

Domestic and non-domestic gas and electricity suppliers, energy consumers and their representatives and other interested parties

Direct Dial: 020 7901 7000
Email: FutureRetailRegulation@ofgem.gov.uk

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Decision to modify the domestic and non-domestic Standards of Conduct

This letter notifies stakeholders of our decision to modify the electricity and gas supply licences by amending standard licence conditions (SLCs) 25C and 7B – the domestic and non-domestic Standards of Conduct respectively. The letter also sets out our decision to modify the information gathering powers provided by SLC 5 so that we can continue to monitor the market effectively. We have also decided to remove other information gathering provisions within the supply licences that would be duplicative as a result of our modification to SLC 5.

Having carefully considered the responses to our June 2017 statutory consultation¹ we have decided to proceed with the modifications proposed in the statutory notices, other than two minor typographical errors requiring correction in the electricity supply licence notice.²

The domestic and non-domestic Standards of Conduct (“the Standards”) already contain enforceable broad principles³ that require suppliers to treat domestic and microbusiness consumers fairly in the way they behave, provide information and deliver customer service. The Standards form the foundation stone of the supply licences and will play a critical role as we progress with reforms that will see us rely much more on principles, and rely less on detailed prescriptive rules. We are convinced this regulatory approach will ensure there is a strong safety net in place to protect consumers from poor supplier conduct, while also enabling more innovation to take place in a changing market.

The policy intent of the Standards is to improve the interactions and experiences consumers have, thereby increasing consumer trust and engagement in the market.⁴ To help ensure the Standards can continue to fulfil their policy intent into the future, we will be making the following changes:

- Amending 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.
- Removing the “**all reasonable steps**” threshold in the domestic and non-domestic Standards so that the measure of whether a consumer has been treated fairly is based on the consumer outcomes a supplier has delivered, rather than their attempts to secure compliance.

¹ Our June 2017 statutory consultation is available online at: <https://www.ofgem.gov.uk/publications-and-updates/statutory-consultation-standards-conduct-suppliers-retail-energy-market>

² The final modification notices published alongside this letter are available online at: <https://www.ofgem.gov.uk/publications-and-updates/final-decision-standards-conduct-suppliers-retail-energy-market>

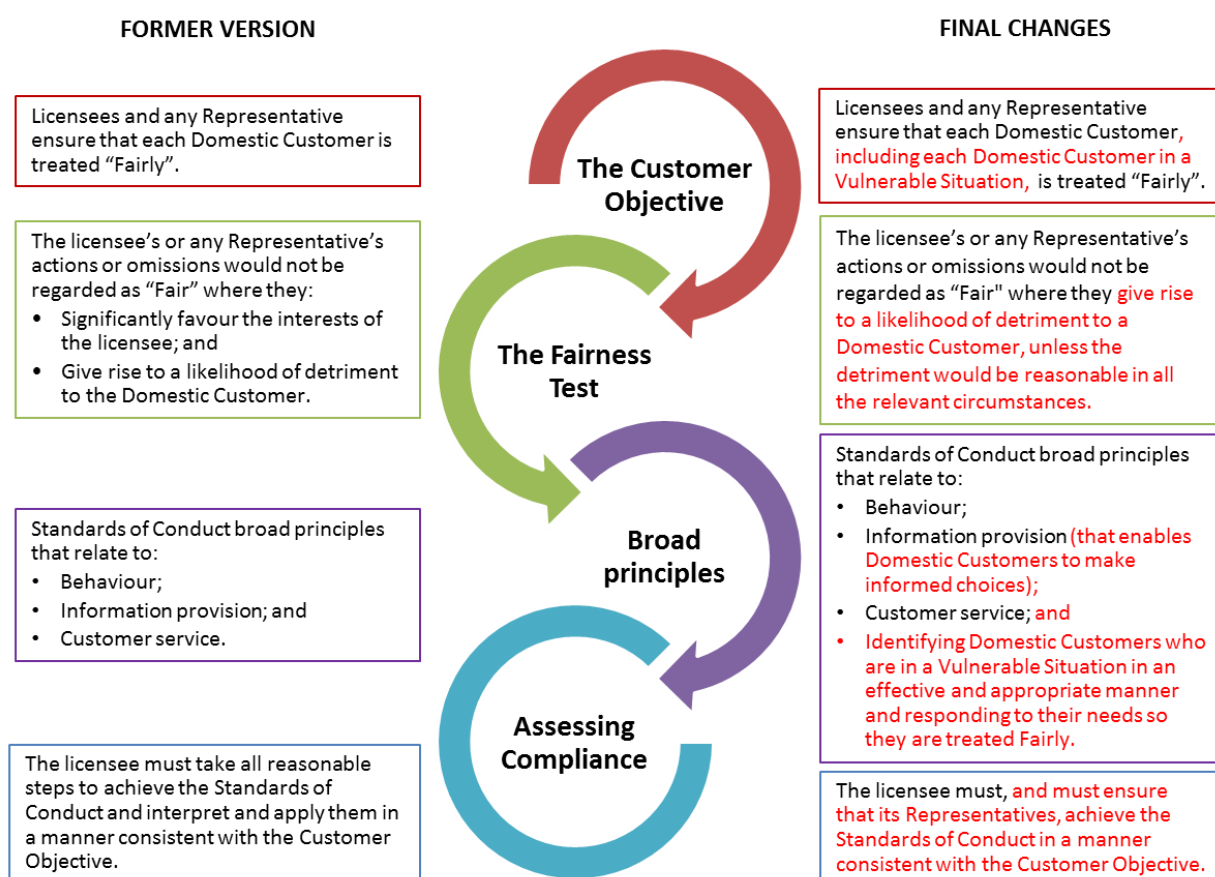
³ “Broad principles” are overarching rules that apply across a range of supplier activities.

⁴ The Competition and Markets Authority’s 2016 Energy Market Investigation Final Report found that there has been persistently low levels of domestic and microbusiness consumer engagement in the retail energy market.

- Adding 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 those in vulnerable situations. Together with our wider changes to the domestic Standards, this will strengthen protections for vulnerable consumers.
- Adding a broad principle to the domestic Standards that requires suppliers to enable domestic customers to make **informed choices** about their energy supply.

These changes reflect lessons from, and the maturing of, the principles-based approach we have used since the Standards were introduced in 2013. The changes place a firmer responsibility on suppliers to put consumers at the heart of their business and treat them fairly. This is a standard of customer treatment that is befitting of an essential service provider. The changes also strengthen our ability to take swift action, including compliance action, when consumers need protection from harm. Finally, the changes will provide more comprehensive protection for consumers in a fast-changing market, while also enabling us to remove greater amounts of prescriptive rules that limit innovation and competition. Figure 1 outlines our changes, as they apply to the domestic Standards.

Figure 1 – Changes to the domestic Standards of Conduct^{5,6}



Scope: *Apart from any matters relating to Deemed Contracts, the domestic Standards do not apply in respect of the amount or amounts of any Charges for the Supply of Electricity and/or Gas, or any other types of charge or fee, applied or waived. The Standards do apply to the exercise of a licensee's discretion to apply or waive any fee or charge.*

⁵ The non-domestic Standards are structured in a very similar way to the domestic Standards and contain an identical *Fairness Test* and threshold for assessing compliance. However, the non-domestic Standards do materially differ in scope to the domestic Standards, as they only apply to "Designated Activities" relating to (amongst other things) contracts, billing and customer transfers. In addition, the non-domestic Standards do not apply to Representatives.

⁶ A description of how the current Standards of Conduct work is provided on p.8 of our January 2017 policy consultation. This is available online at: <https://www.ofgem.gov.uk/publications-and-updates/standards-conduct-suppliers-retail-energy-market-0>

Other modifications to the domestic and non-domestic Standards that we have decided to progress include:

- moving these SLCs to the front of the supply licences (making them SLC 0 and 0A respectively);
- simplifying the way the Standards are set out; and,
- removing the obligation for suppliers to prepare “Treating Customers Fairly” statements and make them available to customers.

Appendix 1 to this letter provides an overview of stakeholder responses to our statutory consultation. It also outlines the rationale for our decisions regarding modifications to the Standards (see section 1) and certain information gathering provisions within the supply licences (see section 2). We are not publishing any new guidance for the domestic and non-domestic Standards, however, existing guidance for these SLCs remains in place and is provided in Appendix 2.

The changes set out in the decision notices published alongside this letter will take effect on **10 October 2017**.

Yours faithfully,

Neil Barnes

Associate Partner, Consumers and Competition

Duly authorised on behalf of the Gas and Electricity Markets Authority

Overview of stakeholder responses and way forward

This licence modification decision follows two consultations, published in January 2017 and June 2017 respectively, that described our changes and rationale. We have also circulated an online survey, published a working paper and presented at multiple workshops that gave stakeholders an opportunity to engage with us on our proposals. We note that many respondents have welcomed this open and inclusive consultation approach. In reaching this decision, we have carefully considered and taken into account all views put forward by stakeholders.

We received 15 responses to our June 2017 statutory consultation, one of which was confidential.⁷ All respondents provided views on our proposed changes to the domestic and non-domestic Standards (see section 1), with only four stakeholders offering views on our proposals to modify SLCs relating to our information gathering powers (see section 2). An overview of stakeholder responses, and our way forward, is set out below.

1. Modifications to the domestic and non-domestic Standards of Conduct

Almost all respondents strongly support us increasing our reliance on principles-based regulation, like the domestic and non-domestic Standards. These respondents agreed that prescriptive rules should only be used where a one-size-fits-all approach is needed to protect consumer interests. Views raised by respondents on our specific domestic and non-domestic Standards of Conduct proposals are addressed below.

Amending the “Fairness Test”

Statutory consultation proposition and stakeholder feedback

We have proposed to amend the *Fairness Test* definition of unfair in the domestic and non-domestic Standards so that it no longer takes into account whether the licensee has gained an advantage of some kind through an act or omission which has “*significantly favoured*” their interests. The revised *Fairness Test* instead focuses on whether an act or omission would “*give rise to a likelihood of detriment to a customer, unless the detriment would be reasonable in all the relevant circumstances*”. Our modifications would mean compliance with the Standards is assessed against the impact on the consumer, rather than also considering the impact on the supplier.⁸ The amended *Fairness Test* does not attempt to replace, or operate in the same way as, the *all reasonable steps* threshold (which is being removed from the Standards).⁹

All small and medium suppliers and consumer groups who offered views on the *Fairness Test*, and two large suppliers, supported our proposal. Four large supplier respondents had varying levels of concern regarding our proposal, with all preferring the current *Fairness Test*. Their main reasons for this were because they considered the current test:

- already provides sufficient protection to consumers as it has been successfully applied in past enforcement cases and is driving improvements in consumer outcomes;
- is based on legal principles within consumer protection legislation¹⁰ that are well established and understood, thereby providing suppliers with regulatory certainty; and,

⁷ Non-confidential responses to our June 2017 statutory consultation are available online at: <https://www.ofgem.gov.uk/publications-and-updates/statutory-consultation-standards-conduct-suppliers-retail-energy-market>

⁸ See pp. 11-14 of our June 2017 [statutory consultation](#) for a full explanation of our proposal and policy intent.

⁹ See p. 19 of our June 2017 [statutory consultation](#) for an explanation of the differences between *all reasonable steps* and the amended *Fairness Test*.

¹⁰ Unfair contract terms provisions are contained within the *Consumer Rights Act 2015*.

- strikes the right balance between considering the outcome for consumers as well as considering the intent behind a supplier's actions or omissions.

One large supplier welcomed us clarifying that the revised *Fairness Test* would continue to recognise that there are circumstances in which a likelihood of detriment may arise without unfairness to the consumer (such as the act of charging for services or exercising rights under statute, as long as the supplier conducts the activities lawfully and proportionately). However, this respondent also requested that we clarify how fairness would be assessed and what level of consumer detriment would be regarded as unreasonable.

No respondents provided specific comments on our proposed changes to the broad information principles within the current domestic and non-domestic Standards (SLC 25C.4(b)(iv) and SLC 7B.4(b)(iv) have now moved to SLC 0.3(b)(iv) and 0A.3(b)(iv) respectively). These changes make clear that unfair contract terms, and other unfair representations, are still captured under the revised Standards.¹¹

Way forward and rationale

We have decided to proceed with the *Fairness Test* proposal – including consequential changes to the broad information principles – set out in the statutory consultation. Although the current test has proven enforceable to date, we do not think it places an adequate focus on the consumer outcomes expected under the Standards. We maintain the view that a test of whether a consumer is treated fairly should hinge on the actual outcomes a consumer has experienced, rather than the impact on the licensee. Ensuring positive consumer outcomes is a key purpose of the Standards, and we consider the changes to the *Fairness Test* make this clearer. The majority of respondents who engaged on this topic agreed that focusing the *Fairness Test* on consumer outcomes was appropriate.

Regarding our approach to assessing fairness, we stated in our statutory consultation that potential non-compliance with the Standards will always be considered on the facts of the case.¹² We will continue to assess compliance cases fairly and proportionately. While some suppliers have called for it, we wish to avoid providing detailed guidance on what we consider would constitute fairness in different scenarios, as this would be a move away from, and risk undermining the objectives of, our principles-based regulatory approach. Instead, we encourage and expect suppliers to think actively about the impact of their actions or omissions for each consumer, and consider whether their conduct aligns with the Standards. If a likelihood of detriment does arise, a supplier will have an opportunity to set out a compelling reason for why the detriment was, or would be, “*reasonable in all the relevant circumstances*”.

Regarding the “level” of detriment that would fail the *Fairness Test*, our changes to the Standards are designed to incentivise a consumer-centric culture that fosters fair customer treatment, rather than a culture that focuses attention on identifying a “level” of detriment which might be acceptable. The starting point should be that it is generally not acceptable to cause detriment to consumers and, as mentioned above, we consider there are only narrow circumstances where detriment might arise without there being unfairness. When detriment is unfair, even if it is or appears to be of a low “level”, suppliers have a clear obligation to put things right. In accordance with our Enforcement Guidelines, we will continue to prioritise cases for potential enforcement action where the level of actual or

¹¹ 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 change to SLC7B.4(b)(iv) continues to ensure suppliers cannot use unfair contract terms, for example, to prevent microbusiness consumers switching away.

¹² Ofgem (2017) [Statutory Consultation: Standards of Conduct for suppliers in the retail energy market](#), p. 14.

potential harm is most serious.¹³ The level of detriment arising will also continue to have bearing on the amount of any penalty where a case concludes, and whether a financial penalty is appropriate.¹⁴

Removing “all reasonable steps”

Statutory consultation proposition and stakeholder feedback

To be compliant with the current Standards, licensees are required to take “*all reasonable steps*” to achieve the Standards of Conduct in a manner consistent with the Customer Objective. We propose to remove the *all reasonable steps* threshold and instead require that licensees ensure they “*achieve*” the Standards of Conduct. For the domestic Standards only, as is the case currently, licensees must also ensure that their Representatives¹⁵ treat customers fairly. We proposed this change to the Standards because we consider it will:

- better incentivise suppliers to embed a culture that acknowledges the importance of understanding the experiences of consumers and acting upon that insight;
- allow us to respond more swiftly to support and compel compliance measures, including through alternative actions¹⁶, when suppliers are not meeting our expectations under the Standards; and
- mandate that suppliers deliver fair consumer outcomes, thereby providing us with greater scope to remove prescriptive rules that limit innovation, as well as helping us to avoid adding new rules to the supply licences in the future.

All small and medium supplier and consumer group respondents either supported, or stayed silent on, our proposal to remove *all reasonable steps*. Two large supplier respondents were also comfortable with our proposal. However, four large supplier respondents said they continued to have varying levels of concern about this proposal, with one large supplier also claiming that the proposal “takes energy regulation out of line with other comparable regulators”. These large suppliers considered that they could be found non-compliant with the Standards, regardless of whether they acted in good faith; whether consumer detriment could have been foreseen or prevented; and, whether they made an attempt to put things right. It was their view that this could increase their compliance risk, which could then result in increased costs for consumers and stifle innovation. No specific evidence or estimates of these suggested impacts were provided.

Common to most supplier responses was a high level of interest in the upcoming review of the Enforcement Guidelines.¹⁷ Many suppliers supported this review taking place, with some encouraging us to extend its scope so that it includes our wider approach to managing potential compliance issues. These suppliers also sought more information on the matters we would consider in the absence of *all reasonable steps*, how we will ensure consistency in supplier treatment, communication and advice, and how we plan to provide greater transparency regarding the actions we are taking to address supplier compliance issues.

¹³ Our Enforcement Guidelines state that while we will tend to focus on systemic failings, we will not rule out investigating instances of particular detriment affecting small groups or individuals, especially when those affected are vulnerable. The guidelines are available online at: <https://www.ofgem.gov.uk/publications-and-updates/enforcement-guidelines>

¹⁴ Our policy regarding financial penalties and consumer redress is available online at: <https://www.ofgem.gov.uk/publications-and-updates/statement-policy-respect-financial-penalties-and-consumer-redress>

¹⁵ “Representative”, in relation to the licensee, means any person directly or indirectly authorised to represent the licensee in its dealings with Customers.

¹⁶ Ofgem (2014) [Enforcement Guidelines](#), pp. 29-30.

¹⁷ See pp. 32-33 of our 2017-18 Forward Work Programme. It is available online at: <https://www.ofgem.gov.uk/publications-and-updates/forward-work-programme-2017-18>.

Way forward and rationale

We have decided to proceed with our proposal to remove *all reasonable steps* from the domestic and non-domestic Standards. We consider it is appropriate that the measure of whether a consumer has been treated fairly is based on the consumer outcomes a supplier has delivered, rather than their attempts to secure compliance.¹⁸ We acknowledge that, during our policy and statutory consultations, there were several suppliers who expressed concerns about this change. After carefully considering these concerns, we maintain the view that removing the *all reasonable steps* threshold from the Standards is in the best interests of existing and future energy consumers.¹⁹ Furthermore, we'd like to stress that we do not consider the Standards become "unachievable" without an *all reasonable steps* threshold. The Standards set clear expectations of conduct which all consumers might reasonably expect to receive from any supplier.

We are fully aware that inconsistent or disproportionate action from Ofgem could create uncertainty, drive up costs and deter innovation. If principles are to result in improved consumer experiences and enable innovation, we need to continue operating proportionately, in line with our Better Regulation duties.²⁰ This is why we have in place – and will continue to refine – an approach to managing compliance that reflects the increasing importance of the Standards, and other principles, in the supply licences. This approach places an emphasis on constructive and proactive two-way engagement with suppliers so that issues that are posing risks to consumers can be avoided where possible, and if not, resolved in a swift and effective manner. 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.

We recognise that our move away from prescriptive rules to principles-based regulation puts a greater onus on suppliers to determine how to comply with obligations, and that this could raise questions about how Ofgem might prioritise enforcement action compared to alternative action and our compliance activities. This is one of the reasons why we made a commitment in our Forward Work Programme to revise our Enforcement Guidelines so that we are providing further clarity on how we will continue to take a proportionate approach to compliance and enforcement action. We intend to discuss our latest thinking on this review with stakeholders at the Enforcement and Compliance Conference in September 2017.

Finally, we do not consider that the specific approaches used by regulatory authorities in other sectors is evidence that should necessarily dictate the regulatory decisions we take to protect the interests of energy consumers. We've carefully considered our modifications to the domestic and non-domestic Standards in the context of the energy market and our wider regulatory framework.

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

Statutory consultation proposition and stakeholder feedback

We have proposed to add a broad principle to the domestic Standards that requires licensees to ensure that they, and their Representatives, provide information to each domestic customer, which "*is sufficient to enable the Domestic Customer to make informed choices about their supply of electricity/gas by the licensee.*" The key reason for introducing

¹⁸ A supplier's attempts to secure compliance remain a relevant consideration under our [Enforcement Guidelines](#) when deciding whether it is appropriate to take enforcement action.

¹⁹ See pp. 14-19 of our June 2017 [statutory consultation](#) for a full explanation of our proposal and policy intent.

²⁰ 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.

this principle is that it makes clear our expectation that suppliers must proactively seek to understand the information consumers need, and then act upon these insights.²¹ It will also provide more comprehensive, future-proof protection that helps ensure consumers are more engaged and are able to make informed choices about their energy supply. Promoting greater levels of consumer engagement continues to be an important focus for us. We consider this is key to promoting effective competition in the retail energy market, as well as helping consumers fully realise the benefits of new technology and innovation.

All suppliers who commented on this proposal expressed support and welcomed the clarifications we provided in the statutory consultation. Some suppliers raised issues relating to how the new broad informed choices principle would interact with other rules in the supply licences, such as those relating to the automatic “rollover” of a customer on to a default variable tariff if they do not make an active decision when their fixed-term tariff expires.²²

Consumer group respondents also supported us introducing a broad informed choices principle into the domestic Standards. However, one of these respondents was concerned that the proposed legal drafting may limit the effectiveness of the principle. They suggested that instead of requiring that information be “sufficient” to enable an informed choice, we stipulate that it must be “effective”. Their reason for this suggestion was that “sufficient” implies a reference to the amount of information provided, and that enabling informed choices is more so determined by information being “effectively” tailored to the circumstances and needs of consumers.

Way forward and rationale

We have decided to add the informed choices principle to the domestic Standards, using the legal drafting proposed in the statutory consultation. It is encouraging to see that all respondents who engaged on this topic welcomed the comprehensive, future-proof protection this principle will provide for consumers. Nevertheless, we note the concerns raised by one respondent regarding the use of the word “sufficient” in the legal drafting.

The current legal drafting requires licensees and their Representatives to provide “sufficient” information to “each Domestic Customer” in order to enable them to “make informed choices”. Therefore, the focus of this drafting is on the consumer outcome suppliers, and their Representatives, are required to achieve (ie, consumers being able to make an informed choice). We agree with the respondent’s point that our principle needs to mandate an “effective” approach. It is our view that a supplier would not have achieved the outcome required under this principle if their approach for providing information was not “effective”.

Our legal drafting provides a clear signal to suppliers that they must provide consumers with information that is tailored to their circumstances and needs. To do this, they need to understand the experiences consumers have when dealing with them. These insights should be used to inform supplier decisions regarding matters like the purpose, channel, content, presentation, volume and frequency of the information they provide. If a supplier overloads consumers with information, thereby preventing them from being able to make an informed choice, then we consider this would clearly not align with the consumer outcome required by the principle.

We agree that the new informed choices principle, alongside our other changes to the Standards, should support the upcoming reforms to rules relating to supplier-customer communications by enabling us to move further and faster in removing unnecessary

²¹ See pp. 19-24 of our June 2017 [statutory consultation](#) for a full explanation of our proposal and policy intent.

²² A statutory consultation on proposed changes to these rules is available online at:

<https://www.ofgem.gov.uk/publications-and-updates/default-tariffs-domestic-customers-end-fixed-term-contracts>

prescription in this area. In the meantime, we wish to reiterate that 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.

Adding a broad vulnerability principle to the domestic Standards of Conduct

Statutory consultation proposition and stakeholder feedback

We proposed to add a broad principle to the domestic Standards that makes it clear to suppliers that, as essential service providers, they have a special responsibility towards vulnerable consumers.²³ The principle reflects our expectation that suppliers must seek to identify domestic consumers that are in a vulnerable situation in a way that is effective and appropriate, and that they must respond to the needs of these consumers so they are treated fairly. Our proposed definition of a “vulnerable situation” retains the spirit of the definition in our Consumer Vulnerability Strategy.²⁴ We also proposed to amend the Customer Objective within the domestic Standards to make clear that these principle-based obligations apply to the dealings a supplier has with all domestic customers, including those that are vulnerable.

Respondents expressed strong support for the revisions we made to our legal drafting in the statutory consultation, and agreed it is right that suppliers take accountability for protecting and empowering domestic consumers in vulnerable situations. One consumer group, however, was concerned that the use of “effective and appropriate” in the legal drafting could be used as a reasonableness test (similar to an “*all reasonable steps*” threshold). Two respondents also raised the point that understanding, identifying and responding to vulnerability can be particularly challenging for the growing number of smaller suppliers in the market. They considered that guidance, targeted at smaller suppliers, could be valuable.

One large supplier commented that challenges could arise when requirements under the General Data Protection Regulation (GDPR) come into effect (currently due to occur in May 2018). This supplier considered that suppliers, Ofgem and other agencies will need to work together to manage these challenges so benefits for vulnerable consumers are maximised.

Way forward and rationale

We have decided to add the vulnerability principle to the domestic Standards, using the legal drafting proposed in the statutory consultation. This new broad principle will help ensure protections for vulnerable consumers are robust and future-proof, while also enabling vulnerable consumers to have an equal chance to benefit from the opportunities retail market developments will bring. We do not consider that the terms “effective and appropriate” represent a reasonableness test similar to *all reasonable steps* (which we are removing from the Standards). Instead, these terms place a clear requirement on suppliers to seek to identify vulnerable consumers in a manner that is not only effective, but also sensitive to a consumer’s needs and interests.

Regarding respondent comments requesting guidance, we urge all suppliers, and particularly those who are new to the market, to become familiar with our Consumer Vulnerability Strategy. This strategy sets out some of our core expectations regarding suppliers identifying and responding to vulnerability in the energy sector, including some of the risk factors we expect suppliers to consider.²⁵ Our Social Obligations Report is another

²³ See pp.24-30 of our June 2017 [statutory consultation](#) for a full explanation of our proposal and policy intent

²⁴ The consumer vulnerability strategy is available online at:

https://www.ofgem.gov.uk/sites/default/files/docs/2013/07/consumer-vulnerability-strategy_0.pdf

²⁵ Ofgem (2013) [Consumer Vulnerability Strategy](#), pp. 12-19.

important resource.²⁶ It highlights examples of good practice and areas for improvement regarding debt, disconnection, prepayment meters and customer service. We intend to publish this year's report in September 2017. In addition to using these existing resources, our statutory consultation set out a range of actions suppliers could consider when it comes to dealing with vulnerable consumers.²⁷

We note the stakeholder comment regarding the GDPR. We would expect all suppliers to become familiar with their obligations under these laws, and ensure they are upholding these obligations when they come into effect.²⁸ Suppliers who identify potential conflicts between the GDPR and the vulnerability principle are encouraged to raise these with us.

Treating Customers Fairly statement

We have decided to remove the Treating Customers Fairly (TCF) statement from the domestic and non-domestic Standards. Respondents supported this proposal, and agreed with our rationale that our changes to the Standards will be more effective at building consumer trust and engagement in the industry than a rarely-viewed statement. A large supplier also supported us being willing to engage with suppliers on how they can promote the messages from the TCF statement in more innovative and effective ways.

Guidance for the revised Standards of Conduct

We have decided against publishing any additional guidance relating to the domestic and non-domestic Standards. At this stage, we think there is enough guidance available to support suppliers to understand the intent of the Standards and to apply them when they are considering what is right for consumers. Existing guidance on key terms within the Standards will remain in place and is included in Appendix 2.

As mentioned above, some respondents considered that guidance on terms used within the vulnerability principle could be useful, particularly for smaller suppliers. In their responses to our policy consultation, several suppliers also advocated for guidance on the new terms used within the *Fairness Test*. We maintain the view that the explanations provided within previous consultations provide a sufficiently clear description of the policy intent behind our changes.

Respondents supported our commitment to continue to publish "good practice" and "lessons learned" materials on our website. One respondent commented that these documents should be framed in a way that helps consumers understand what is expected of suppliers. Respondents also welcomed our Forward Work Programme commitment to provide greater transparency on how we address compliance issues, with some suggesting this commitment be fulfilled in combination with our review of the Enforcement Guidelines.²⁹ Some respondents also expressed a willingness to engage with us on how this initiative will work in practice. We are currently exploring how we can better publicise the compliance work we do. This will help provide stakeholders with greater clarity on the purpose of our compliance function, and help suppliers learn from previous compliance activity. More information on our approach will be discussed at our Enforcement and Compliance Conference in September 2017.

²⁶ Information relating to Social Obligation Reporting can be found online at: <https://www.ofgem.gov.uk/about-us/how-we-work/working-consumers/protecting-and-empowering-consumers-vulnerable-situations/consumer-vulnerability-strategy/consumer-vulnerability-strategy-social-obligations-reporting-sor>

²⁷ Ofgem (2017) [Statutory Consultation: Standards of Conduct for suppliers in the retail energy market](#), pp. 28-29

²⁸ More information regarding the GDPR can be found on the Information Commissioner's Office website at: <https://ico.org.uk/for-organisations/data-protection-reform/overview-of-the-gdpr/> and <https://ico.org.uk/for-organisations/data-protection-reform/>

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

Making the Standards of Conduct simpler and more accessible

We have decided to proceed with our statutory consultation proposals to move the domestic and non-domestic Standards to the front of the supply licences and simplify their layout. Respondents who commented on our proposal to move the Standards to the front of the licence were supportive, and considered this would help ensure these obligations are more prominent. One respondent noted that this would be particularly useful for readers who could be less familiar with the supply licences, such as new entrants.

Regarding our changes to the layout of the Standards, a consumer group considered that a consequence of moving the *Fairness Test* to the definitions table of these licence conditions (SLC 0.9 and 0A.9 respectively) was that the importance of the test would not necessarily be clear to readers less familiar with these obligations. We consider our changes to the layout of the Standards give the key compliance requirement, and the broad principles that set out our expectations of supplier conduct, more prominence. We also consider that it is appropriate to place the *Fairness Test* definition of unfair customer treatment within the existing definitions table in the Standards. Nevertheless, we recognise that it can be difficult for stakeholders who are unfamiliar with our rules to find, navigate and interpret them. Our ongoing work regarding rulebook accessibility aims to make this easier, including by creating a series of guides on supply licence obligations that highlight the policy intent of the rules and signpost other related information that is useful.³⁰

2. Modifications to SLCs relating to our information gathering powers

We have decided to proceed with modifications to SLC 5 that will extend the scope of the information gathering powers we have under this licence condition. This change will ensure we can continue to monitor the market effectively as we transition to a principles-based regulatory framework that enables suppliers to achieve compliance in different ways.

We will also proceed with the removal of information gathering provisions within the SLCs set out below, as these would duplicate the effect of an amended SLC 5. These changes are the same as we proposed in the statutory consultation notices, other than one correction to a minor typographical error relating to our changes to SLC 14A in the electricity supply licence.

- SLC 10 (Restriction or revocation of licence)
- SLC 12A (Matters relating to Theft of Electricity/Gas)
- SLC 14A (Customer Transfer)
- SLC 21 (Fuel mix disclosure arrangements)³¹
- SLC 25B (Interoperability of Advanced Domestic Meters)

Respondents either supported or stayed silent on these licence modifications. Those who did comment supported our commitment to embed a monitoring approach that reduces burdens for suppliers who are less risky. They also supported our efforts to minimise overlap and duplication of information requests as much as possible.³²

³⁰ More information regarding our plans for making the supply licences, and other associated materials, more accessible, is available online at: <https://www.ofgem.gov.uk/publications-and-updates/making-rulebook-more-accessible-update-way-forward>.

³¹ This standard condition is only included in the electricity supply licence.

³² See pp. 35-38 of our June 2017 [statutory consultation](#) for more detail on these commitments.

Final guidance for the domestic and non-domestic Standards of Conduct key terms

The content below represents final guidance relating to standard conditions 0 (“Treating Domestic Customers Fairly” and 0A (“Treating Microbusiness Consumers Fairly”). This is the same guidance that previously applied to standard conditions 25C (Customer Objective and Standards of Conduct for supply activities) and 7B (Customer Objective and Standards of Conduct for non-domestic supply activities). We consider this guidance will help provide further clarity regarding how some of the terminology used in this licence condition should be interpreted. This guidance is being reissued pursuant to paragraph 0.8 of standard condition 0 and paragraph 0A.8 of standard condition 0A. Therefore, suppliers will need to have regard to the guidance in their interpretation and application of standard conditions 0 and 0A.

Expression	Illustrative guidance
'honest' and 'transparent'	<p>The requirements to be honest and transparent encapsulate the following:</p> <p>Honesty requires that the actions and omissions of a supplier are truthful, free of any form of deceit, and sincere. Transparency requires that information about a product (including the terms and conditions) is expressed fully, and in a manner which is clear and easy to understand and which avoids concealed pitfalls or traps.</p> <p>When communicating directly with consumers, acting in a transparent manner would include (but not be limited to) proactively providing consumers with appropriate and/or relevant information (orally or in writing) to make them aware of their rights and the supplier’s obligations. It would also encapsulate actively responding to any questions.</p> <p>Transparency and honesty would require appropriate and prominent signalling to be given to aspects of a product or contractual rights which might operate to the disadvantage of the customer. It also requires that a supplier does not, whether deliberately, recklessly or negligently, take advantage of the customer's necessity or desperation, lack of experience or knowledge, unfamiliarity with the subject matter of the product, or weak bargaining position.</p> <p>An example of transparency and honesty would be for the supplier to disclose all relevant information the supplier has in response to a consumer’s query via telephone even if this information does not favour the supplier. This query may relate to the price of the product or the quality of service provided by the supplier.</p>
'appropriate'	<p>Encapsulates adapting behaviour to take into account particular circumstances arising in a given situation, including but not limited to: cultural or other sensitivities, the position of vulnerability,</p>

	<p>disabilities, or intellectual and technical (including IT skills and access to the internet) capabilities of consumers.</p> <p>Examples of when a supplier may be insensitive to a consumer's circumstances when they are in a vulnerable position may include scenarios where a consumer is in financial difficulty, are suffering from stress and/or are in debt.</p> <p>An example of inappropriate behaviour in this scenario would involve the supplier's customer service representative adopting an aggressive/rude tone when speaking to a consumer on the phone.</p>
'professional manner'	<p>Encapsulates acting with reasonable care and skill, having good knowledge of the product and relevant aspects of the energy sector, dealing with consumers in a courteous manner and having relevant knowledge of the rights of consumers' and suppliers' obligations.</p> <p>It also covers matters of taste and decency. The behaviour should not put the industry in disrepute. Aggressive, intimidating, rude or condescending behaviour would be examples of acting contrary to this requirement.</p>
'plain and intelligible language'	<p>As per the SLC 7A guidance, we would look to the interpretation the courts and the Office of Fair Trading (OFT) have taken in the context of the Unfair Terms in Consumer Contracts Regulations 1999.</p> <p>For example, plain and intelligible language requires:</p> <p>"...not only that the actual wording of individual clauses or conditions be comprehensible to consumers, but that the typical consumer can understand how the term affects the rights and obligations that he and the seller or supplier have under the contract...I would consider it proper when assessing whether terms are in plain intelligible language to take into account clear and accessible presentation with, for example, useful headings and appropriate use of bold print, which can contribute to <i>the intelligibility to the typical consumer of the language.</i>"</p> <p><i>(Smith J, OFT v. Abbey National [2008] EWHC 875 (Comm))</i></p>