements:</p> <p>(i) makes it easy for a Micro Business Consumer to contact the licensee;</p> <p>(ii) acts promptly to put things right when the licensee makes a mistake; and</p> <p>(iii) otherwise ensures that customer service arrangements and processes are fit for purpose and transparent.</p>	We have amended sub-paragraph b(iv) as a consequence of our changes to the <i>Fairness Test</i> . The use of the term "material imbalance" makes it clear that unfair terms are captured under the Standards (this policy intent was previously embodied by the word "Fair"). As a consequence of this change, the requirement to ensure "more important information is given sufficient prominence" would be moved to sub-paragraph b(ii).
7B.4	The licensee must take all reasonable steps to achieve the Standards of Conduct and ensure that it interprets and applies the Standards of Conduct in a manner consistent with the Customer Objective.	0A.2	The licensee must ensure it achieves the Standards of Conduct in a manner consistent with the Customer Objective.	We have amended the compliance threshold as per our proposal to remove <i>all reasonable steps</i> from the Standards. Removing <i>all reasonable steps</i> will mean that our assessment of whether a customer has been treated fairly is based on

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				the customer outcomes a supplier has delivered, rather than their attempts to secure compliance. We have also moved this compliance provision toward the start of this licence condition so that it is more prominent.
7B.6	In the event of a conflict between this condition and paragraph 14.2 of standard condition 14, this condition will prevail.	0A.7	In the event of a conflict between this condition and paragraph 14.2 of standard condition 14, this condition will prevail.	No change.
7B.7	Apart from any matters relating to Deemed Contracts, standard condition 7B does not apply in respect of the amount or amounts of any Charges for the Supply of Electricity or any other type of charge.	0A.5 0A.6	Apart from any matters relating to Deemed Contracts, standard condition 0A does not apply in respect of the amount or amounts of any Charges for the Supply of Electricity or any other type of charge or fee, applied or waived. Standard Condition 0A applies to the exercise of a licensee's discretion to apply or waive any fee or charge.	We have amended this provision as per our proposal to clarify the scope of the non-domestic Standards. We wish to make it clear, on the face of the licence condition, when the non-domestic Standards do and do not apply. This does not represent a change in policy intent and is consistent with the scope of the current non-domestic Standards. We have added this provision as per our proposal to clarify the existing scope of the non-domestic Standards.
7B.8	The licensee must prepare and update annually information (hereafter referred to as the "Treating Customers Fairly Statement") which: (a) is set out in Writing; (b) uses a heading which clearly highlights that the information relates to how the licensee is seeking to treat customers fairly; and (c) includes the following information: (i) the main actions taken and being taken by the licensee in line with the Customer Objective and Standards of Conduct; and (ii) the service and treatment Micro Business Consumers can expect from the licensee.		[We have proposed to delete this provision]	This provision has been removed as per our TCF statement proposal. We do not think it is necessary to retain this obligation. There is little evidence that the TCF statement is used by consumers and we think our other proposed changes to the Standards, which place clear obligations on suppliers to focus on outcomes and ensure customers are treated fairly, will be more effective at building consumer trust and engagement than the existing TCF statement requirements
7B.9	If the licensee or any Affiliate Electricity Licensee has a Website, the licensee must publish the Treating Customers Fairly Statement on that Website in a position that is capable of easily being accessed by any person.		[We have proposed to delete this provision]	We have removed this provision as per our Treating Customers Fairly statement proposal. The rationale is the same as for our proposed changes to 7B.8 above.
7B.10	If any person requests a copy of Treating Customers Fairly Statement, the licensee must provide a Written copy to that person free of charge as soon as reasonably practicable.		[We have proposed to delete this provision]	We have removed this provision as per our Treating Customers Fairly statement proposal. The rationale is the same as for our proposed changes to 7B.8 above.

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7B.11	The licensee must have regard to any guidance on standard condition 7B (including in respect of definitions which appear in standard condition 1) which, following consultation (which may be conducted before this condition takes effect), the Authority may issue and may from time to time revise (following further consultation).	0A.8	The licensee must have regard to any guidance on standard condition 0A (including in respect of definitions which appear in standard condition 1) which, following consultation (which may be conducted before this condition takes effect), the Authority has issued , may issue and may from time to time revise (following further consultation).	No substantive changes.
7B.12	<p>For the purposes of this condition:</p> <p>“Billing” all matters relating to the provision of a Bill or statement of account to a Customer, including the content and calculations relating to such a Bill or statement of account and the collection and use of information relating to the consumption of electricity.</p> <p>“Contractual Information” includes the drafting and content of a Non-domestic Supply Contract or Deemed Contract and the provision of information relating to the Non-domestic Supply Contract or Deemed Contract that applies to a Micro Business Consumer which is being supplied by the licensee.</p> <p>“Customer Objective” is to be interpreted in accordance with paragraph 7B.2.</p> <p>“Customer Transfers” includes, but is not limited to, any matters that relate to a Customer’s ability to change supplier and/or affect the timeframe for changing supplier (including related terms and conditions of a Non-domestic Supply Contract or Deemed Contract that applies to a Micro Business Consumer).</p> <p>“Designated Activities” mean each of the following:</p>	0A.9	<p>For the purposes of this condition:</p> <p>“Billing” all matters relating to the provision of a Bill or statement of account to a Customer, including the content and calculations relating to such a Bill or statement of account and the collection and use of information relating to the consumption of electricity.</p> <p>“Contractual Information” includes the drafting and content of a Non-domestic Supply Contract or Deemed Contract and the provision of information relating to the Non-domestic Supply Contract or Deemed Contract that applies to a Micro Business Consumer which is being supplied by the licensee.</p> <p>“Customer Objective” is to be interpreted in accordance with paragraph 0A.1.</p> <p>“Customer Transfers” includes, but is not limited to, any matters that relate to a Customer’s ability to change supplier and/or affect the timeframe for changing supplier (including related terms and conditions of a Non-domestic Supply Contract or Deemed Contract that applies to a Micro Business Consumer).</p> <p>“Designated Activities” mean each of the following:</p>	

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<p>(a) the accuracy of a Bill or statement of Account; (b) the timeframe for a Micro Business Consumer receiving a Bill or statement of account and the timeframe for the payment of a Bill; (c) any written or oral communications regarding Billing or Contractual Information; (d) Customer Transfers; (e) any matters relating to Deemed Contracts; and (f) any matters which fall within the scope of standard conditions 7A, 14, 14A and 21B (in so far as they relate to a Micro Business Consumer).</p> <p>“Fair” and cognate expressions are to be interpreted in accordance with paragraph 7B.3.</p> <p>“Micro Business Consumer” Has the meaning given in standard condition 7A.</p> <p>“Standards of Conduct” Means one or more of sub-paragraphs 7B.4(a) to (c)</p> <p>“Treating Customers Fairly Statement” is to be interpreted in accordance with paragraph 7B.8.</p>	<p>(a) the accuracy of a Bill or statement of Account; (b) the timeframe for a Micro Business Consumer receiving a Bill or statement of account and the timeframe for the payment of a Bill; (c) any written or oral communications regarding Billing or Contractual Information; (d) Customer Transfers; (e) any matters relating to Deemed Contracts; and (f) any matters which fall within the scope of standard conditions 7A, 14, 14A and 21B (in so far as they relate to a Micro Business Consumer).</p> <p>“Fair” and cognate expressions The licensee would not be regarded as treating a Micro Business Consumer Fairly if their actions or omissions give rise to a likelihood of detriment to the Micro Business Consumer, unless the detriment would be reasonable in all the relevant circumstances.</p> <p>“Micro Business Consumer” Has the meaning given in standard condition 7A.</p> <p>“Standards of Conduct” Means one or more of sub-paragraphs 0A.3 (a) to (c)</p>	<p>As per our <i>Fairness Test</i> proposal, we have moved this provision to the definitions section of the non-domestic Standards. We think this change allows for the compliance provision and the broad principles within the Standards themselves to be more prominent at the start of SLC 0A.</p> <p>Consistent with our TCF statement proposal mentioned above, we have removed the TCF statement definition from the non-domestic Standards.</p>
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Appendix 3 – Revised domestic Standards of Conduct

Standard Condition 0: Treating Domestic Customers Fairly⁵⁴

Customer Objective

- 0.1 The objective of this condition is for the licensee and any Representative to ensure that each Domestic Customer, including each Domestic Customer in a Vulnerable Situation, is treated Fairly (“the Customer Objective”).

Achieving the Standards of Conduct

- 0.2 The licensee must, and must ensure that its Representatives, achieve the Standards of Conduct in a manner consistent with the Customer Objective.
- 0.3 The Standards of Conduct are that the licensee and any Representative:
- a) behave and carry out any actions in a Fair, honest, transparent, appropriate and professional manner;
 - b) provide information (whether in Writing or orally) to each Domestic Customer which:
 - i. is complete, accurate and not misleading (in terms of the information provided or omitted);
 - ii. is communicated (and, if provided in Writing, drafted) in plain and intelligible language with more important information being given appropriate prominence;
 - iii. relates to products or services which are appropriate to the Domestic Customer to whom it is directed;
 - iv. in terms of its content and in terms of how it is presented, does not create a material imbalance in the rights, obligations or interests of the licensee and the Domestic Customer in favour of the licensee; and
 - v. is sufficient to enable the Domestic Customer to make informed choices about their supply of electricity by the licensee;
 - c) in relation to customer service arrangements:
 - i. make it easy for a Domestic Customer to contact the licensee;
 - ii. act promptly and courteously to put things right when the licensee or any Representative makes a mistake; and
 - iii. otherwise ensure that customer service arrangements and processes are complete, thorough, fit for purpose and transparent;
 - d) in relation to Domestic Customers in Vulnerable Situations:

⁵⁴ Please note the licence drafting contained in appendix 3 relates to the electricity supply licence. Our proposed changes to the Standards apply to both the electricity and gas supply licence. The drafting used in the electricity and gas licence is materially the same.

- i. seek to identify each Domestic Customer in a Vulnerable Situation, in a manner which is effective and appropriate, having regard to the interests of the Domestic Customer; and
- ii. when applying the Standards of Conduct in paragraphs (a) to (c) above, do so in a manner which takes into account any Vulnerable Situation of each Domestic Customer identified in accordance with (d)(i) above or otherwise.

Scope of condition

- 0.4 Standard condition 0 only applies to the licensee if:
- a) the Secretary of State has provided, by a scheme made under Schedule 7 to the Utilities Act 2000, that Section B of the standard conditions will have effect; or
 - b) the Authority has issued a Domestic Supply Direction to the licensee under paragraph 3.3 of standard condition 3.
- 0.5 Subject to paragraph 0.6, standard condition 0 applies to all activities of the licensee and any Representative which involve, or otherwise relate to, dealings with a Domestic Customer.
- 0.6 Apart from any matters relating to Deemed Contracts, standard condition 0 does not apply in respect of the amount or amounts of any Charges for the Supply of Electricity or any other type of charge or fee, applied or waived.
- 0.7 Standard condition 0 applies to the exercise of a licensee’s discretion to apply or waive any fee or charge.

Guidance

- 0.8 The licensee must have regard to any guidance on standard condition 0 (including in respect of definitions which appear in standard condition 1) which, following consultation (which may be conducted before this condition takes effect), the Authority has issued, may issue and may from time to time revise (following further consultation).

Definitions

- 0.9 For the purposes of this condition:

Customer Objective	is to be interpreted in accordance with paragraph 0.1.
Fair and cognate expressions	The licensee or any Representative would not be regarded as treating a Domestic Customer Fairly if their actions or omissions give rise to a likelihood of detriment to the Domestic Customer, unless the detriment would be reasonable in all the relevant circumstances.
Standards of Conduct	Means one or more of sub-paragraphs 0.3(a) to (d).



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Vulnerable Situation	means the personal circumstances and characteristics of each Domestic Customer create a situation where he or she is: (a) significantly less able than a typical Domestic Customer to protect or represent his or her interests; and/or (b) significantly more likely than a typical Domestic Customer to suffer detriment or that detriment is likely to be more substantial.
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Appendix 4 – Revised non-domestic Standards of Conduct

Standard Condition 0A: Treating Micro Business Consumers Fairly⁵⁵

Customer Objective

0A.1 The objective of this condition is for the licensee to ensure that each Micro Business Consumer is treated Fairly (“the Customer Objective”).

Achieving the Standards of Conduct

0A.2 The licensee must ensure it achieves the Standards of Conduct in a manner consistent with the Customer Objective.

0A.3 The Standards of Conduct are that the licensee:

- a) behaves and carries out any actions in a Fair, honest, transparent, appropriate and professional manner;
- b) provides information (whether in Writing or orally) to each Micro Business Consumer which:
 - i. is complete, accurate and not misleading (in terms of the information provided or omitted);
 - ii. is communicated (and, if provided in Writing, drafted) in plain and intelligible language with more important information being given appropriate prominence;
 - iii. relates to products or services which are appropriate to the Micro Business Consumer to whom it is directed; and
 - iv. in terms of its content and in terms of how it is presented, does not create a material imbalance in the rights, obligations or interests of the licensee and the Micro Business Consumer in favour of the licensee;
- c) in relation to customer service arrangements:
 - i. makes it easy for a Micro Business Consumer to contact the licensee;
 - ii. acts promptly to put things right when the licensee makes a mistake; and
 - iii. otherwise ensures that customer service arrangements and processes are fit for purpose and transparent.

Scope of Condition

0A.4 Standard condition 0A applies to all Designated Activities in respect of a Micro Business Consumer.

⁵⁵ Please note the licence drafting contained in appendix 4 relates to the electricity supply licence. Our proposed changes to the Standards apply to both the electricity and gas supply licence. The drafting used in the electricity and gas licence is materially the same.

- 0A.5 Apart from any matters relating to Deemed Contracts, standard condition 0A does not apply in respect of the amount or amounts of any Charges for the Supply of Electricity or any other type of charge or fee, applied or waived.
- 0A.6 Standard Condition 0A applies to the exercise of a licensee’s discretion to apply or waive any fee or charge.
- 0A.7 In the event of a conflict between this condition and paragraph 14.2 of standard condition 14, this condition will prevail.

Guidance

- 0A.8 The licensee must have regard to any guidance on standard condition 0A (including in respect of definitions which appear in standard condition 1) which, following consultation (which may be conducted before this condition takes effect), the Authority has issued, may issue and may from time to time revise (following further consultation).

Definitions

- 0A.9 For the purposes of this condition:

“Billing”	all matters relating to the provision of a Bill or statement of account to a Customer, including the content and calculations relating to such a Bill or statement of account and the collection and use of information relating to the consumption of electricity.
“Contractual Information”	includes the drafting and content of a Non-domestic Supply Contract or Deemed Contract and the provision of information relating to the Non-domestic Supply Contract or Deemed Contract that applies to a Micro Business Consumer which is being supplied by the licensee.
“Customer Objective”	is to be interpreted in accordance with paragraph 0A.1.
“Customer Transfers”	includes, but is not limited to, any matters that relate to a Customer’s ability to change supplier and/or affect the timeframe for changing supplier (including related terms and conditions of a Non-domestic Supply Contract or Deemed Contract that applies to a Micro Business Consumer).
“Designated Activities”	mean each of the following: a) the accuracy of a Bill or statement of Account; b) the timeframe for a Micro Business Consumer receiving a Bill or

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	<p>statement of account and the timeframe for the payment of a Bill;</p> <p>c) any written or oral communications regarding Billing or Contractual Information;</p> <p>d) Customer Transfers;</p> <p>e) any matters relating to Deemed Contracts; and</p> <p>f) any matters which fall within the scope of standard conditions 7A, 14, 14A and 21B (in so far as they relate to a Micro Business Consumer).</p>
"Fair" and cognate expressions	The licensee would not be regarded as treating a Micro Business Consumer Fairly if their actions or omissions give rise to a likelihood of detriment to the Micro Business Consumer, unless the detriment would be reasonable in all the relevant circumstances.
"Micro Business Consumer"	has the meaning given in standard condition 7A.
"Standards of Conduct"	Means one or more of sub paragraphs 0A.3(a) to (c).

Appendix 5 – Summary of responses to policy consultation

On 30 January 2017, we consulted on proposed changes to the domestic and non-domestic Standards of Conduct, and standard licence condition (SLC) 5. The consultation closed on 13 March and we received 26 responses from consumer groups, suppliers and other interested parties (see table 3).

This appendix summarises the key themes stakeholders raised in their formal consultation responses (see list of respondents below) and does not necessarily represent the views of Ofgem. The summary also draws on key takeaways from a workshop we held on February⁵⁶, and an online survey that stakeholders could respond to. Please note that the summary of responses to our Call for Evidence questions is contained in appendix 6.

Table 3 – Consultation respondents

Stakeholder Name	Stakeholder Type
Age UK	Consumer Groups
Centre for Consumers and Essential Services	
Christians Against Poverty	
Citizens Advice	
National Energy Action	
Ombudsman Services: Energy	
Scope	
Step Change Debt Charity	
Energy UK	
I&C Shippers and Suppliers Group (ICoSS)	Industry Groups
Centrica	Large Suppliers
EDF	
Eon	
NPower	
ScottishPower	
SSE	
Haven Power	Non-Domestic Suppliers
Opus Energy	
SmartestEnergy	
Bristol Energy	Small and Medium Suppliers
Economy Energy	
First Utility	
Octopus Energy	
Ovo	
Information Commissioner	
Mr John Howard	

⁵⁶ Ofgem (2017) [Future of Retail Market Regulation stakeholder workshop – 28 February 2017](#).

Question 1: Do you agree with our proposal to retain a Fairness Test for all the broad principles within the domestic Standards of Conduct? If you don't agree, please provide an explanation in support of your answer.

All respondents who answered this question agreed that a *Fairness Test* should be retained and applied across all broad principles within the Standards of Conduct ("the Standards"). Suppliers generally felt that the test provides an objective measure upon which compliance with the Standards can be assessed. A small number of consumer groups stated that the emphasis a *Fairness Test* places on treating customers fairly helps lead to suppliers providing better customer service.

Some suppliers highlighted that the proposed removal of *all reasonable steps* will place increased importance on the *Fairness Test*. In their response, one supplier emphasised that we will need to continue being proportionate when applying a *Fairness Test*, and not penalise suppliers for infrequent mistakes.

Question 2: Do you agree with our proposed wording for a revised Fairness Test: "the licensee or any Representative would not be regarded as treating a Domestic Customer/Micro Business Consumer Fairly if their actions or omissions give rise to a likelihood of detriment to the Domestic Customer/Micro Business Consumer, unless the detriment would be reasonable in all the relevant circumstances"?

Several stakeholders supported our proposed drafting of the *Fairness Test*, and supported increasing the focus of the test on consumer outcomes, rather than the impact of an act or omission on a supplier. Consumer groups generally agreed with the removal of the wording "significantly favour the interest of the licensee". They considered this change made it clear that a supplier could be in breach of the Standards, even if those actions were not overtly in the supplier's interest.

The two large suppliers who were comfortable with the new drafting welcomed that the test recognises a supplier's ability to carry out legitimate commercial activities and exercise their rights under statute or the licences, as long as these activities are conducted in a lawful and proportionate way. A consumer group also cautioned that we should be careful when framing a lawful activity (such as disconnection) as something that could be reasonable, as some newer suppliers may not appreciate the nuance that such activities need to be carried out proportionately.

Stakeholders who were not supportive of our proposal, and their reasons for this, are set out below:

- Some large suppliers felt that removing "significantly favours" from the *Fairness Test* removes appropriate consideration of supplier intent, which they thought could cause a supplier to be considered in breach of the licence if detriment occurs for reasons outside of their control.
- Several stakeholders thought the current test should not be changed, as it provides regulatory certainty and has been successfully applied in past enforcement cases. They also put forward the view that the established "significantly favours" test has not lost any legal relevance since the Standards were introduced into the supply licences in 2013.
- Two suppliers raised the point that the drafting stipulates that an act or omission need only give rise to a "likelihood of detriment" for it to contravene the *Fairness Test*. They considered this could mean that a supplier could be deemed to have

acted unfairly even if there was only a remote chance of consumer detriment. Alternative drafting proposed included detriment that was “reasonably foreseeable” and “actual” and “significant” detriment.

- One supplier did not agree with the rationale behind the rewording of the *Fairness Test*. They felt that allowing a test to evolve with time renders it more likely to be abused by changes in political thinking.
- Three suppliers raised the point that moving away from the “significantly favours” concept means that the extensive guidance that exists around this term can no longer assist suppliers in understanding their obligations under the Standards.
- One consumer group and a non-domestic supplier were concerned that the revised test could send a message to suppliers that, in certain circumstances they will not be required to treat customers fairly.
- One supplier suggested that instead of an emphasis on preventing consumer detriment, the test could instead more clearly incentivise the achievement of good outcomes.
- Some suppliers asked for further clarity from us around the definition of “reasonable in all the relevant circumstances”. Consumer groups also requested further clarification around what behaviours would and would not be “Fair”, as this could help their frontline advisors interpret the revised Standards.

Question 3: Do you agree that the changes to the Fairness Test should be made to the non-domestic Standards of Conduct at the same time as the domestic Standards of Conduct?

Most respondents agreed that the changes to the *Fairness Test* should be made to both the domestic and non-domestic Standards. One supplier who did not agree with our proposal to amend the *Fairness Test* within the non-domestic Standards thought that microbusinesses did not warrant such protection and should be responsible enough to assess the contract they are entering into with suppliers.

Question 4: Do you agree with our proposal to remove the “all reasonable steps” threshold from the domestic Standards of Conduct? If you don’t agree, please provide an explanation in support of your answer.

All consumer groups, and a minority of suppliers (including two large suppliers) were comfortable with the removal of *all reasonable steps*. They accepted our desire for compliance with the Standards to depend on consumer outcomes, rather than supplier efforts to secure compliance. The suppliers who agreed did so on the basis that we would operate the revised Standards proportionately, and in line with our Better Regulation duties.

A majority of suppliers felt some anxiety about the proposed removal of *all reasonable steps* and did not support this change. The key reasons put forward for not supporting this proposal are set out below:

- One large supplier considered that internal supplier processes are intertwined with consumer outcomes, and therefore claimed that this threshold did not disadvantage consumers.
- Several suppliers, and one industry group, considered that the removal of *all reasonable steps* provides suppliers with less certainty in understanding how to comply with the requirement. They thought that this could lead to investment

decisions becoming much more difficult, and potentially result in increased costs for consumers as suppliers take “unreasonable” steps to ensure compliance.

- Several suppliers considered that their positive intentions could be disregarded, and this increased risk of enforcement could breed a risk averse culture where suppliers are less willing to innovate.
- The proposed removal of *all reasonable steps* would mean an inappropriately wide range of conduct could be considered non-compliant with the Standards.

Stakeholders that expressed these concerns want more assurances from us about how we intend to monitor and manage potential non-compliance with the revised Standards. Two suppliers preferred that we give these assurances before any proposed changes to the compliance threshold are made. Suppliers also called for greater transparency around how we will ensure compliance conversations are constructive for suppliers, and that any subsequent actions will be proportionate.

One stakeholder did not specifically support or oppose our proposal, but instead observed that the revised *Fairness Test* could have a similar effect to *all reasonable steps*. This stakeholder pointed out that the proposed *Fairness Test* requires the assessment of whether any likelihood of detriment was reasonable. To apply this test, they suggested that we may need to identify “reasonable resolutions” that would have avoided detriment to customer/s, and that this closely mirrored the possible steps a supplier might have reasonable taken.

Question 5: Do you agree that all reasonable steps should be removed from the non-domestic Standards of Conduct at the same time as the domestic Standards of Conduct?

Some respondents were not convinced that “protection needs to be increased” in the non-domestic space, particularly where there is no equivalent focus currently on removing prescription. However respondents generally showed support for maintaining consistent compliance thresholds across the domestic and non-domestic Standards.

Question 6: Do you support our proposal to introduce a broad “informed choices” principle into the domestic Standards of Conduct?

There was strong support among the majority of respondents for our proposal to introduce a broad “informed choices” principle into the domestic Standards. Two consumer groups advocated for it to be extended to the non-domestic Standards.

Some respondents noted the potential of the broad principle to complement the narrow principles we had proposed for SLC 25, as it signposted to suppliers that the information they provide to consumers regarding tariffs should enable them to make an informed choice. Other respondents saw merit in the broad principle covering a wider set of activities throughout the consumer journey than just tariffs, and considered this would lead to better outcomes for consumers.

Although supportive of the proposal, several suppliers had questions about the policy intent of the principle and how it would interact with other rules. Specific points respondents sought clarification on were:

- What we expect from suppliers, over and above their existing obligations;

- Whether the principle overrides existing prescriptive rules relating to supplier-customer communications;
- Whether the proposed principle only requires suppliers to enable informed choices when consumers are facing a decision (for example, at a point of sale);
- Whether the “informed choices” principle requires suppliers to increase the frequency or volume of information they provide to consumers; and
- Whether the “informed choices” principle requires suppliers to express the information they provide a consumer in a particular way (eg express bundled products in monetary terms).

Question 7: Do you agree with the proposed drafting of the broad “informed choices” principle we have set out?

The majority of respondents either agreed or qualified their support for our proposed drafting subject to us clarifying the following points:

- One respondent considered that the provision of (sufficient) information may not be enough to avoid detriment if consumers are hurried or coerced into making a decision;
- Two consumer groups were concerned that the use of the word “sufficient” could encourage suppliers to overload consumers with information, and pointed out that less information often enhances effective consumer decision making.
- One supplier requested clarification on the scope of the term “supply of gas and/or electricity”, and how it differs to the scope of SLC 25.
- One supplier considered that the drafting implied that suppliers would need to provide consumers with sufficient information about all tariffs offered by all suppliers, and wanted us to confirm whether this was the case or not.

Question 8: What, if any, additional guidance on the domestic and non-domestic Standards of Conduct do you consider would be helpful in light of the changes we are proposing?

There was a general theme in responses that we should be cautious about issuing guidance that could lead to ‘prescription by the backdoor’. However, a number of other respondents considered that more case studies and/or examples of what we consider to be good and poor practice might be helpful. Some commented that we should target these at areas where we consider there are risks to consumers.

Some respondents considered that some extra guidance on specific policy proposals would be helpful. Consumer bodies in particular thought that additional guidance on any new vulnerability principle would be beneficial. It was suggested that this could include our policy intent, more information on what it means to treat customers in vulnerable situations fairly (to help suppliers operationalise the principle), and examples of good practice.

Suppliers generally sought guidance on terms such as ‘likelihood of detriment’, ‘relevant’ and ‘reasonable’ (which are all terms used in our proposed *Fairness Test*). They also requested that we clarify the scope of the new “informed choices” and vulnerability principles, and what they would have to do, over and above their current obligations, to be compliant. Several suppliers would also like to see more detail around how we will operate proportionately given our proposed removal of *all reasonable steps*, particularly in the context of our compliance and enforcement activities.

A general comment made by numerous suppliers during our engagement, particularly small and medium suppliers, was that guidance can often be difficult to access. It was considered that having one-stop-shop for suppliers to access guidance, consultations and the licence conditions would help suppliers to understand their obligations.

Question 9: Do you consider that the "Treating Customers Fairly" statement has a valuable role to play and should be retained as an obligation in the domestic and non-domestic Standards of Conduct? Please provide an explanation for your answer.

The majority of respondents considered that although the intention of the "Treating Customers Fairly" (TCF) statement is valuable, the statement itself may not be the best way to achieve the intended outcome. Many suppliers agreed that the TCF statement is a useful tool for suppliers to internally communicate their thinking, however it provides little to no value as a communication tool for consumers. Several suppliers gave examples of low levels of engagement with the statement. Some stakeholders considered that the inconsistent quality of TCF statements across suppliers was also limiting its effectiveness.

Several respondents felt that the TCF statement does not fit with a move to principles since it can be treated as a tick-box obligation by suppliers. Many suppliers stated that they were keen to continue to deliver the messages found in the TCF statement, but in new and innovative ways.

Of the small number of respondents who felt that the TCF statement should be retained, most recommended that we review its effectiveness and consider how it could become more consistent and effective across suppliers. These respondents also voiced concerns about sending the wrong message to suppliers by removing the requirement to produce and publish a statement that told consumers what they should expect, in terms of fair treatment.

Question 10: Do you agree with our proposal to include a broad vulnerability principle in the domestic Standards of Conduct? If not, please explain why with supporting evidence.

There was virtually unanimous agreement from respondents that a vulnerability principle within the domestic Standards is a valuable initiative. Respondents recognised the unique circumstances and challenges that vulnerable consumers can face, and that it requires an extra effort from licensees, and their representatives, to ensure these customers are treated fairly.

Although there was strong support for our proposal, many suppliers expressed concern over an obligation that required them to identify *each* vulnerable customer. This was seen as unachievable, with many respondents requesting that we clarify the intent behind our proposal. One large supplier highlighted that the proposed licence drafting could better reflect our stated intent by requiring suppliers to have process fit for the purpose of identifying vulnerable customers "*in the course of interactions between the licensee and Domestic Customers*". A different large supplier highlighted the importance of us recognising that agents and employees are not care professionals and there is a limit to the amount of assistance suppliers can provide to vulnerable consumers who are identified. Some suppliers also wanted us to be clear

that the obligation does not prohibit suppliers from charging customers in certain circumstances, or require suppliers to provide tailored products that specifically cater for different types of vulnerable consumers.

There were a small number of respondents who felt the current Standards already provide vulnerable consumers with appropriate protection, saying that in order to treat “each customer” fairly, a supplier would need to consider any vulnerable situations a customer might find themselves in.

There were mixed views about the retention of prescription alongside a new vulnerability principle. Consumer groups generally felt that a minimum standard of prescription should continue to remain until robust evidence demonstrated that this was no longer needed. On the other hand, some suppliers felt that retaining prescription around vulnerability (or at least some part of it) would inhibit suppliers from being able to embrace the spirit of the principle and innovate while upholding it. They considered this would not lead to optimal outcomes for vulnerable consumers.

Question 11: Do you agree with our proposed definition of ‘Vulnerable Situation’? If not, please explain why with supporting evidence.

Some respondents agreed with the definition put forward in the consultation, however, others felt it deviated too much from the definition used in Consumer Vulnerability Strategy. Several respondents considered that removing the reference to the role of the market in creating, or exacerbating, vulnerability detracted from the definition of a vulnerable situation. There were mixed views on whether the definition should be in line with that used in the Priority Services Register conditions.

Question 12: Do you have any comments on the proposal to amend SLC 5?

The majority of respondents either agreed or expressed qualified support regarding our proposal to amend SLC 5. Many respondents agreed that the change would help ensure market monitoring is effective as we move to a more principles-based framework. To ensure monitoring is effective, consumer groups also felt that we should continue to improve existing data sharing and market monitoring arrangements we held with these organisations.

Although the need to monitor the market effectively was recognised, some suppliers sought further clarity on our rationale for these proposals. This included providing information on how we intend to use this power in practice and identifying what ambiguity in our monitoring powers we are trying to address.

For those respondents who qualified their support for this proposal, most were concerned about the potential for regulatory burdens on suppliers to increase, particularly in responding to ad-hoc requests for information (RFIs). Key operational issues suppliers would like us to consider included providing advance notice of RFIs, better coordination of the RFIs we issue, providing a clearer rationale for RFIs and providing more clarity on how we intend to use the information we request. Some other assurances sought by suppliers is that the information they provide is securely handled (especially commercial and personal data).

Appendix 6 – Update on impact assessment

In January we published a Call for Evidence alongside our policy consultation on the Standards of Conduct and SLC 5 changes. We wanted to understand what evidence suppliers could provide to quantify the impacts of the proposed reforms.

In the Call for Evidence, we noted that quantifying such impacts is challenging and that we will base our impact assessment on the information available. We have also said that we would consider asking suppliers for additional information should the responses to the call for evidence not be sufficient.

After reviewing the responses – summarised below – we have decided that we will not issue a request for information (RFI) to seek further evidence on the impacts of the reforms. We think that an additional RFI would add little value to the analysis at this stage, but could pose a significant burden for suppliers.

This does not mean that we don't take the potential impacts of our reforms seriously. Instead, we think there are better ways to monitor whether our reforms are delivering the benefits we expect and at what cost (if any).

To this end, we have put in place mechanisms to evaluate the impact of our reforms, and are continuing to develop this framework. We greatly value your ongoing views and input on how our more principles-based regulatory framework (and associated operational changes) is working well for consumers. We'd also appreciate any evidence you can provide on where there may be undue barriers to innovation and competition.

We have recently issued a short survey to gauge your views on key topics that closely relate to the proposed changes to rulebook accessibility and future work to keep reviewing the supply licences. These topics include:

- Whether the regulatory framework is fit for an 'innovative' market.
- Your ideas of what we could do to make it easier to understand and navigate the framework.
- Your views on our performance as a proportionate and transparent regulator.

We thank the stakeholders who have responded to this survey and we'd appreciate feedback on how we can make this engagement tool as straightforward as possible.

The rest of this appendix is structured as follows:

- we give a summary of the responses to the Call for Evidence, as well our response; and
- we present a high-level assessment of the impacts of the proposed changes, building on what we included in the Call for Evidence in January.

Summary of responses and our views

Question 13: How would your processes change if our proposals are implemented? Can you provide evidence of what costs you think you will incur to a) implement the changes and b) comply with these?

Stakeholders' views

Domestic suppliers who answered this question generally commented that the majority of the proposed changes would not cause them to incur significant additional implementation or compliance costs. This is because they have already been developing consumer-centric cultures in line with the Standards of Conduct, and therefore many suppliers felt they were likely to already be delivering the outcomes we are looking for.

A few suppliers are reviewing their processes to see whether changes will need to be made, but are not at the stage of being able to quantify costs yet. One supplier noted that the cost of reviewing all their processes (relating to the vulnerability principle) will be high, but did not provide evidence of this. Other suppliers noted that certain aspects of our proposals are likely to increase costs, such as the removal of *all reasonable steps* combined with changes to the *Fairness Test*, though no estimates were given.

Two non-domestic suppliers responded to this question. Both did not anticipate that our proposed changes would result in significant additional costs. One commented that the impact of the changes to SLC 5 are unclear and may increase costs if RFIs increase. This point was echoed by other suppliers.

Our views

We remain of the view – also confirmed by the majority of the responses – that if suppliers have already been embedding a consumer-centric culture, they will not incur significant additional costs as a result of implementing our proposals. We invite those suppliers who envisage a disproportionate increase in their costs to provide evidence of the scale of such costs.

Question 14: Can you provide evidence to support any alternatives to our proposals?

Stakeholders' views

Most respondents to this question did not provide alternatives to our proposals. A few alternatives were suggested, including amendments to the *all reasonable steps* proposal and the application of the vulnerability principle and definition. One independent supplier suggested that a supervisory contact and escalation line for each supplier could help suppliers know who to contact in Ofgem.

Our views

We discuss the rationale behind our Standards of Conduct proposals in Chapter 2 of the main document. Concerning the suggestion of an escalation line, we are considering more widely how to make it easier for suppliers to engage with us as part of our wider efforts to change the way we operate. We recognise that our operating approach will need to evolve if our principles-based framework is to be effective at achieving its objectives.

Question 15: Can you provide evidence of how the proposal will benefit your business? As an example, these could include greater efficiency and coordination among internal processes, development of new business models etc.

Stakeholders' views

Suppliers highlighted a number of ways in which the proposals may provide benefits. These included:

- giving them greater scope for flexibility and innovation;
- enabling them to better tailor products and customer service to meet the needs of their customer bases;
- allowing them to determine the most efficient and effective way to achieve a consumer outcome;
- being able to better deploy their resources, eg towards developing new products rather than focusing on tick-box compliance; and
- driving better quality engagement between Ofgem and suppliers.

One supplier noted that the costs and benefits of these proposals, and the wider move to principles, will depend on how suppliers respond, including how they perceive regulatory risks. Another supplier did not believe that the proposals would lead to greater efficiency and coordination between internal processes. This supplier argued that additional regulation would be more likely to lead to additional costs, however they did not provide evidence of this.

Our views

We agree with the majority of suppliers that noted how our reforms could lead to greater innovation. We also note that some suppliers have expressed views on their willingness to innovate as result of our changes, but did not provide concrete evidence on how the changes could deter innovation.

Question 16: What wider benefits do you think our proposals could deliver?

Stakeholders' views

Suppliers outlined a number of wider benefits that they thought our proposals could deliver. Some of these were similar to the examples noted above in response to question 15. Other examples included:

- some suppliers may focus more on vulnerable consumers;
- consumers may be able to better understand what they can expect from their suppliers, including understanding the choices they have in order to get value for money, improved service and wider energy solutions to suit their circumstances;
- consumer satisfaction may increase; and
- consumer engagement may increase, especially if previously disengaged consumers can be reached with new products and/or services.

Our views

While we agree with respondents' views, we are disappointed that no supplier has provided evidence of the potential scale of benefits, nor indicated willingness to leverage upon the changes made to the regulatory framework to deliver these benefits sooner rather than later.

Question 17: In a year, how much time (in full-time equivalents/month) on average does your business spend responding to requests for information (RFIs) from Ofgem? How does this compare with the time spent responding to other organisations' RFIs (eg from BEIS, CMA)? Please provide evidence and indicate whether this is half the time or less, or twice the time or more.

Stakeholders' views

Suppliers provided varying levels of detail in response to this question. For those who provided time estimates of how long they spent responding to RFIs from Ofgem in a year, these ranged from around 0.1 FTEs for smaller suppliers (who noted they have responded to an average of around 10 Ofgem RFIs in 2016) up to 4 FTE for larger suppliers (who responded to between 30 and 40 RFIs).

Three respondents said that the number of RFIs they receive from Ofgem and/or time spent responding is around the same as the sum of all other organisations combined. One supplier said they get numerically fewer RFIs from Ofgem than other suppliers, but they are more time consuming for them to respond to. The other five respondents who provided estimates all said that RFIs from Ofgem total substantially more than those received from other organisations combined.

Several suppliers noted that the time taken to respond to RFIs depends greatly on the content of the request and on how much of that information they already have available. A key issue highlighted by a number of suppliers is that RFIs can be uncoordinated, in terms of timing and/or different organisations asking for similar information in different formats. Many respondents highlighted that advanced warning of RFIs – that we now try to give for as many RFIs as possible – to enable them to plan resources better would be helpful. Many respondents also noted that there is scope for greater coordination, both within Ofgem and across different organisations, on the actual content of RFIs.

Our views

We note that responding to our RFIs can be a burden on suppliers. We are firmly committed to limit the number of RFIs and are considering how to best gather the evidence that we need, including giving advance notice to suppliers and using workshops and meetings when we do not need quantitative evidence.

Question 18: Can you provide evidence of any unintended consequences that could arise as result of our proposals?

Stakeholders' views

Suppliers noted a number of potential unintended consequences. These included:

- potential for misalignment between broad principles and developing narrower policy objectives at the same time;
- future non-compliance with the Standards of Conduct is seen as a direct result of principle-based regulation and this could lead to political calls for more prescriptive regulation;
- some suppliers suggested there could be additional regulatory risk, which could make suppliers reluctant to innovate and/or deter new entry to the market;
- Ofgem-published good practice could be seen as defining minimum standards in a principles-based world;
- statements made by Ofgem about our principles in public (in any form, including public speeches) may be interpreted as de facto guidance;
- inconsistent compliance approaches to different suppliers could lead to unfair treatment and a distortion of competition;
- supplier costs could increase due to greater resources needed for compliance, which could then push up consumer bills; and
- some suppliers may struggle to maintain the Standards of Conduct while meeting specific government targets such as smart rollout.

Our view

We agree with stakeholders that there may be unintended consequences of our proposals, but only if both suppliers and Ofgem fail to deliver the culture change required to make the new framework a success. So for suppliers, risks may arise if they fail to adopt a consumer-centric culture and instead see complying with regulation a tick-box exercise (as opposed to an opportunity to keep improving).

For Ofgem, we recognise we too need to change the way we operate and work is already underway to ensure our engagement and compliance monitoring model is risk-based, so we target our activities towards the riskiest suppliers while leaving other suppliers the freedom to operate and innovate. We know we will also need to be wary of how and what we communicate to avoid misinterpretations or 'regulation through the back door'. We will be adopting a pragmatic approach to issuing guidance and will make it clear how stakeholders should interpret information that we could publish on compliance with the new principles.

Proposed changes and expected impacts

The changes we propose to the Standards of Conduct licence condition are summarised below:

- Amend the *Fairness Test* in the domestic and non-domestic Standards of Conduct to exclude "significantly favours" threshold and add a threshold requiring the likelihood of customer detriment to be "reasonable in all the relevant circumstances";
- Remove the *all reasonable steps* threshold and instead require that licensees (and in the case of domestic suppliers, their representatives) achieve the objective of the domestic and non-domestic Standards of Conduct;
- Include a broad vulnerability principle in the domestic Standards of Conduct only which sets out our broad expectations regarding how suppliers treat vulnerable consumers;
- Include a broad "informed choices" principle in the domestic Standards of Conduct only; and
- Amend SLC 5 so Ofgem can monitor the market more effectively (and remove other reporting obligations within the supply licences that are redundant as a result of this amendment).

In assessing the impacts of our proposals, we have considered consumers, suppliers, third parties and Ofgem.

Looking at the benefits, we consider what could deliver our following objectives:

- Allowing more room for suppliers to compete and innovate;
- Providing effective consumer protection in an evolving market;
- Putting responsibility firmly on suppliers to deliver good consumer outcomes; and
- Make the rulebook clearer and easier to understand.

With respect to the costs, we consider both implementation costs and ongoing costs of the proposed changes.

Table 4 below summarises the expected impacts of the reforms on relevant parties.

Table 4 - Expected impacts of proposed changes

Consumers	Benefits	<p>Hard-to-monetise benefits</p> <ul style="list-style-type: none"> - Ensure adequate consumer protection by changing the <i>Fairness Test</i> - Place greater emphasis on ensuring vulnerable situations are identified and that suppliers are treating domestic customers in vulnerable situations fairly <p>Monetary benefits</p> <ul style="list-style-type: none"> - Monetary benefits if services and offerings take into account the individual needs and circumstances of each customer (including those in vulnerable situations), eg customers are on a cheaper tariff, are more likely to re-pay debt, and are promptly compensated if things go wrong and they suffer detriment
	Costs	<ul style="list-style-type: none"> - No impacts
Suppliers	Benefits	<p>Hard to monetise benefits</p> <ul style="list-style-type: none"> - Regulatory certainty achieved by making clear how the <i>Fairness Test</i> applies in the context of statutory rights and legitimate commercial practices - Licence text clear to understand - No change to policy intent - suppliers will still be flexible in how they will apply fairness in any dealings with their customers, leaving room for innovation - Reputational benefits if suppliers ensure customer service is in line with the spirit of the Standards of Conduct <p>Monetary benefits</p> <ul style="list-style-type: none"> - Positive monetary benefits for those suppliers who will use the Standards of Conduct as a platform for innovating and offering good customer service, thus gaining customers and increasing their market share - Potentially lower costs to respond to ad-hoc RFIs if, given broader scope of SLC 5, we make proportionate and effective use of monitoring (eg regular and comprehensive RFIs planned in advance as opposed to ad hoc RFIs)
	Costs	<p>Additional upfront costs for:</p> <ul style="list-style-type: none"> - Developing a framework for decision making on how the revised Standards of Conduct should be applied - Making changes to internal guidance and training material - Training staff <p>Additional ongoing costs</p> <ul style="list-style-type: none"> - For those suppliers who already fully embrace the intent of the Standards of Conduct, we expect a neutral monetary impact compared to a counterfactual - For those suppliers who don't fully apply the intent of the Standards of Conduct now, we expect increasing ongoing costs compared to a counterfactual. This is due to the need to improve their practices to ensure they achieve the objective of the Standards of Conduct. - Ongoing training costs - Potentially, penalties if suppliers do not respond to the RFIs
Third parties	Benefits	<p>Hard to monetise benefits</p> <ul style="list-style-type: none"> - Clearer, enduring rules will help consumers groups to feel more confident in helping consumers understand their rights

	Costs	Monetary benefits - Consumers groups may need to invest and train staff on how to interpret the new licence conditions in order to give appropriate advice
Ofgem	Benefits	Hard-to-monetise benefits - Clear broad principles will help focus compliance and enforcement efforts on understanding whether suppliers are delivering the consumer outcomes required under the Standards of Conduct Monetary benefits - We expect a neutral monetary impact
	Costs	- Potentially additional costs to monitor compliance with the amended Standards of Conduct

Unintended consequences

We considered whether, and what, unintended consequences are associated with the proposed reforms. In doing so our primary concerns are risk to consumers and, more specifically, whether the reforms could cause any detriment or hinder the realisation of benefits (with the former being a more severe risk). We have also considered if the reforms pose any risk to suppliers or third parties. Our views are summarised in Table 5 below.

Table 5 – Potential unintended consequences

Consumers	- None identified
Suppliers	- None if suppliers fully embed the spirit of the amended Standards of Conduct
Third parties	- For consumer groups: there may be some initial uncertainty on how to interpret the amended Standards of Conduct in order to give adequate assistance to consumers <u>How we plan to mitigate this:</u> we are considering how best to ensure uncertainty is minimised
Ofgem	- None identified

Appendix 7 – 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. Do you have any further comments?

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