

Neil Barnes  
Ofgem  
9 Millbank  
London  
SW1P 3GE

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Dear Neil,

**Energy Supply Probe – proposed retail market remedies**

Thanks you for the opportunity to respond to the above statutory consultation, which proposes specific remedies to improve the retail market arising from the October 2008 initial probe findings. We have welcomed the pragmatic approach taken by Ofgem in considering our responses to the original consultation in the current statutory consultation.

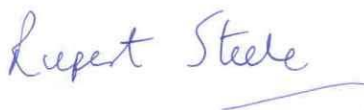
Our main concern at this stage is that the timescales for bringing the conditions into force are in some cases ambitious, and in those cases full compliance may not be practicable immediately. These are described in the confidential Annex 2 to this letter.

On the condition that Ofgem either amends the implementation dates in line with the concerns expressed in Annex 2, or accepts that it would be inappropriate to take enforcement action where we are taking all reasonable and proportionate steps to bring our systems into compliance, as described in Annex 2, I can confirm that the licensees owned by ScottishPower would not object to their respective conditions.

Although not part of the statutory consultation, we would urge Ofgem to look again at the drafting of the first “overarching standard”. In particular, the aim that we should ensure that each customer “fully understands” a product looks unrealistic. Our fuller comments on this and other representations are attached in Annex 1.

If you have any questions, or would find it useful to further discuss any of the issues raised in our response in more detail, please don’t hesitate to contact me, using the contact details printed on this page.

Yours sincerely,



**Rupert Steele**  
Director of Regulation

## PROBE LICENCE CONDITIONS – SCOTTISHPOWER REPRESENTATIONS

We recognise that at this stage in the process there is limited scope to make changes without re-consultation. The comments below are matters we would like Ofgem to take into account if there is an opportunity to do so without delaying the process, either in the event that Ofgem needs to re-consult for other reasons, or if the changes can be accommodated without further consultation.

### Standards of Conduct for Suppliers

We support Ofgem's decision to follow option 2 and set out the standards as overall aims to guide its enforcement process. This will avoid creating costly regulatory uncertainty and overlaps/conflicts with other conditions. However, there would be benefit from further discussions, particularly on Standard 1, to ensure that the standards are practical and workable.

The current version of standard 1 reads as follows:

*You must not sell a customer a product or service that he or she does not fully understand or that is inappropriate for their needs and circumstances.*

It is not feasible for a supplier to determine with clarity whether a customer "fully understands" the product that he or she chooses. This is partly because few people fully understand anything, and partly because the customer's understanding is a subjective matter which a supplier or an agent cannot reliably judge.

We also need clarity on the question of whether a product meets the customer's needs and circumstances. A detailed assessment of the customer's needs and circumstances would require a costly and slow information gathering exercise with its success dependent on the quality of the information provided by the customer. We doubt that this is what is intended.

It would be helpful for Standard 1 to be clarified to deal with these points. One approach might be:

*You must not sell a customer a product or service where it is evident that (a) he or she does not fully adequately understand it or that (b) it is inappropriate for his or her ~~their~~ needs and circumstances.*

This could be supplemented by guidance to the effect that this is looking for a professional and reasonable sales process, rather than due diligence on the customer's requirements.

## **Condition 7A Supply to Micro Business Consumers**

### **Paragraph 7A.7**

Drafting recommendation: We would suggest that paragraph 7A.7 is returned to its original state, so as to say:

7A.7 Where the licensee enters into ~~or extends the duration (including the duration of any fixed term period)~~ a Micro Business Consumer Contract, it must take all reasonable steps to provide the Micro Business Consumer with the following information within 10 days, or do so as soon as reasonably practicable thereafter:

- (a) A copy of all the terms and conditions of the Micro Business Consumer Contract;
- (b) The Statement of Renewal Terms.

Explanation for drafting recommendation: Upon contract renewal, the customer will receive the Statement of Renewal Terms, and details of any necessary changes to the contract terms (including Principal Terms) 30 days prior to the Relevant Date at the end of the fixed term period. It is therefore unnecessary duplication of costs and resource effort for suppliers to also send this within 10 days of the start of the new fixed term contract period.

## **Condition 14 – Customer Transfer Blocking**

### **Paragraph 14.6**

We can confirm that we are in the process of raising the necessary modifications to the industry codes to raise the Debt Assignment Protocol to £200. The changes have been submitted to the relevant bodies. For SPAA, the change will be included in the September change pack. For the MRA, the change will be included in the October change pack. We are proposing an implementation date of 1<sup>st</sup> January 2010 for both modifications. We would therefore suggest that paragraph 14.6 can be removed from the Licence Condition, as it will not be necessary.

### **Paragraph 14.9**

Drafting recommendation: We would suggest that paragraph 14.9(c) is redrafted on the following basis:

- “(c) to inform him or her they have ~~30~~ 20 Working Days after they receive the Notice to pay any Outstanding Charges where:”

Explanation for drafting recommendation: In discussions to date a period of 30 days (or 20 working days) was discussed. We doubt the benefits of the extension of this window to 30 Working Days. When a supplier raises an objection, a debt will already have been demanded in writing and remained outstanding for a period of at least 28 days. We can understand the rationale for providing an adequate window for the customer to pay off a debt following a price increase. It seems to us that 30 Working Days is excessive, particularly since the customer is already in breach of contract by failing to make payment when it falls due.

## **Condition 23 – Notification of Domestic Supply Contract Terms**

### **Paragraph 23.6(c)(ii)**

Drafting recommendation: We would suggest that the current drafting of paragraph 23.6(c)(ii) be changed as follows:

“c) (ii) the Domestic Customer has paid any Outstanding Charges within ~~30~~ **20** Working Days after the Domestic Customer receives notice that the licensee intends blocking the Domestic Customer’s Proposed Supplier Transfer.”

Explanation for drafting recommendation: To make consistent with Condition 14, Paragraph 23.6(c) (ii). See comments above.

## **Condition 19A Financial Information Reporting**

Drafting recommendation: We would suggest the current drafting of paragraph 19A.3 be changed as follows:

“The relevant licensee must in conjunction with the relevant affiliates prepare and publish a Consolidated Segmental Statement no later than ~~six~~ **nine** months after the licensee’s financial year.”

Explanation for drafting recommendation: We believe that the time period to submit the regulatory statement should coincide with the filing deadline for statutory accounts to ensure that all group accounts and their consolidated subsidiary accounts are appropriately signed off and submitted concurrently. Differing regulatory and Companies House timescales will lead to increased compliance costs and complexity.