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By email: [FutureRetailRegulation@ofgem.gov.uk](mailto:FutureRetailRegulation@ofgem.gov.uk)

Dear Katherine and Ruth,

Thank you for the opportunity to respond to Ofgem's statutory consultation on changes to the supplier-customer communication rules. Centrica has been a strong advocate of Principles Based Regulation (PBR). We support Ofgem's current proposals to reform rules around regulated communications and give suppliers more flexibility to deliver good customer outcomes. We would like Ofgem to continue to look critically at the Supply Licence and strip out any unnecessary prescription where appropriate, provided any future changes are carefully considered and introduced through appropriate processes.

We believe the proposed reforms will bring a positive change to how suppliers communicate with their customers and allow suppliers to think about good outcomes, rather than following strict, prescriptive rules. When refining the proposed principles, Ofgem continued to listen to the feedback provided throughout the consultation process and we believe the current proposal is a clearer and more realistic version of the outcomes expected from suppliers than what was proposed in the policy consultation.

However, we believe some areas of the proposals should be amended to ensure the overall policy intent on supplier-customer communications is consistent across all the rules. For example, Cheapest Tariff Messaging (CTM) remains out of line with other rules on customer engagement. Ofgem makes it clear that suppliers should take customer preferences into account when communicating with customers (but not to the extent of ignoring what is needed), yet, the licence conditions assume that CTM in its current form is still applicable to all customers, regardless of what customers know about the customer tariff or characteristics. As a minimum, suppliers should be allowed to choose between showing Relevant or Alternative tariff CTMs and present one that is clear to the customer, because customers find two messages on cheapest tariffs confusing. In addition, where possible, Ofgem should look into the guidance suppliers are obligated to provide, for example the Energy Consumer Guidance specified in 31G.4 – 31G.6 of the new Licence drafting. We do not believe all the guidance information sent to customers is relevant in the format it is presented.

We strongly disagree with the proposal that Ofgem could change rules governing supplier communications via a direction outside of the licence rather than through licence condition changes. The implication would be that Ofgem could create market-wide obligations for suppliers without going through a statutory consultation process and Impact Assessment, which would be unlawful. We consider that such a proposal would also be contrary to the interests of consumers. When Parliament granted Ofgem powers in the Gas and Electricity Acts to impose obligations on suppliers, it did so on the clear and explicit proviso that any such obligations must be subject to consultation and Impact Assessment. The reason for these important steps is to protect consumers and ensure that any changes are transparent, accountable, proportionate, consistent and necessary to meet the desired outcomes. Whilst positive results in a trial may suggest that there are potential benefits for consumers, such success cannot be automatically assumed on a market-wide basis, not least because dynamic competitive effects may mean that such a policy is ultimately counterproductive to consumers' interests.

Please find our answers to the consultation questions in the appendix 1 below. If you have any questions about this response, please contact Justina Miltienyte on 07557 615 743 or [Justina.Miltienyte@centrica.com](mailto:Justina.Miltienyte@centrica.com).

Yours sincerely,

Alun Rees

Director, Retail Market Policy

Centrica

## Appendix 1

**Question 1:** Do you consider that a direction is required to enable suppliers to make changes to existing fixed-term contracts, so that those customers can benefit from our rule changes sooner? If yes, please:

- (a) provide examples of specific clauses in your T&Cs that would require such a direction (suppliers only); and/or
- (b) provide suggestions for how the scope of the direction should be drafted to achieve our policy intent (set out in paragraphs 2.37-2.41 of this document).

Suppliers should be allowed to make use of the changes in the rules as quickly as possible, provided the changes are in line with the policy intent. T&Cs vary between different suppliers and a direction might be needed for some suppliers, depending on the way they phrase their communication obligations to customers and Ofgem should engage with suppliers individually. We do not believe that a direction would be needed for us to implement the changes for our customers.

**Question 2:** Are there any other consequential amendments to the licences that we haven't proposed in annexes 1-2 that you consider would be needed in light of our proposed changes?

We have summarised our comments on the licence drafting below.

### Comments relevant to Gas and Electricity Supply Licences

- Definition "About your tariff" Label: Refers to 31F.9; but in the clause the requirement is to "*contain information that customer may require should that customer wish to compare tariffs across the retail market and must be provided in a consolidated way and be easily distinguishable from the rest of the communication.*". However, we do not see a meaningful distinction between the About Your tariff and the Tariff Information Label (TIL).
- Definition of "Relevant Contract Change Notice": The reference to 23.4 should be 23.4A, as 23.4 is now 'not used'.
- Definition of "Tariff Information Label" should refer specifically to 31F.10 rather than just 31F.
- Clause 22C.3 starts "Prior to the *renewal* of a Fixed Term Supply Contract.....", however, "Prior to the *end of* a Fixed Term Supply Contract....." would be more in line with policy intent to receive a notice that the tariff is ending. Not all customers will renew the current fixed tariff. Instead they may switch to another tariff or supplier or roll off onto the default or cheapest evergreen tariff, yet, they should still receive the notice before the tariff ends, rather than before it 'renews'.
- Clause 22C.13A(c): the reference to 22C.5(a)(v) should be removed because Ofgem is deleting that sub-clause.
- Clause 22D.2: "Subject to paragraphs 22D.5 to 22D.19..." needs to be updated because 22D.5 and 22D.6 have been deleted. Instead, it should read "Subject to paragraphs 22D.7 to 22D.19..."
- Clause 22D.9(aa): should the word 'form' in the sentence "(aa) is in a form and at an appropriate..." be the defined term of 'Form' and therefore with a capital F?

- Clause 23.2(a): should the word 'form' in the sentence "(a) in a form and at an appropriate..." be the defined term of 'Form' and therefore with a capital F?
- Clause 23.8B: the re-drafting does not appear to be related to the policy decision. The purpose of clause 23.8B is to ensure customers get at least 7 working days' notice if their payment method changes because for example the customer stops paying by say Direct Debit and moves to cash/cheque rates. Clause 23.8B refers to the Notice referred to in 23.3 – but 23.3 no longer refers to a Notice and instead says suppliers have to act in accordance with condition 31I. Also, clause 23.8B historically didn't refer to unilateral disadvantageous variations, because the intention of 23.8A is that the terms and conditions set out the process that needs to be followed to change payment methods if a customer doesn't comply with the terms and conditions and doesn't pay. Therefore, it is not a unilateral variation to change the payment method, provided we have set this out in the terms and conditions beforehand. To reflect the actual policy intent, the clause should be written as: *"238.B Where the licensee has satisfied the requirements of sub-paragraphs 23.8A (a), (b) and (c) (but not the other requirements of paragraph 23.8A), the licensee must provide the Domestic Customer with a Notice that complies with standard condition 311 at least 7 Working Days in advance of the date on which the increase in the Charges for the Supply of [Electricity][Gas] has effect."*
- Clause 23.9A(d): the reference to 31I.3(b) is wrong – it should be 31I.4(b), because 31I.3 does not have a (b) sub-clause and does not deal with increases/variations.
- Clause 31F.9: refers to Standard Condition 31H.5(d) – but it should refer to 31H.4(d) to refer to the obligation to provide an "About Your Tariff" Label.
- Clause 31F.12: the electricity version of this clause uses 'their' instead of his/her. Whereas in the gas version of the same clause, in 31F.12(a) says "...gas supplied to his or her Domestic Premises; and"
- Clause 31G.6 should refer to all customers and should read as: *"31G.6 The licensee must provide a copy of the Concise Guidance to each of its Domestic Customers annually."*
- Clause 31H: as this clause also has a section on supply contracts, it should be referenced in the heading?
- Clause 31I.4(c): the wording of the gas and electricity versions about VAT is not the same. The electricity version requires that suppliers make it clear VAT is included in charges but this may be different to how charges are displayed on a bill/statement of account. In the gas version, the clause refers to clauses 23.4(f) and 23.4(h) but both of these clauses have been removed as part of the wider changes. The Gas version of clause 31I.4(c) needs to replicate the wording in the electricity version.

#### Comments relevant to Gas Supply Licence only:

- Definition of "Excluded Staggered Charging Tariff" has not been identified and struck out as not being required, but Ofgem has suggested it should be.
- Clause 22C.5(a): "(v)" should be taken out, as Ofgem is proposing to delete this sub-clause.
- Clause 31G.7: the obligation here is to keep customers 'informed' that gas escapes should be reported and the number to call. What exactly does 'informed' mean as Ofgem has not defined this in the licence?

- Clause 31G.8: the clause here seems a lot briefer than the same version in the Electricity draft (as SLC 31G.7). Is there a specific reason for that? The electricity version requires that the disputes information is provided on or with each bill or annually if no bill sent. The gas version does not have this same level of obligation.
- Clause 31H.2: there is a space missing between 'must' and 'take' in the first line.
- Clause 31H: the gas version of this clause does not have a sub-clause (e) referring to dispute settlement.
- Clause 31I.4(d): needs a full stop at the end and not a semi-colon.

Comments relevant to Electricity Supply Licence only:

- Clause 31H.4(e): the reference to 31G.8 is wrong, as it goes to the supply number obligation. Dispute resolution is 31G.7 and this is the clause that should be referred to.

**Question 3:** Do you agree that our proposals reflect our policy intent relating to encouraging and enabling engagement?

Overall, we agree that the proposals reflect policy intent relating to encouraging and enabling engagement. The changes will allow suppliers to tailor their communications to customer preference, which will be a positive change from the current prescriptive rules.

Suppliers already take customer and, to an extent, tariff characteristic when communicating to customers and we do not think Ofgem should ask suppliers to do more. Most tariff characteristics could also be considered as customer characteristics, such as smart, pre-pay or online only, but we can see how in the future tariff characteristics could be different, for example with Time of Use tariffs. The inclusion of both customer and tariff characteristics in the 'encouraging and enabling' and 'assistance and advice' principles should only be about future proofing the rules, not placing further expectations on suppliers to identify particular characteristics.

We would like Ofgem to address the disconnect of policy intent between the CTM and other rules around supplier-customer communications. CTM methodology and definitions of what constitute Relevant and Alternative CTM remain prescriptive, even though customers find having two messages on cheapest tariffs confusing. The CTM methodology does not take into account customer preferences, when other rules are being changed to place customer characteristics at the centre. As a minimum, suppliers should be allowed to choose between showing Relevant or Alternative CTMs.

**Question 4:** What are your views on our proposal (set out in paragraphs 3.35-3.36) to move the rules around engagement prompts into a direction separate from the supply licences?

Moving the provisions for customer engagement out of the Supply Licence and into a direction implies that Ofgem could create market-wide obligations for suppliers without going through a statutory consultation process and Impact Assessment, which would be unlawful and go against core principles underlying Ofgem's regulatory activity. Obligations that have

significance on the market and impact customer protection can only be treated as Supply Licence Conditions (SLCs), regardless of where and how they are outlined, and changes to them must follow the lawful process to ensure such changes are transparent, accountable, proportionate, consistent and necessary to meet the desired outcomes<sup>1</sup>. Introduction of new obligations or changes to existing ones, therefore, must be consulted on with suppliers (and other interested parties) and impact assessed, as outlined in the Utilities Act 2000, section 35, clause 11A paragraph 3<sup>2</sup>.

Positive trial results are likely to be a useful input to a debate about broader policy change. However, given the complex, dynamic and increasingly innovative nature of the retail market, far broader considerations will need to be taken into account when market-wide policy change is being contemplated. Unless stakeholders are given an opportunity to fully consider and contribute to the development of new policy, there is material risk that new policy may have serious unintended consequences, and potentially be detrimental to competition, the effective operation of the market and ultimately consumers' interests.

Carrying out consultations and Impact Assessments lead to better quality regulatory decision making and Ofgem's proposals would serve to limit the analysis and input Ofgem receives from stakeholders when considering policy change. Ofgem states that they consult '*when developing policy to improve the quality of decision making. It facilitates industry planning and prioritisation, builds understanding of our work and enables progression towards consensual solutions that protect the interests of existing and future consumers.*'<sup>3</sup> Governing customer prompts through a direction would eliminate transparency and leaving Ofgem's decision-making unscrutinised.

We believe the introduction of narrow principles will allow for a better balance between necessary regulation and suppliers' ability to innovate. Any further changes to rules around customer engagement need to be carefully considered before they are adopted as policy. To ensure the new principles are a success, there needs to be mutual confidence between suppliers and Ofgem, where both sides act in a predictable and reasonable fashion. Prompts to engage cannot be considered separately from the proposed principles and, therefore, any decision on moving and/or changing the rules on customer engagement will inevitably affect how suppliers implement these communication principles which may reduce their ability to innovate.

**Question 5:** Do you agree that our proposals reflect our policy intent relating to assistance and advice information?

Yes, we agree that the proposals reflect the policy intent relating to assistance and advice information.

**Question 6:** Do you agree that our proposals reflect our policy intent relating to Bills and billing information?

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<sup>1</sup> As per ([Section 3A\(5A\)](#)), Electricity Act 1989 and [section 4AA\(5A\)](#), Gas Act 1986).

<sup>2</sup> <https://www.legislation.gov.uk/ukpga/2000/27/section/35>

<sup>3</sup> <https://www.ofgem.gov.uk/about-us/how-we-engage>

We generally agree with the proposals. We reiterate that suppliers are not in the position to know what information would be required to enable customers to manage their costs. It should be clear that supplier obligation is limited to enabling customers to understand their costs by providing the information, assuming customers would then use it to manage costs.

**Question 7:** Do you agree that our proposals reflect our policy intent relating to contract changes?

Yes, we agree that the proposals reflect the policy intent relating to contract changes.

Ofgem should specify how the proposed changes will work with the current market-wide derogation on End of Fixed Term Tariff Notices. The derogation states that suppliers are not required to include the TIL with the principle terms, yet, the changes to the licence brings this obligation back. Ofgem should be clear how the changes and derogation interact so that suppliers who made use of the derogation are not going to find themselves in a non-compliant position.