

Confidential - contains commercially sensitive information

23 August 2023

By email: RetailStakeholderTeam@ofgem.gov.uk

Response to Ofgem's statutory consultation on consumer standards

Dear Jemma

We welcome the opportunity to respond to this statutory consultation, and thank you for the workshops your team has run during this process which have been very helpful in understanding Ofgem's thinking.

Our response focuses mainly on your ease of contact proposals. We agree it is important that Ofgem takes action to improve ease of contact where suppliers are letting customers down. **But we regret to say that we think the current proposals are too prescriptive and could have an detrimental impact on service standards in industry leaders like Octopus. A much better route for customers would be for Ofgem to create a "special measures" regime for suppliers that are not performing.**

Octopus Energy has an NPS score that is +39 points above the energy supplier average - the highest difference across any of the sectors that Bain surveyed - and one of the highest company NPS in any sector. We have been awarded the Which? recommended energy supplier six years in a row. **We want to see Ofgem focus on driving up service where it is unsatisfactory and allow us to get on with improving our service offering in preparation for Winter, based on customer feedback and our own accumulated expertise.**

We have a very strong incentive to keep improving our performance. Contrary to Ofgem's suggestion in the consultation that customers don't switch based on service, Octopus has won more than 300k customers over the last 6 months (over 65k in July)¹ despite there being virtually no price competition. This suggests that in a crisis, good service matters and customers recognise it.

¹ Source: Octopus internal data based on industry switching records.

Against this backdrop, we must emphasise that the proposals will get in the way of Octopus continuing to provide a high quality of service. We set out our key concerns in response to question 1 below.

We think there are a number of alternative, more effective and targeted approaches you could take to improve ease of customer contact in time for Winter:

1. **Create a “special measures” regime on ease of contact:** This is straightforward. You can amend the guidance and new licence conditions so they only apply to companies which have not met an acceptable standard of service for their customers. Companies that have shown they can be trusted to provide great service could get on with innovating and evolving their own customer offering. Those that have let customers down would be told by Ofgem what to do to fix it.
2. **Accelerate the introduction of regulatory incentives to winter 2023 in time for the anticipated next round of MCRs.** This would look like exempting suppliers with a consistently high performance in the area of investigation from the full MCR. This approach will reduce regulatory costs overall. Regulatory incentives were considered as part of your policy consultation but do not appear in this statutory consultation - we see no reason for delay in this area. It would also show that Ofgem is being responsive to the considerable industry feedback on the MCR process given last year and not yet acted upon.
3. **Fast track the work you’re planning on designing a common measure of customer experience.** We would be very happy to work closely with you on this. For example, sampling customer satisfaction would be an effective way to identify good and bad service - it's literally ungame-able. This measure of customer experience could be the trigger for putting companies into the enhanced compliance/special measures regime (as at 1 above).
4. **Publish a document on best practice in handling customers for this Winter.** You could use the results of the MCRs, the policy work that has gone into this consultation and the EUK Vulnerability Commitment presentations as a starting point. You could add input from consumer bodies or run a workshop where consumer bodies could share their experience with suppliers on what works and what does not. We are aware that Ofgem did something similar when it launched SLC 0 on ‘treating customers fairly’ and it worked well in changing supplier behaviour.
5. **Take an iterative and data-led approach to the reforms.** e.g. instead of introducing a new requirement for a 24/7 emergency phone line (with no certainty as to how much it will be used), use this winter to get some suppliers to trial this over the winter and then make a decision based on evidence.

We urge you not to rush proposals ahead of the winter, when there are many more targeted alternative options available which will both build on the important policy development work you have done, but also avoid unintended consequences for suppliers that offer good customer service.

Yours sincerely

Alexandra Meagher, Group Head of Regulation

Responses to Consultation Questions

1. Do you have any comments or questions on our proposed licence changes to improve supplier contact ease?

We agree it is important that Ofgem takes action to improve ease of contact where suppliers are letting customers down. However we have a number of concerns with the proposals. Overall, a much better route for customers would be for Ofgem to create a “special measures” regime for suppliers that are not performing, rather than a new set of prescriptions for all which will have a detrimental impact on industry leaders. We set out other more targeted approaches to ease of contact in the cover letter to this response.

We agree with and endorse the concerns about the specific proposals for 24/7 enquiry services and prioritising vulnerable customers which are set out in the Energy UK response to this consultation.

Our overarching concerns with the proposals are:

- **The proposed new licence conditions are not additive to your existing powers and therefore not necessary.** Through SLC0.2, 0.3 and 31F Ofgem already has powers to take action to improve customer ease of contact where it feels certain companies are letting customers down. Ofgem has already successfully used these powers (see the recent [Eon](#) compliance case and ongoing engagements with [Ovo](#)). There’s no need for more. Indeed, your decision to not do an impact assessment is based on their view that the policy options do not represent significant changes to the substance of the licence.
- **The guidance designed to sit alongside the new licence conditions is likely to create perverse consumer outcomes.** This is because:

- It is very prescriptive and focused on inputs, not customer outcomes. For example the guidance specifies longer opening hours but this could lead to worse customer experience - for example if meeting this new requirement means suppliers have to use less well trained people or longer working hours demotivates them. Similarly, the idea of handling vulnerable customers first is laudable, but when tried by suppliers in the past it just led to a two tier service system.

In our experience, the much better approach is to answer the phone to everyone in a decent amount of time and train people to provide good service including to vulnerable customers and their representatives. A focus on outcomes (customer happiness indices) drives all our in house improvement measures and we do not want to be detracted from that by having to meet prescriptive inputs.

- The timescales for implementing the guidance are insufficient - see further in response to question 6.
 - **The Guidance presents new regulatory and reputational risks for suppliers (and for Ofgem).** Firstly, the status of the guidance is not clear. In some areas it is a best practice suggestion and in others it sets a “comply or explain” test. In some areas as well the guidance is imprecisely worded (for example with regard to 24/7 emergency handling - where Ofgem clearly expects this to be provided by phone but this is not contained in the guidance itself). This all adds significant risk of enforcement and reputational damage. Moreover, Ofgem has already publicly stated that it is introducing new standards but these are not reflected in the licence - e.g. see [here](#) saying phone lines must be open on weekends and [here](#) saying dedicated lines for the vulnerable. This creates reputational risk for Ofgem too.
 - **Impact on competition in the market.** Ofgem’s proposed approach to the ease of contacts appears to micromanage suppliers, stifling innovation that is needed to reach net zero. We would like Ofgem’s overall approach to retail regulation to focus more on enabling competition and supporting a diversity of business models and approaches in the market. These proposals are a step in the wrong direction.
- 2. Do you have any comments or views on our proposed contact ease guidance document? We would welcome evidence of ways in which suppliers are already delivering best practice.**

We do not consider that the contact ease guidance is ready for implementation. Overall there are a number of questions about the status of guidance which mean that it carries significant enforcement and reputational damage. In many ways, it appears that Ofgem is

attempting to set minimum standards via the guidance. This is not appropriate. If a minimum standard is not intended, then specific thresholds should be removed from the guidance and included in the licence. We have not seen enough evidence from Ofgem to suggest that the specific thresholds it appears to be suggesting will actually drive better customer outcomes or represent good value for money investment for billpayers.

As EnergyUK points out, the current approach introduces considerable risks that either suppliers all interpret the thresholds in the guidance as a minimum standard in order to avoid excessive regulatory risk; or that, if suppliers deviate from the thresholds set in guidance, Ofgem will be expected to enforce against them, bringing reputational risks to the whole sector. This is likely, in no small part because Ofgem's guidance will set expectations that it will be pressured to enforce.

We have several further concerns about the guidance:

- **The enforcement status of the guidance is unclear.** Suppliers are expected to have “due regard” to the guidance yet Ofgem is using for a number of things - defining licence terms, describing best practice and sometimes setting new standards tests (e.g. a “comply or explain” test relating to a supplier’s “enquiry service opening hours”). Ofgem officials have been keen to stress that the expectations and thresholds (for example 7 hours of open contact channels over the weekend) are not minimum standards. However, by specifying the conditions which will lead Ofgem to suspect non-compliance, we believe Ofgem is effectively writing minimum standards into its guidance.
- **In some areas the guidance is imprecisely worded.** For example with regard to 24/7 emergency handling - where Ofgem clearly expects this to be provided by phone - and specified this in workshops - but this is not contained in the guidance itself.
- **It is likely to be out of date quickly.** The guidance includes elements that will become outdated very quickly, making it a less useful document for the future. For example, it references the REC R0053 modification that does not yet have an outcome and will be referred to as something different once a decision is made by Ofgem. This seems out of place in a guidance document.

3. Do you have any comments or questions on our proposed licence changes to better support customers struggling with their bills?

We are more comfortable with Ofgem's proposals on support for customers struggling with their bills.

We suggest that Ofgem introduces an “all reasonable steps” element to licence conditions 27.5B and 27.8A to allow for flexibility in implementation and to manage implementation

costs. As currently drafted, the licence conditions could be ready as requiring a site visit early in the non-payment journey because it instructs that suppliers must make proactive contact with customers who may in fact not want to be contacted.

4. Do you have any comments or questions on our proposed licence changes to require suppliers to publish information on their customer service performance, as measured by Citizens Advice?

Overall, we support reputational incentives as a driver of better outcomes, so long as this is based on objective assessment of supplier outcomes for customers.

In addition, we consider Ofgem should accelerate the introduction of regulatory incentives to winter 2023 in time for the anticipated next round of MCRs - which are largely repeats of previous MCRs. We see no reason for delay in this area. This would look like exempting suppliers with a consistently high performance in the area of investigation from the full MCR. This approach will reduce regulatory costs overall.

5. Could you provide any further, detailed evidence on the potential costs and benefits of our revised proposals?

As set out in response to questions 1 and 2, we do not consider the ease of contact proposals clear or ready for implementation. We have not done any detailed work on the costs of the proposals as we are not convinced they are the right approach.

In general, our experience shows that better service standards are currently achieved in the market by those suppliers with the lowest cost to serve. However this relies on suppliers being able to be agile and serve their customers needs in the most appropriate manner. Forced minimum standards such as dedicated phone lines or mandatory opening hours are likely to impose costs on suppliers and - as set out in question 6 - need significant lead time. We would expect that proposals of this nature would be supported by a full and robust impact assessment from Ofgem, which is not the case.

6. Could you provide detailed evidence or information on the proposed timescales for implementation of our revised proposals?

The timescales for implementing the proposals on ease of contact as contained in the guidance are insufficient. For example, if Octopus were required to extend phone opening times (either in general or for a specific 24 hour metering requirement) and we wanted to use our trained teams to meet our high service standards, the statutory timelines do not allow time to engage our people and make the necessary contract changes. We expect that many suppliers will be in the same position. It is not reasonable to expect suppliers to act on the

basis of the licence and guidance in the statutory consultation as the guidance itself, and the expectations that underlie it, are so unclear.

Rushing to implementation of the proposals as are in the statutory consultation will lead to perverse outcomes. Either suppliers take a 'minimum standard' approach to compliance which is unlikely to improve customer outcomes (e.g. outsourcing phone lines to poorly trained agents), or suppliers take a regulatory risk, choose to not change behaviours considerably and instead spend time and effort explaining their approach to Ofgem - this is both onerous and counterproductive.

We urge Ofgem to adopt a phased approach to implement the new consumer standards. For example, introducing the proposals for supporting customers struggling with their bills this winter. We think Ofgem should pause the ease of contact proposals and consider the following alternative, more effective and targeted approaches, as set out in our cover letter.