

## Appendix 2 – Treating Customers Fairly

### SLC10AA

Our main concern with the licence condition remains the absolute phrasing of the condition, which could result in DNOs breaching “the letter” of those obligations simply by undertaking routine activities. We remain concerned that Ofgem’s enforcement team may interpret the condition in a rigid way, leading to disproportionate and unnecessary levels of enforcement activity, which would not be consistent with how a principle-based obligation should operate.

Ofgem has confirmed at policy meetings that the specific examples that concern us would not be expected to breach the requirements of the licence condition. Ofgem also expressed the view that a principles-based licence condition is not intended to stipulate definitive steps which must or must not be taken by the licensee. Changes should, therefore, be made to align the wording of the licence condition with the interpretation shared by Ofgem at policy meetings and to better reflect how Ofgem has described a principles-based licence condition would operate.

Most importantly, the licence condition must be drafted to make it clearer that failure to meet “the letter” of the Standards of Conduct does not constitute a breach of the licence condition provided that the DNO has complied with the requirements to act in a manner consistent with the Customer Objective and to deliver a Fair outcome for Domestic Customers.

We believe that there are a few different drafting approaches that could achieve this:

- place a “reasonable endeavours” obligation on the DNOs and make changes/ qualification to those specific aspects of the Standards of Conduct that are of greatest concern to Ofgem (the approach proposed by DNOs on 15 September 2022); or
- change the wording of paragraph 10AA.4 so that it is clear that the Standards of Conduct are not to be interpreted prescriptively, as long as paragraphs 10AA.2 and 10AA.3 have been complied with. This could be achieved, for example, by amending paragraph 10AA.4 to read: *“The Standards of Conduct in the procedures and processes which the licensee must put in place are that the licensee and any Representative must: ...”*. This would need to be accompanied by changes/ qualification to those specific aspects of the Standards of Conduct that pose the biggest concern; or
- make detailed changes to the wording of all aspects of the Standards of Conduct so that all aspects are drafted in a way that “the letter” of each aspect could be readily met by DNOs when carrying out their routine activities.

### Fair Treatment Guidance

The Fair Treatment Guidance currently adds very little to what is set out in the licence and does not provide any meaningful “guidance” to the licensee.

Sections 2 and 3 of the Fair Treatment Guidance do not provide any guidance on the interpretation of the licence condition. These sections simply repeat or paraphrase aspects of the licence condition itself. Furthermore, the Fair Treatment Guidance seems to introduce a new concept of “customer outcome” which is not anticipated by the licence condition itself, is not included in the licence definitions and is, therefore, unclear.

It is essential that the Fair Treatment Guidance is expanded considerably to provide guidance and actual examples.

Section 4 (How Ofgem applies the Standards of Conduct) does not fully align with the process that Ofgem has explained in policy meetings. It also introduces concepts of a “fairness test” and “compliance threshold” which are not explained. In particular, it is essential that this section is refined to clearly set out the tests and logic that Ofgem will apply in enforcing this licence condition and the Standards of Conduct, as outlined by Ofgem at the various policy discussions for this condition.

The detailed drafting suggestions we provided in the paper sent by all DNOs in September 2022 will enable this to be achieved.

It is essential that amended versions of the licence condition and Fair Treatment Guidance are brought to the next LDWG, to allow further review prior to the Statutory Consultation.