

18 October 2018

Katherine Harris and Ruth Saunders
Consumers & Competition
Ofgem
10 South Colonnade
Canary Wharf
London
E14 4PU

Email: Alisonrussel@utilita.co.uk

By email only: futureretailregulation@ofgem.gov.uk

Dear Ms Harris and Ms Saunders,

Statutory 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 and helps them understand how they use their energy and how much it costs. As well as providing a flexible and resilient service, with a range of convenient top up options and access to our apps.

General Observations on the Statutory Consultation

As previously mentioned in our response to Ofgem's Policy Consultation, Utilita fully supports the move away from prescriptive licence conditions. A principles-based approach will allow suppliers greater freedom to determine how they best meet the diverse needs of their customers.

As a general observation, we note that the proposed new licence conditions; 31F, 31G, 31H, 31I all contain "Guidance" and "Exception to Compliance with Condition" clauses. We would like to understand the reasoning for inclusion of these general provisions. We understood it was Ofgem's strong preference not to issue guidance, although Ofgem did make it clear in their response that they retain the right to do so in the future if the need arises.

When coupled with the Exception condition, we would like to understand whether Ofgem foresees a situation where these new Conditions may be derogate-able or subject to individual Direction. In addition, if this is the case, might this lead to Guidance specific to a single supplier, and if so, is there a potential risk of uncertainty?

Consultation questions

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?*

Utilita do not offer fixed-term contracts although, we consider that most supply contracts will already contain the provision to make changes to the terms and conditions, where there is a regulatory requirement to do so. Where such changes are of benefit to consumers, and therefore, an advantageous change, a Direction would not be required in any event. Equally, we do not believe that a Direction should be used to effectively force suppliers to change contract terms.

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?*

While Utilita is encouraged by the move to principles-based legislation, we believe that there is still room to go further. There are currently significant prescriptive requirements in SLC 22C.13A, 22D.16A, SLC 23.9A and, to a lesser extent, the proposed 31H.10, that specify certain terms to be included within the Domestic Customer's Supply Contract. We believe the current licence provisions, that require suppliers to ensure the supply contract terms comply with the applicable Standard Conditions are sufficient to achieve customers' understanding of their rights and protections. We do not understand what benefit the additional prescription offers, over the existing broad requirements.

The Notice required for moving customers from a Dead Tariff under SLC 22D.9(a)-(l) repeats many of the same requirements proposed to be removed from the SLC 23 Notice. Please clarify the rationale for retaining the detailed level of prescription for Dead Tariffs. The principles under the new SLC 31I.2 would already extend to cover fully any such Notice letter. This would also apply to the prescriptive nature of SLC 23.8A(f)(i)-(iii), which outlines what information should be contained within the payment switch notice. This prescription should also be removed in favour of referencing the principles under SLC 31I.2.

We agree in principle with the spirit of the proposed drafting in SLC 31F.11, however, we consider the licence drafting unclear, and would welcome clarification. Specifically, the reference to providing orally the information contained within the Tariff Information Label and the customers' Estimated Annual Costs, only where a Domestic Contract is offered to the customer.

We note the requirement under SLC 23.4A to issue a "Combined Relevant Contract Change Notice" where the customer is a dual fuel account. While we see the benefit of combining a notice that would have the same information for both fuels, we believe that the requirement may not produce the best outcome for customers who may have a dual fuel account, but where a potential contract change only affects one of their meters. As an example, a customer could be on a PPM E7 meter and a pay on receipt of bill gas meter and a unilateral disadvantageous change to the contract terms may only affect the PPM E7 meter. In this example, we believe that the licence could be construed as requiring us to produce a combined notice under the Licence Condition, because the customer is treated as having one energy account. This would have the potential to confuse the customer.

We acknowledge Ofgem's intention to retain the requirement to provide Notices separate from other communications to ensure that the important messages do not get "lost". We would like to understand the empirical evidence that demonstrates such messages are lost amongst other communications. We consider that, providing the Notice is given enough prominence and clarity in the manner in which it is communicated, then offering additional information (such as including Citizens Advice's Know Your Rights leaflet) could have a beneficial impact on encouraging customers to engage. This also helps with the requirement laid on Ofgem under the new Domestic Gas and Electricity (Tariff Cap) Act 2018, to provide efficiency incentives. Combining formal notices and official material may lead to better understanding and encouragement for the customer to keep their 'pack' of important information together.

We would not support the inclusion of marketing messaging with such packs, but we can see no reason why licence requirements cannot be appropriately met.

Ofgem have stated that the prescription around when a Statement of Renewal Terms can be sent is to be removed however, the switching window remains as before. Although the policy intent technically allows suppliers to decide when the Statement of Renewal Terms can be sent, Ofgem prescribes that customers must still be informed the date that their switching window starts. We cannot envisage a situation under the current switching window where there is a benefit for the Notice to be sent after the switching window starts.

- 3. Do you agree that our proposals (summarised in boxes 1 and 2 on pages 29 and 31-32) reflect our policy intent relating to encouraging and enabling engagement?*

We agree that the proposals reflect Ofgem's policy intent. We also welcome the move away from the requirement to provide information at Key Prompt Points "throughout the year".

We would like to understand the behaviour Ofgem are attempting to drive by their policy, set out in paragraph 3.51. Suppliers are being asked to provide information in a format that encourages customers to consider ways to be more efficient, or flexible, in how and when they consume energy.

While we would never intentionally promote the idea of customers under-heating homes or self-disconnecting, there are many circumstances in which the licence or regulation requires energy efficiency advice to be provided. In response to these requirements, and to encourage customers to use energy more efficiently, we would routinely provide information to assist customers in making decisions on how they can reduce their energy consumption. Would these messages therefore be considered by Ofgem to cause detriment to consumers, if they were in a vulnerable situation?

- 4. What are the 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?*

Utilita echo Energy UK's response that such a move could remove the requirement for open consultations and the associated licence modification appeals process.

- 5. Do you agree that our proposals (summarised in boxes 3 and 4 on pages 39 and 41) reflect our policy intent relating to assistance and advice information?*

We agree that the proposals reflect Ofgem's policy intent.

6. *Do you agree that our proposals (summarised in boxes 5 and 6 on pages 47 and 49) reflect our policy intent relating to Relevant Billing Information, Bills and statements of account?*

Utilita reiterates Energy UK's response: we would be concerned that the continued use of the current ambiguous language to keep the wording of 'In writing' and 'Provide' could result in risk-adverse interpretations limiting innovation to the detriment of consumers and counter to the intent in moving to principles-based regulation. Such definitions must be flexible and future proofed, to ensure that licence provisions keep pace with developing methods of communications and customer preferences, without requiring continual updates.

7. *Do you agree that our proposals (summarised in boxes 7 and 8 on pages 55-56 and 57-58) reflect our policy intent relating to contract changes?*

We agree, with the exception of the policy intent to "signpost" to the Principal Terms outlined in 311.5(C)(II) & (III). The current drafting suggests that suppliers may draw the customer's attention to the current Principal Terms but must still include the Principal Terms of the relevant cheapest evergreen tariff/relevant fixed term default tariff and the Principal Terms of the existing fixed term supply contract, where a Notice is provided under SLC 22C.5(a). We would welcome clarity in the licence drafting.

We hope that these comments have been helpful, and we would be happy to discuss any points in more detail.

Yours sincerely,

By email only

Alison Russell
Director of Policy and Regulatory Affairs