

To: Holders of Gas and Electricity
Supply Licences, DECC,
Consumer Futures, consumers
and their representatives and
other interested parties

Our Ref: 108/13
Direct Dial: 020 7901 7000
Email: rmr@ofgem.gov.uk

28 June 2013

Dear Colleagues,

Implementation of the Retail Market Review non-domestic proposals – decision to make licence modifications

This letter provides an overview of the Retail Market Review (RMR) non-domestic proposals and describes how we have taken account of responses to our statutory consultation, issued on 22 March 2013 (the 'March consultation'). The deadline for representations on these modifications was 1 May 2013. It confirms the Gas and Electricity Markets Authority's (the Authority)¹ decision to make licence modifications to the gas and electricity supply licences by amending standard licence condition (SLC) 1, SLC 7A and inserting SLC 7B. The main effect of these modifications can be summarised as: expanding the definition of a micro business consumer, allowing micro businesses to provide termination notice at any time, creating new requirements for the contract end date and notice period end date on bills and introducing enforceable Standards of Conduct (SOC).

The amendments to SLC 1 and the new SLC 7B will take effect on 26 August 2013 and the modifications to SLC 7A will take effect on 31 March 2014.²

Policy overview

The March consultation detailed our final proposals to improve the energy market³ for non-domestic consumers, particularly smaller businesses. Our proposals were developed following extensive consultation with suppliers, consumer groups, third party intermediaries (TPIs) and our own quantitative and qualitative research. Below we set out an overview of the proposals. The full detail and rationale for these proposals can be found in 'The Retail Market Review - Final non-domestic proposals' and the accompanying Impact Assessment.⁴

¹ Ofgem is governed by an Authority, consisting of non-executive and executive members and a non-executive chair. The Authority determines strategy, sets policy priorities and takes decisions on a range of matters, including price controls and enforcement. The Authority's powers are provided for under the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998 and the Enterprise Act 2002.

² Except the modification to paragraph 7A.14 of SLC 7A, which takes effect on 26 August 2013 for the purposes of SLC 7B.

³ In this document and associated documentation we use the terms 'market' and 'markets' as shorthand for referring to different segments of the energy sector. For the avoidance of doubt these terms are not intended to describe or otherwise suggest the approach that may be taken by Ofgem for the purposes of market definition in competition law investigations.

⁴ <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=458&refer=Markets/RetMkts/rmr>

Protecting more businesses by expanding the definition of a micro business

A micro business consumer is defined in terms of energy usage, the number of employees and turnover. As set out in the March consultation, we consider it is appropriate to increase the energy usage part of this definition to more accurately capture the smaller businesses that we believe should be protected. We proposed raising the energy consumption thresholds to 100,000 kWh per year for electricity, and to 293,000 kWh per year for gas. To put this in context, a business consuming these amounts of electricity and gas would pay about £10,000 before VAT for each fuel.

Clearer and simpler processes for smaller businesses

We are putting in place new rules to help smaller businesses avoid being caught out when their fixed term contracts come to an end. Suppliers will have to show clearly, on every bill or statement of account, the date that the contract will end and the deadline for the customer to give notice to terminate a contract and change supplier. We also proposed that micro business consumers should be allowed to give notification that they wish to terminate a contract at the end of the fixed term, any time during their contract. This will eliminate the current practice of some suppliers to require termination notices during a narrow time period (typically 30 days).

Fairer treatment for smaller businesses

We are putting in place enforceable SOC that require suppliers to treat micro business consumers fairly. These will provide greater protection and transparency to these businesses in respect of contractual information, switching supplier, deemed contracts and billing. To comply with the new rules, under the general objective of treating customers fairly, suppliers must ensure information is not misleading and act promptly to put things right when they make a mistake. They will need to focus their attention on what best meets the needs of their customers. Suppliers will be required to communicate what they have done and are doing to comply with the SOC and update this annually.

Increased monitoring of suppliers' customer transfers

We will be increasing our monitoring of customer transfers and will continue to take enforcement action where necessary.⁵ Efficient switching is particularly important to the functioning of a competitive market. Since we recently highlighted concerns, fewer customers have faced difficulties when trying to switch suppliers, although there is still room for further improvement. We continue to encourage suppliers to make changes to processes to ensure this progress continues.

Third Party Intermediaries (TPIs)

We have taken further steps to gain powers under the Business Protection from Misleading Marketing Regulations 2008 (BPMMRs). We have also taken the lead in developing a single Code of Practice for non-domestic TPIs and have shared a draft version with industry. We want this Code to protect the interests of business consumers by giving them confidence that when they use TPIs for energy related services, they will be honest, fair, appropriate and transparent and assist them effectively.

To inform our development of the contents of the Code, we convened a working group at the start of this year. TPIs, suppliers, consumer representatives and code administrators were all included in the group to ensure we captured a wide range of viewpoints and issues. We have established a dedicated email address⁶ where all interested parties can comment on the published discussions of the working group. In parallel to this letter we are

⁵ Decisions on whether to take enforcement action are taken in line with our Enforcement Guidelines <http://www.ofgem.gov.uk/About%20us/enforcement/Documents1/Enforcement%20guidelines%202012.pdf>
⁶ thirdpartyintermediaries@ofgem.gov.uk

publishing our 'Issues and Options Paper' that discusses the current regulatory framework for TPIs across both the domestic and non-domestic market.

Summary of responses and Ofgem's view

We received 14 responses⁷ to the March consultation:

- Ten from suppliers.
- Two from trade associations.
- Consumer Focus (now Consumer Futures),
- Ombudsman Services: Energy ('the Ombudsman').

In general, respondents were supportive of the intent and much of the detail of the proposals. However, some respondents made comments and suggestions regarding the drafting of the proposed licence changes and the timetable for implementation.

The key points raised by respondents were:

- The drafting of the revised definition of a micro business in SLC 7A was not consistent with the existing definition.
- More clarity was needed on the requirements for the contract end date and notice period end date on bills or statements of account.
- The proposed implementation table for the modifications to SLC 7A underestimated the complexity of the changes required to suppliers' IT systems.
- The SOC guidance should be specific to non-domestic consumers.
- The SOC Customer Objective should be amended to require 'undue detriment' rather than just 'detriment'.
- Concerns with how the SOC would interact with existing licence conditions.
- Queries on the scope of the SOC and approach to enforcement.

Below we describe these in more detail and explain our views.

Revising the micro business definition

Six respondents considered the drafting of the expanded micro business definition was inconsistent with the existing reference to a 'relevant consumer' for the purposes of article 2(1) of The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 (the 'Redress Scheme Order').⁸ Two suppliers requested the definition of a micro business consumer be drafted in the text of the licence condition, rather than referring to the definition used in the Redress Scheme Order.

In our view, the amendments to the micro business definition as drafted remain consistent with the Redress Scheme Order. Unless the turnover and employee number criteria are satisfied, a customer will only qualify as a micro business consumer in relation to the particular fuel which satisfies the consumption criteria. For example, this may mean that a customer only qualifies as a micro business for electricity, but not for gas (or vice versa). This position is also in line with guidance issued by the Department for Business Enterprise and Regulatory Reform (BERR) in 2009:⁹

"A micro-enterprise consumer may only bring a complaint to the redress scheme if he qualifies for that particular fuel. That is to say, if his annual consumption is under 55,000kWh for electricity then he would qualify to bring an electricity complaint to

⁷ Non-confidential responses to the March consultation are published on our website.

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=458&refer=Markets/RetMkts/rmr>

⁸ <http://www.legislation.gov.uk/uksi/2008/2268/contents/made>

⁹ <http://webarchive.nationalarchives.gov.uk/+http://www.berr.gov.uk/files/file47811.pdf>. In 2009, BERR became part of the Department for Business, Enterprise and Skills (BIS).

the redress scheme. In the same way, if his annual consumption is under 200,000kWh for gas then he would qualify to bring a gas related complaint to the redress scheme. Where a micro-enterprise consumer is a dual fuel consumer receiving gas and electricity from one regulated provider then the relevant consumer's annual consumption of gas and electricity shall be treated separately for the purposes of qualifying to bring complaints to redress."

We consider the proposed drafting is clear and consistent and we have not made any changes. We also consider it is appropriate to retain the reference to the Redress Scheme Order so that in the event any guidance or clarifications were published by government it would also apply to the licence condition.

Not allowing unilateral termination of micro business contract

One supplier was disappointed that we decided not to amend SLC 7A.3. This condition prevents suppliers from applying different terms or terminating a micro business contract if the customer no longer satisfies the definition of a micro business consumer. We will consider if any further clarity is required in the guidance for SLC 7A, which we intend to update following publication of this letter.

Allowing termination notice to be given at any time

One supplier questioned whether the drafting of SLC 7A.13(b) could mean that a supplier requires two forms of notification to terminate a contract; a notice not to rollover and a separate notice to terminate.

This is not the policy intent. The current drafting of 'notification' as a singular noun means that only one notification from the customer will be required to both prevent contract rollover and terminate the contract at the end of the current fixed term period. No changes to the drafting have been made.

Contract and notice period end date on bills

Two suppliers said that the requirements of SLC 7A.10B for the contract end date and notice period end date on bills were ambiguous in scenarios where the customer has already agreed a subsequent contract after the current fixed term or provided termination notice early during the current term. Three suppliers also considered that sub paragraph SLC 7A.10B(c) was unnecessary because contracts without a rollover clause would not require any termination notice. Another supplier requested clarity on the types of communication that would be covered by a 'statement of account' as drafted in SLC 7A.10A. They explained that in addition to the regular bill or invoice, a statement of account may be sent to customers to chase late payment and that it would be unnecessarily costly to include the information on both of these documents.

Whilst we believe the licence requirements are clear, we are clarifying that in respect of SLC 7A.10B, if a micro business consumer has agreed a new contract with a supplier or has been rolled over, and continues to receive a bill from the same supplier during the current fixed term period, then we would expect the end date and notice period end date for the next fixed term contract to be displayed on the bill. Nevertheless, given the scope of the SOC we would also expect it to be made clear to the customer when their current fixed term ends.

In the scenario where a customer has provided termination notice but continues to receive a bill prior to the end of their notice period, we consider that it should also be made clear on the bill/statement of account (in scope of the SOC) that this notice has been accepted and that no further action is required to terminate the contract at the end of the current fixed term.

Although the circumstances outlined by sub-paragraph 7A.10B(c) may be rare, we consider that it is still possible a supplier may require a termination notice period even if there is no rollover clause. In the scenario where a fixed term contract has no rollover clause and no termination notice period, the end date of the contract and the 'latest date' to provide notice would effectively be the same. Therefore, under the new licence requirements only the end date of the fixed term period would be required to be on the bill or statement of account.

We have not defined 'statement of account' in the licence drafting. The RMR consultation on the final domestic proposals, published on 27 March 2013,¹⁰ describes the purpose of a statement of account for domestic consumers as follows:

"A Statement of Account . . . has the main purpose of informing PPM [pre-payment] and Direct Debit customers about how much they have paid and what they are paying."

A statement of account is distinguished from a 'Bill' that, as defined in SLC 1, covers any invoice, demand for payment or similar instrument.

Implementation timetable

Four suppliers raised concerns with our proposed implementation timetable of Day 1 + 5 months (i.e. 206 days from the final decision date) for the modifications to SLC 7A. They argued that the additional information on bills required significant changes to billing systems and customer communications. Some suppliers were constrained by other IT developments, such as those required to comply with the domestic RMR proposals.

We have considered these responses carefully and our view is that a slightly revised implementation date of 31 March 2014 is appropriate. This date then aligns with the envisaged timetable for our 'Clearer Information' proposals as part of the domestic RMR remedies.¹¹ We are also aware that government is looking at the current consumer redress legislation to ensure consistency in the definitions of a micro business. We expect suppliers to meet this date.

Nevertheless, these are important protections and we urge licensees to introduce these changes as soon as possible before this date, particularly in light of the SOC taking effect from 26 August 2013. Whilst we are allowing additional time before the formal requirements to comply with our SLC 7A rules take effect, suppliers should consider ways in which they can treat consumers fairly, on and from the date the SOC take effect. Consequently, we would expect suppliers to take steps to consider ways to ensure their customers have access to the appropriate information in relation to their contracts, before 31 March 2014.

Standards of Conduct Guidance

Some suppliers noted that the proposed SOC guidance text matched the proposed guidance for the domestic SOC. They believed that some of the concepts, such as 'vulnerability', are not appropriate to the non-domestic market and requested the guidance be specific to this market. One supplier also considered that the draft guidance may contradict Ofgem's open letter on non-domestic debt and disconnection from December 2012.¹² In this letter we outlined our view that the introduction of enforceable licence conditions was unnecessary:

¹⁰ <http://www.ofgem.gov.uk/Markets/RetMkts/rmr/Documents1/The%20Retail%20Market%20Review%20-%20Final%20domestic%20proposals.pdf>

¹¹ See Appendix 4 of the statutory consultation on the RMR domestic proposals <http://www.ofgem.gov.uk/Markets/RetMkts/rmr/Documents1/The%20Retail%20Market%20Review%20-%20Statutory%20Consultation%20on%20RMR%20Domestic%20Proposals.pdf>

¹² <http://www.ofgem.gov.uk/Sustainability/Cp/Ewbc/Documents1/Non-dom%20disconnection%20openletter%2020-12-2012.pdf>

"Non-domestic customers do not have the same levels of protection on debt and disconnection as domestic consumers, who are protected through licence conditions. These licence conditions provide a number of protections where households face payment difficulty including taking into account ability to pay, the use of pre-payment meters, preventing the disconnection of vulnerable customers and the provision of information around these obligations.

Overall, we do not currently see that enforceable licence conditions of this nature are necessary or desirable for non-domestic consumers, where the nature of detriment is different and where equivalent issues of vulnerability and fuel poverty do not exist. However, suppliers should treat non-domestic customers who are in payment difficulties and face disconnection fairly."

The purpose of our open letter on non-domestic debt and disconnection was to highlight suppliers' approaches to customers in payment difficulty or facing disconnection and our expectations of good practice. The meaning of "equivalent issues of vulnerability" relate to specific domestic licence conditions covering issues such as the Winter Moratorium.¹³ Amongst other things, suppliers will not knowingly disconnect a consumer with a child under the age of 16 or someone who is chronically sick. This is an example of vulnerability that does not apply in the non-domestic market.

Vulnerability may not always be applicable to interactions between suppliers and non-domestic consumers, but we consider there are circumstances where it is relevant. For example, a sole trader may have a disability, or otherwise share characteristics of vulnerability with a domestic consumer. When communicating with this consumer (within the designated SOC activities), suppliers should account for such factors and treat them fairly. Other examples may include circumstances where a domestic consumer is in premises supplied under a non-domestic contract.

The concept of vulnerability in the non-domestic market has been considered previously in the context of the Extra Help Unit and the Ombudsman, They provide advice to micro businesses that are under threat of disconnection or have been disconnected. Following the publication of the Consumers, Estate Agents and Redress (CEAR) Act 2007, the National Consumer Council (NCC) published a paper¹⁴ regarding micro business vulnerability. This stated:

"...the new NCC takes the view that a "vulnerable person" should be regarded as encompassing a domestic or non domestic individual, business enterprise or not for profit organisation so long as it satisfies the vulnerable criteria."

"Given that non-domestic consumers are in business for themselves or are not for profit organisations with a hierarchy of structure, the new NCC believes that in the vast majority of cases where difficulties arise, a non-domestic consumer should be able to resolve their problem for themselves ... However, in a very limited number of instances due to the complexity of the matter or the circumstances of that non-domestic consumer, that will not necessarily be the case."

The SOC guidance specifies that suppliers should treat their customers in an 'appropriate' and 'fair' manner. This complements the best practice approach we outlined in the open letter, where we stated:

"We consider a variety of approaches should be used by suppliers to understand their customers' circumstances and proactively communicate using channels which are best suited to their customers' needs."

¹³ See SLC 27.10.

¹⁴ <http://www.ofgem.gov.uk/Sustainability/Cp/Cr/CJwg/Documents1/CD-CF%20Non-Dom%20Discon-Vulcon%20Referral%20Pathway.pdf>

This approach is consistent with the SOC policy objective.

For these reasons we believe that suppliers should, where applicable, be acting in a manner consistent with that outlined in the 'appropriate' section of the guidance. Consequently no changes to the drafting have been made. We do not believe it is unreasonable for suppliers to understand their customers and if a consumer has certain needs or requirements, the supplier should account for these in their interactions with them.

Two suppliers raised concerns about the inclusion of 'unconsciously' as part of the requirements to be 'honest and transparent'. They felt that, by definition, suppliers would find it difficult to be held to account for things they were not aware of. As such we have altered the guidance. 'Unconsciously' has been replaced by 'deliberately, recklessly or negligently' and reflects our policy intent whilst retaining our expectation of how a supplier should interact with consumers.

Some suppliers raised concerns that as they must have regard to the guidance, Ofgem could effectively modify the licence without a proper consultation process. As stated in SLC 7B.11, any new guidance or modifications to existing guidance will be consulted on in accordance with Ofgem's normal approach.¹⁵

We also received requests to confirm that the guidance for the SOC should be interpreted in the context of the reasonable person test, in line with our approach to enforcement. We can confirm that this is the case. A final version of the SOC guidance can be found in Appendix 1 below.

Changes to the Customer Objective

Six respondents to the consultation outlined that the Customer Objective should be amended, and require 'undue detriment' rather than only 'detriment'. Suppliers argued that without the word 'undue' they may be unable to exercise genuine and necessary business practices.

In our view the addition of 'undue' could mitigate suppliers' responsibility to treat consumers fairly. As we noted in the March consultation, where a supplier has a right to do something, the effect of the term 'significantly favour' means that the SOC would not necessarily prevent the supplier from exercising that right. The SOC will capture whether the process for exercising the right and the manner in which it is exercised is fair and otherwise consistent with the SOC principles. For example, it will always be necessary for the supplier to employ its discretion before exercising a legal right.

SOC interactions with existing licence conditions

A number of respondents disagreed with the drafting of SLC 7B.6, which outlines that in instances of a conflict between the SOC and SLC 14,¹⁶ the SOC will prevail. Suppliers argued that this may deny them the opportunity to block a transfer for valid reasons. SLC 14.2 currently allows a supplier to object to a non-domestic customer switching as long as they have specified this in the contract, no matter how onerous the term. Customer transfers are one of the largest areas of problems for non-domestic consumers,¹⁷ including the objections process. We have decided to include SLC 7B.6 to ensure that when a supplier objects to a transfer, the reasons for doing so are fair and meet the criteria of our Customer Objective.

¹⁵ See guidance on Ofgem's approach to consultation:

<http://www.ofgem.gov.uk/About%20us/BetterReg/Documents1/guidance%20on%20ofgems%20approach%20to%20consultation.pdf>

¹⁶ SLC 14 sets out the conditions under which a supplier may block a customer from switching.

¹⁷ See page 25 of the RMR Impact Assessment.

http://www.ofgem.gov.uk/Markets/RetMkts/rmr/Documents1/RMR_ImpactAssessment_Non-Domestic_22032013.pdf

Enforcement of the SOC

We have previously outlined that we will use a bespoke approach to enforcement for the SOC, pending the outcome of the Review of Ofgem's enforcement activities¹⁸ (the 'Enforcement Review'). Our assessment of the seriousness of a potential breach will include consideration of whether a reasonable person, intent on complying with the SOC, would have acted in the way that a supplier did with the consumer.

We received a number of responses related to the enforcement of the SOC. These included questions on how Ofgem would open a case into a potential breach of the SOC, requests for more detail on the proposed independent panel to be used in disputed cases, queries on the appeals panel in instances where a supplier loses a ruling and when investigations will be made public. Some suppliers again noted their preference for a formal two-stage approach to enforcement.

Respondents noted that they would elaborate on these issues in their response to the Enforcement Review and we will consider these representations as part of this review. Consequently, our approach to enforcement of the SOC will continue to use the reasonable person test as proposed. Our current Enforcement Guidelines provide guidance on how we will decide which cases to pursue.¹⁹ Where changes to these Guidelines are made, we will build these into our approach to enforcement.

Scope of SOC

The majority of respondents agreed that the SOC should only apply to smaller non-domestic consumers and were appropriately limited to the designated activities within billing, contracting and transfers.

One respondent asked for clarity on whether activities that are not licensable and not explicitly excluded from the designated activities would be covered by the SOC. Where an activity falls within the scope of the designated activities of SLC 7B.12 and is being carried out by the licensee, the activity is covered by the SOC irrespective of whether it includes elements which do not relate to energy supply. The communication of charges on a bill may include items not directly related to energy supply, for example, the Feed-in Tariffs scheme.²⁰ These should be communicated in a way that is compliant with the SOC.

Other comments

A number of other minor comments were made on the drafting of the proposed licence conditions. In some cases we considered that revisions would make the drafting clearer without changing the obligations on licensees. Where this is the case, or the matters are clearly of no substantive impact (such as typographical errors) the text has been amended accordingly.²¹ A list of these changes, and the reasons for them, are set out in Schedule 1 of the statutory direction as a supplementary appendix to this letter.

¹⁸ <http://www.ofgem.gov.uk/About%20us/enforcement/Documents1/ER%20initial%20thinking%20letter%2026-3-13.pdf>

¹⁹ <http://www.ofgem.gov.uk/About%20us/enforcement/Documents1/Enforcement%20guidelines%202012.pdf>

²⁰ <https://www.gov.uk/government/policies/increasing-the-use-of-low-carbon-technologies/supporting-pages/feed-in-tariffs-scheme>

²¹ There were some minor typographical errors in the original version of the statutory consultation notice published on the Ofgem website. These were not present in the notices sent out to licensees and the notices were republished on the Ofgem website without the typographical errors. Please note that these typographical errors are not highlighted in the annexes to the statutory direction statutory directions.

The Authority's Decision

Having carefully considered the responses to the March consultation, the Authority has decided to proceed with the modifications to the gas and electricity supply licences by amending SLC 1 and SLC 7A, and the insertion of SLC 7B. The effective dates for these modifications are set out below.

SLC 1

The amendments to SLC 1 will take effect on and from 00:00 on Monday 26 August 2013.

SLC 7A

With the exception of the application of paragraph 7A.14 (i.e. the new definition of micro business consumer) to SLC 7B, the amendments to SLC 7A will take effect on and from 00:00 on Monday 31 March 2014.

However, due to the existing provisions of SLC 7A, this implementation date will mean that the new rules will start to apply to new and existing micro business consumers in different timescales:

- In respect of micro business consumers which are already subject to the existing micro business protections (known as SLC 7A), the modifications will apply on and from 00:00 on Monday 31 March 2014.
- In respect of micro business consumers which are not already subject to the micro business protections of SLC 7A (i.e. the business consumers that would be covered by the wider definition of micro business), the effect of the existing drafting of SLC 7A means that the modifications (and SLC 7A as a whole) will start to apply on and from 00:00 on Monday 31 March 2014, but will only have effect for an individual consumer:
 - at and from the time a micro business consumer enters into a new supply contract; or,
 - in the case of a fixed term contract, at and from the time when the duration of a supply contract that applies to a micro business consumer is extended in any way.

SLC 7B

New SLC 7B (and the amended definition of micro business consumer in paragraph 7A.14 of SLC 7A for the purpose of SLC 7B) will take effect on and from 00:00 on Monday 26 August 2013.

Statutory directions modifying the standard conditions of all electricity and gas supply licences have been issued to all relevant licensees. The statutory directions have also been published on the Ofgem website as a supplementary appendix to this letter.

Next Steps

Licence holders, trade bodies representing licence holders and Consumer Futures will have 20 working days to decide (from the first working day after this letter is published) if they want to appeal to the Competition Commission against the licence modifications. Barring any appeal the licence modifications will have effect from the relevant dates set out above.

We are committed to continue our monitoring of the performance of the market, and in particular the impact of our new rules. We will review the impact of the RMR remedies no

later than 2017 – and may examine specific issues as new information and evidence emerges.

If you have any queries regarding the content of this letter please contact David Hunt, Head of Retail Market Functioning (020 7901 7000) or email rnr@ofgem.gov.uk.

Yours faithfully,

Maxine Frerk
Partner, Retail Markets and Research

Appendix 1 – Final Guidance for the Standards of Conduct key terms

1. The content below represents final guidance relating to the new licence Standard Condition 7B, Standards of Conduct. 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 issued pursuant to paragraph 7B.11 of standard condition 7B and therefore suppliers will need to have regard to the guidance in their interpretation and application of standard condition 7B.

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"	Encapsulates adapting behaviour to take into account particular circumstances

	<p>arising in a given situation, including but not limited to: cultural or other sensitivities, the position of vulnerability, 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>
<p>"professional manner"</p>	<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.</p> <p>Aggressive, intimidating, rude or condescending behaviour would be examples of acting contrary to this requirement.</p>
<p>"plain and intelligible language"</p>	<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</p>

	<p>the intelligibility to the typical consumer of the language.”</p> <p><i>(Smith J, OFT v. Abbey National [2008] EWHC 875 (Comm))</i></p>
--	--