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Dear Mr Coughlan and Ms Cochrane-Williams,

Policy consultation: Domestic supplier customer communications rulebook reforms

Thank you for the opportunity to comment on the above consultation.

Utilita has been operating in the prepayment market since 2008, and specialises in providing excellent smart prepayment services to our customers. This core product gives our customers access to their own usage habits and helps them understand how they use their energy and how much it costs.

Executive summary

- Utilita fully supports the move away from prescriptive licence conditions. A principles-based approach will allow suppliers flexibility to tailor communications and respond more effectively to customer feedback.
- It is important to frame the drafting of the principles in a way that balances adequate protection for customers with flexibility for suppliers and effective, proportionate enforcement.
- Where a trialled approach has led to unintended consumer detriment, arrangements for redress may be needed. Any decisions made without careful thought to consumer impact may need swift enforcement action and the findings published to aid in understanding lessons learned.
- We would welcome clarity on Ofgem's current thinking on how non-compliance will be monitored in this new principles-based framework. We would caution against heavy use of external auditing at the supplier expense without clear evidence supporting the regulator's concern.

Introduction

Utilita fully supports the move away from prescriptive licence conditions to a more principles-based approach. We believe that principles-based legislation will grant each supplier the flexibility to tailor customer communications to its unique customer base. This will mean that, for each style of communication, suppliers will have the freedom to respond more effectively to customer feedback.

We will have the ability to adapt the format and content to suit demand and this will better facilitate open, engaging communication building trust between supplier and customer.

Utilita also agrees that this flexibility to tailor communication in a manner that appropriately engages customers will facilitate effective competition in the industry. As communications become more diverse and tailored, suppliers will be able to develop a new sense of identity which can attract potential customers.

While Utilita fully supports the move to principles-based legislation, we consider that it is important to frame the drafting of the principles in a way that balances adequate protection for customers with flexibility for suppliers and effective, proportionate enforcement.

We are encouraged by Ofgem's move in recent years to holding supplier bi-lateral discussions which facilitate open, frank conversations. Where suppliers have got things wrong, these discussions aid quicker resolutions and remedies (where applicable) for consumers. Where consumer harm is minimal, and the mistake is dealt with appropriately by the supplier, the discussions benefit from remaining informal.

In the consultation, Ofgem refers to its expectation that suppliers "test" designs, content, format and layout to determine what works best for consumers. This will need to be supported by research and evidence. Suppliers may need to trial several options to reach innovative solutions. While Ofgem will need to monitor, such requirements should be considered in any enforcement activity by Ofgem. However, where a trialled approach has led to unintended consumer detriment, arrangements for redress may be needed.

Ofgem have recognised that the introduction of new communications after the principles are introduced will not be instantaneous. It will also take time for suppliers to gather insights and learnings from their customer base. Suppliers may take an overly cautious approach to the new rules. The sharing of best practice and lessons learnt from trials may be viable if supported by Ofgem.

The removal of prescription could cause unintended detrimental effects on consumers. Hasty decisions made without careful thought to consumer impact may need swift enforcement action. Investigations should be completed without delay and the findings published to aid in understanding lessons learned.

Utilita is concerned with Ofgem's approach to monitoring of supplier activities once the principles are introduced. The Bi-lateral meetings between supplier and regulator will foster discussions around supplier approaches to interpretation and allow for setting out the regulator's expectations of the supplier, but may not capture all instances of non-compliance. We would welcome clarity on Ofgem's current thinking on how non-compliance will be monitored in this new principles-based framework. We would caution against heavy use of external auditing at the supplier expense. Where an external audit is required, sound reasoning and clear evidence supporting the regulator's concern should be provided in advance to avoid unnecessary cost being incurred.

We have set out our responses to the questions raised in the consultation below.

Consultation questions

- 1. Do you agree in general with our proposed reforms to the rules related to supplier-customer communications?*

As a predominantly smart prepayment supplier, Utilita have often felt restricted by the rules of the Licence and felt that current level of prescription does not best serve our customers. Therefore, Utilita is in broad agreement with the proposed reforms. The principles reflect the underlying intent of the existing prescriptive rules, and will allow suppliers to align better with customer preferences and characteristics.

Adopting a combination of narrow principles that will complement the existing broad principles of SLC 0 and SLC 25 is welcome. Narrow principles and the retention of some prescription would be beneficial in the short term however, we would like to see a future where these narrow principles can eventually be removed. This is dependent on a supplier and regulator change of mindset and the establishment of full consumer trust in the industry.

We echo Energy UK's point that this should not mark the end to the reform work. The UK's departure from the EU could open another review of the more prescriptive licence requirements.

2. *Do you think our proposals make appropriate use of principles and remove the right amount of prescription? Have we gone too far, or not far enough in removing prescription to enable suppliers to innovate?*

The proposals set out that parts of SLC 22D will be removed and other parts will stay intact. With the Contract Changes principle better covering communications around tariffs, we feel that the entirety of SLC 22D is not needed.

In its current format, the principles will not be future-proof. As echoed by EUK's response, industry changes and technological improvements means that the nature of an effective communication solution is not static. The narrow principles need to be broad enough to consider that supplier tariffs evolve into broader concepts. We would welcome Ofgem's request for input into the drafting, to best allow for full flexibility, prior to a Statutory Consultation.

3. *Do you think there are any areas of particular risk to Vulnerable Consumers that are not already addressed in this consultation and/or by the vulnerability principle in the Standards of Conduct?*

We believe that the proposed principles have adequately accounted for vulnerable customers in the use of the broad remit of "characteristics and preferences", which will allow suppliers the flexibility to tailor communications to a style better suited to an individual's method of thinking and communicating.

The potential area of risk to vulnerable customers is where isolated elements of prescription is retained. One such example identified is the retention of SLC 22C(3)(a). This sets out that a Statement of Renewal Terms letter must be issued "in writing" or "Electronic Format" meaning "a message compromising text of an image of text". This may exclude vulnerable consumers who cannot read text e.g. blind customers or consumers who benefit from Easy Read formats and pictures.

SLC 23.3 specifies the requirement of a price increase notification (or other unilateral disadvantage change) must be made as a "Notice" which is defined as "a notice given directly to a person in Writing". While Writing may include electronic communication, this is limited to text, where voice or video may be a better choice.

Requiring information to be displayed in writing, as outlined above, will also conflict with the principle proposed in Contract Changes. This suggests communication can be provided "in a form"

that enables customers to make informed choices. The use of “form” in this principle suggests communication does not need to be restricted to the “written” word.

4. *Do you support our proposed changes to the rules regarding the (i) content, (ii) format, layout and wording, and (iii) frequency and timing of communications? If not, why not?*

In general, Utilita supports these changes. They allow for unique communications from suppliers and encourage independent thought to generate engaging methods and styles.

We would also support the use of the broad phrase “at a frequency that takes into account customer characteristics and preferences”. However, as stated above, clarity on Ofgem’s enforcement and monitoring approaches is essential.

Suppliers will need to balance increasing consumer expectations and the feasibility of acceding to those demands. This may reflect instances where delivering to consumer demand is unachievable.

5. *Do you agree with the key features of the new principles: (i) “Key Engagement Points”, (ii) “characteristics and preferences”, and (iii) our expectations of suppliers?*

We agree with the key features of the new principles. We understand that Ofgem’s expectation of suppliers is covered in the policy intent. Ofgem’s expectation of suppliers should set a minimum standard across all of the industry, but Ofgem’s expectations should not be the same across all suppliers. Supplier size, customer demographic, business model, specialisms and product offerings are elements that must be taken into account when monitoring and enforcing these new principles.

6. *Do you agree with our package of proposals to change the current customer communications rules to “encourage and enable” engagement? Please explain your answer, in particular noting any consequences you envisage for consumer outcomes or suppliers’ ability to innovate.*

The consequences of removing much of the prescription from SLC 20 will also impact non-domestic consumers. The new principles are specific to Domestic Customers therefore there will be a gap in protection for non-domestic customers.

We support Energy UK’s response to this question. The language in section 1a of the principle needs further review to better reflect a supplier’s ability to impact on consumer behaviour. We support the proposal to change the drafting to better reflect “that” a consumer may benefit.

7. *Do you agree with our definition of Key Engagement Points?*

We welcome the intent behind the definition of Key Engagement Points. This will provide the freedom for Utilita to tailor our communications in response to our customer’s needs.

We propose that “based upon their preferences and characteristics” should be added to the end of the Key Engagement Points definition. Taking into account a customers’ characteristics and preferences when considering when their Key Engagement Points would create better flexibility for innovative communications and allow a sense of understanding and trust to develop by customers.

Consumer choice in the energy market is not only driven by costs and comparisons, but also customer service, supplier brand or reputation and consumer trust in the supplier. The definition of Key Engagement Points should therefore be broadened to encompass key points in time where the consumer would want to consider, or benefit from considering, consumption and cost choices. This

would be in addition to the existing requirement to prompt consumer consideration of contracts and terms.

8. *Do you support our package of proposals to change the current customer communications rules to ensure consumers are aware of, and can obtain, “assistance and advice”? Please explain your answer, in particular noting any consequences you envisage for consumer outcomes or suppliers’ ability to innovate.*

We support the proposals to change the current customer communications rules.

We are concerned about the proposed wording in 3.d(i) which suggests suppliers should provide information about managing debt and finances. We consider that this wording should be further refined to “energy debt” and signposting to help on managing finances more generally. As suppliers of energy, we would not be in a position to offer financial help and consider the drafting too broad.

In addition, we support the view that suppliers are not able to ensure that consumers “understand” the information provided or that they “know who to contact”. Suppliers can provide easily understandable information and ensure customers are provided with easy to find or understand information.

Expecting suppliers to ensure anything more than awareness is not feasible.

9. *Do you support our proposed changes to the customer communications rules relating to “Bills and billing information”? Please explain your answer, in particular noting any consequences you envisage for consumer outcomes or suppliers’ ability to innovate.*

We support the proposed changes relating to providing billing information and in particular separating Bills from billing information.

Ofgem should clarify the intent for bills to be “provided” and no longer “made available”. This requirement risks undermining the aim to be technology neutral and future proof, limiting innovation and potentially overriding customer preference.

10. *Do you agree with the distinction between billing information and Bills?*

We agree with the distinction between billing information and Bills.

11. *Do you agree our principle reflects the different needs and circumstances of different customer groups, including prepayment customers?*

Except otherwise mentioned within our other responses, we agree that the principle reflects the needs and circumstances of different customer groups, including prepayment customers.

12. *Do you support our proposed changes to the customer communications rules relating to “contract changes”? Please explain your answer, in particular noting any consequences you envisage for consumer outcomes or suppliers’ ability to innovate.*

We broadly support the proposed changes relating to “contract changes”.

We outline three points below, in relation to the removal of specific sections of the conditions.

- As stated in our answer to Question 3, the proposed retention of SLC 22C(3)(a) which sets out a Statement of Renewal Terms must be “in writing” contradicts the new proposal for contract change information to be given “in adequate time and in a form, that enables

the customer to make an informed choice". The requirement for a written letter will stifle innovation and may cause unintended harm to vulnerable consumers who cannot respond to text.

- We consider that it is possible to remove SLC 22C.3(c,iv). The Contract Changes principle covers that suppliers must explain what will happen at the end of a fixed term contract if no action is taken, so it is not necessary to prescribe this further.
- It does not seem productive to retain the prescriptive requirements in SLC 22C.4(b), that the Statement of Renewal Terms should not be provided with any other document. Third-party documents such as the Citizens Advice Consumer Checklist provide effective advice and should be provided to customers, when possible. This may also contradict with the intention to amend and merge the requirements to comply with guidance or directions issues by the authority such as in SLC 23.4(y) to include energy literacy information in with the Price Increase Notice.

13. Do you agree with our proposal to no longer require suppliers to provide Annual Statements?

We strongly agree with this proposal to remove the requirement to provide Annual Statements while retaining the requirements for information provision. Annual Statements are often confused with a Bill, which can lead to avoidable enquiries from customers. There is a large crossover of information that is provided in Bills and Annual Statements so it is not necessary to provide both. Annual Statements cover a different period to Bills and this means that the information provided can conflict and cause unnecessary confusion.

14. Do you agree that the intended outcomes of the Annual Statement are reflected in our proposed new principles?

We agree that the intended outcomes of the Annual Statement are reflected in the proposed new principles. The information in the Annual Statement is included in other communications and covered in the new principles.

Yours sincerely,

By email only

Alison Russell
Director of Policy and Regulatory Affairs