

Citizens Advice response to Ofgem's consultation on Standards of Conduct for suppliers in the retail energy market



Introduction

This response was prepared on behalf of the Citizens Advice service. We welcome the opportunity to comment on Ofgem's proposals for changes to the Standards of Conduct. This response is entirely non-confidential and can be published by Ofgem.

We are supportive of Ofgem's proposals to strengthen the Standards of Conduct and add two new principles. These changes put the responsibility firmly on suppliers to achieve good outcomes for all their customers across all areas of the business. Ofgem will need to ensure its compliance monitoring and enforcement activities keep pace with these changes. Data and insight from across the Citizens Advice service will provide useful information about the performance of individual suppliers.

The introduction of a broad, enforceable vulnerability principle emphasises that energy suppliers, as an essential service provider, have special responsibilities towards vulnerable customers. We think this is an important step forward in protecting vulnerable consumers. While we agree broadly with the proposed approach, we think Ofgem needs to do more to make it clear to suppliers what is expected of them. We recommend providing guidance alongside the licence condition. This should explain the policy intent, as set out in the consultation document, and clarify a number of other points, as detailed in our response to question eight. In addition, we would like Ofgem to produce a short statement in Plain English setting out suppliers' obligations towards vulnerable consumers. This would help suppliers and consumer groups to use the vulnerability principle on a day-to-day basis, particularly at the frontline level.

Finally, Ofgem will need to monitor compliance with the vulnerability principle very closely in order to ensure it delivers the right outcomes for vulnerable consumers, and take swift action where it does not. This should include detailed assessments of supplier policies and processes to ensure suppliers have considered and mitigated the different risks for vulnerable consumers across the business, before substantial and systemic detriment occurs. We will be happy to work collaboratively with Ofgem on this piece of work.

We have responded to all the consultation questions below.

Chapter 1. Ensuring the Standards of Conduct remain fit for purpose

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.

Yes, Citizens Advice agrees that the Fairness Test should be retained for all the broad principles within the domestic Standards of Conduct. It is a necessary tool for determining whether a consumer has been treated fairly and allows us to challenge suppliers more easily when we see evidence of consumer detriment.

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"?

Yes, we agree with the proposed wording. It allows for the fact that a consumer can be treated unfairly even when their supplier's actions or omissions did not significantly favour their own interests. For example, a supplier's failure to communicate effectively can lead to significant consumer detriment without being significantly in the supplier's interests. Moreover, removing this clause from the Fairness Test makes it clear that the primary measure of fairness should always be the consumer outcome. This represents an important shift in focus of which Citizens Advice is fully supportive.

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?

Yes, we agree with this proposal. Through our work supporting and advising non-domestic consumers, we know that unfair practices towards

micro-businesses often impact on a very personal level, emotionally and financially. We therefore support the increased focus on consumer outcomes in determining whether a micro-business customer has been treated fairly. We agree that by making these changes at the same time as changes to the domestic licence, it will be clearer for suppliers who operate in both markets.

In a paper published last year, we set out our priorities for the non-domestic market, recognising that micro-business customers currently receive fewer protections than domestic customers.¹ We will continue to monitor the performance of non-domestic suppliers and work with Ofgem to ensure these suppliers treat micro-business customers fairly.

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.

Yes, we agree with removing the all reasonable steps threshold. Suppliers need to take full responsibility for all their interactions with customers and for making sure their policies and processes lead to good consumer outcomes. Removing the all reasonable steps threshold puts this responsibility firmly on suppliers, which we fully support.

This could lead to improvements particularly in the following areas:

- Taking responsibility for the actions (and omissions) of all their agents and employees, including third party contractors
- Putting things right when they go wrong and offering suitable compensation to customers
- Working collaboratively to resolve cross-industry issues affecting consumers where necessary
- Engaging constructively with third sector partners to ensure policies and processes for vulnerable customers remain fit for purpose

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?

¹ Citizens Advice (2016) [Priorities in the non-domestic market](#)

Yes, we agree with this proposal for the same reasons as set out in our answer to question three.

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

Yes. The new broad principle should complement the narrow “informed choices” principles that Ofgem has proposed. This should not add extra burden for suppliers, but in future could ensure suppliers consider consumer outcomes when introducing innovative tariffs or marketing methods which are not covered by the narrow principles. We agree that placing the broad principle into the Standards of Conduct will emphasise the importance of treating customers fairly in regards to tariffs and marketing, and will ensure suppliers consider these issues in all customer interactions, rather than just those related to tariff choices.

According to the proposed changes, suppliers will need to ensure vulnerable consumers are able to make informed choices about their energy supply. This is likely to require careful, tailored approaches according to different consumer characteristics and situations. For example:

- Consumers with literacy or numeracy impairments may find it difficult to understand and interpret information provided to them
- Consumers experiencing a significant life event may be less able to choose the best tariff for them
- Consumers in receipt of the Warm Home Discount may lose their entitlement by switching supplier and will need to be advised accordingly

There are no easy solutions in many of these situations. Suppliers will need to understand the needs of different vulnerable customers and how best to enable them to make informed choices. Ofgem will need to ensure these standards are being met through its compliance and enforcement activities.

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

Yes. This drafting should ensure that suppliers do not mislead consumers by providing either inaccurate or incomplete information.

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?

We understand that Ofgem is keen to minimise the amount of detailed guidance provided to suppliers as this goes against the spirit of principles-based regulation. However, there are a number of areas that require clarification if the proposed changes are to be effective.

First, we would like Ofgem to provide guidance to non-domestic suppliers on their obligations when supplying a domestic customer, i.e. in cases of mixed-use properties. As we have argued previously, domestic customers sharing a non-domestic supply should receive the same protections as any other domestic customer. This is particularly important if they are vulnerable. We continue to see evidence of vulnerable domestic customers sharing a non-domestic supply who receive poor treatment or, at worst, are disconnected due to third party debt. The non-domestic SOC guidance should therefore explain the circumstances in which the domestic SOC applies, including the vulnerability principle. This guidance could sit inside or alongside the licence conditions in an explanatory note.

Second, Ofgem needs to ensure suppliers fully understand the policy intent of the vulnerability principle. While this is partly set out in the consultation document, it is not evident from the licence condition alone. An explanatory note linked to the licence condition could serve this purpose. It should remain separate from the Consumer Vulnerability Strategy, which does not deal directly with operationalising the Standards of Conduct. In particular, it should cover:

1. The sense in which 'applying the Standards in a manner that takes into account any vulnerable situation' may involve treating a vulnerable customer differently and making a special effort to achieve equal outcomes.
2. What Ofgem considers to be 'unreasonable' detriment for a vulnerable consumer - 25C.3

3. The extent to which Ofgem expects each vulnerable consumer to be identified - 25C.4(d)(i)

According to Ofgem's revised definition of a vulnerable situation, the circumstances and characteristics of a customer can create a situation where she or he is significantly more likely than a typical domestic customer to suffer detriment, or that detriment is more likely to be substantial. For example, a prepayment customer with an insecure income is significantly more likely to self-ration or self-disconnect. If they have small children in the household, this could lead to substantial detriment, e.g. if they are not able to cook hot meals or keep the children warm. Likewise, a consumer with mental health problems could suffer significant distress from aggressive debt recovery practices. It is likely, however, that suppliers will set a low bar for what they consider to be their responsibility. Ofgem therefore needs to set out what they consider to be unreasonable detriment for a vulnerable consumer, how they expect suppliers to stop customers being placed in these situations, and how they should respond when customers are in these situations.

The proposed drafting could also suggest that suppliers are not compliant if they do not identify every single customer in a vulnerable situation. Suppliers are likely to protest that this in itself is not possible (for example, to identify every consumer with a disability or who is in financial difficulty). Ofgem's guidance should set out the intention behind this requirement and how suppliers are expected to put it into practice when applying the Standards. Our understanding is that suppliers must identify consumers who are vulnerable with respect to their energy supply, so that they are able to respond appropriately, i.e. treat them fairly.

We note from your Forward Work Programme 2017-18 that you plan to identify and share good practice with suppliers in relation to the experience of vulnerable consumers. While we support this, we hope that this will complement rather than replace the above guidance on the new vulnerability principle. In our role as an advice provider and consumer advocate, Citizens Advice provides formal and informal guidance to suppliers on how to treat customers fairly,

particularly those who are vulnerable.² We will continue to review and adapt our approach in order to make best use of our available resources.

We are pleased that Ofgem will be re-issuing its general compliance guidelines once the review is complete and hope that this will take place as soon as possible.

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.

We do not think this obligation is particularly useful in its current form. Ofgem has already identified that consumer awareness of the statements is low. The variation in approach and level of detail means that consumers do not gain much in practical terms from being aware of the statements. For similar reasons, our advisers have not found the statements to be particularly useful in holding suppliers to account. More important than a published statement is how suppliers interpret and apply their Standards of Conduct obligations on a day-to-day basis and in their interactions with customers.

Chapter 2: Broad vulnerability principle

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.

We strongly support the proposal to include a broad vulnerability principle in the domestic supply licence. While the existing Consumer Vulnerability Strategy plays an important role in setting out Ofgem’s expectations in this space, we

² See, for example, our published good practice guides: Citizens Advice (2017) [How energy suppliers can signpost and refer vulnerable consumers to the right source of help](#) and Citizens Advice (2016) [How energy suppliers can help and support prepayment customers who self-disconnect](#)

agree that there is a need to bring these expectations into the licence. This should make it clear to suppliers that, as an essential service provider, they have special responsibilities towards vulnerable customers.

Through our network of local Citizens Advice offices, the Consumer Service and Extra Help Unit, we collect real-time evidence of the problems faced by vulnerable consumers in the energy market. These include, but are not limited to:

- Indebted customers who experience distress or confusion as a result of inflexible debt recovery practices
- People who experience poor billing practices leaving them with catch up bills that cause financial or other difficulties
- Customers on prepayment meters for whom it is not a suitable payment method, including those who cannot afford to top up³
- Low income consumers on standard variable tariffs who are not able to switch to a better deal
- Consumers with literacy or numeracy impairments who find it difficult to understand bills and communications from their energy supplier
- Consumers who face difficulties and confusion operating their new smart meter and In-Home Display⁴
- Vulnerable consumers who share their supply with a business property and are disconnected as a result of third party debt

As the market continues to evolve, there is a risk that vulnerable consumers will experience new kinds of detriment and miss out on important opportunities to engage with the market.⁵

In recent years, we have also experienced a huge amount of variation in how well suppliers are able to meet the needs of their vulnerable customers. At worst, we have seen consumers being left off supply during winter because a new supplier did not have sufficient processes in place. In most cases, however, there is a will to get things right for vulnerable customers. Some newer suppliers simply don't understand what they need to do, or do not commit the necessary resources. An enforceable vulnerability principle should provide the necessary

³ Citizens Advice (2016) [Staying Connected](#) and Citizens Advice (2014) [Topping up or Dropping out](#)

⁴ Citizens Advice (2017) [Smart Support](#)

⁵ For example, time of use tariffs and embedded generation.

incentive for suppliers to proactively set about meeting the needs of their vulnerable customers, right from the point of market entry.

We agree that the principle as drafted provides a strong basis for Ofgem to act on non-compliance and enforce where necessary. However, integrating the vulnerability principle into the Standards of Conduct does render it less clear than a standalone principle. Ofgem will need to ensure that suppliers are able to operationalise the principle in a manner that is consistent with the policy intent. The guidance set out in our response to question eight should help with this. In addition, it could be helpful for Ofgem to produce a short statement in Plain English setting out suppliers' obligations towards vulnerable consumers. This would be particularly helpful for frontline agents and advisers.

Ofgem will need to monitor compliance with the principle closely in order to ensure it delivers the right outcomes for vulnerable consumers. This should include detailed assessments of supplier policies and processes to ensure suppliers have considered and mitigated the different risks for vulnerable consumers across the business before cases of substantial and systemic detriment occur. These should include, but are not limited to:

- Keeping vulnerable customers on supply
- Supporting vulnerable customers to use products and services
- Recovering debt in a sensitive, flexible manner
- Helping vulnerable customers to resolve billing disputes
- Enabling vulnerable customers to make informed choices

The nature of vulnerability means that compliance with the principle will need to be monitored using both quantitative and qualitative indicators. We are pleased that Ofgem is reviewing its approach to the Social Obligations Reporting and considering if and how it could be used to monitor compliance with the vulnerability principle. We will continue to feed into this piece of work. We will also continue to provide our evidence and insights through the current tripartite arrangements.

Finally, while a broad vulnerability principle goes a long way towards strengthening protections for vulnerable consumers, some additional narrow principles may also be necessary in areas where vulnerable consumers are particularly at risk. The existing Ability to Pay principle, for example, continues to

play an important role in getting suppliers to set affordable debt repayment rates.

We estimate that around 15% of prepayment customers self-disconnect or self-ration their energy.⁶ While not all of these households are vulnerable, for many it does pose a serious risk to their health and wellbeing. According to previous research, 56% of self-disconnecting households contain someone with a physical or mental health condition and 40% contain at least one child under the age of 16.⁷ A narrow principle setting out supplier's obligations in cases of vulnerable households self-disconnecting could provide important protections in addition to the broad vulnerability principle.

This and another narrow principles relating to vulnerability may be appropriate going forward. We agree with Ofgem that existing prescriptive rules should only be replaced by narrow principles if this would improve consumer outcomes.

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

We accept that the definition may have been changed to make it fit better with the proposed new Standards of Conduct. However, we do not agree with the removal of explicit reference to the role of the supplier in the definition. Ofgem must make it clear that supplier behaviour can create or exacerbate vulnerable situations. Given the success of the original definition, we would be concerned that producing an alternative version may undermine the weight and recognition the original now enjoys across the industry. Given this risk, we think such a move should only be considered where absolutely necessary for the protection of vulnerable consumers.

⁶ Citizens Advice (2014) [Topping up or Dropping out](#)

⁷ Consumer Focus (2010) Cutting back, cutting down, cutting of

Chapter 3: Ofgem's information gathering powers

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

We support the proposal to widen Ofgem's information gathering powers and will continue to share our own evidence with Ofgem in support of its monitoring activities.

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confidential and independent advice
to help people overcome their problems.

We advocate for our clients and consumers
on the issues that matter to them.

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