

Standards of Conduct: meeting minutes and emerging thoughts

Meeting minutes for 16 July 2012

Circulation date: 5 September 2012

Authors: Katie Brennan, Sweta Deb, Adam Crockett

Team: Retail

Tel: 020 7901 7195

Email: rmr@ofgem.gov.uk

Round table discussion held on 16 July

Ofgem hosted a round table discussion on 16 July at 9 Millbank, London where we discussed our emerging thinking on the Standards of Conduct (SOC) proposals for the domestic retail energy market. Attendees included suppliers, consumer groups and Ofgem (see Annex 1 for full list of attendees).

The discussion was the first in a series of workshops that will be held over the coming months. Topics discussed on 16 July included:

- i. the benefits and concerns associated with the overall SOC approach we proposed; and
- ii. if the SOC were to come into force as proposed (as legally binding licence condition covering all supply licence conditions and all interactions between consumers and suppliers/their representatives), consider ways in which the concerns raised by industry stakeholders could be overcome.

This paper is for all stakeholders and provides some detail about the SOC proposal, a high level summary of the discussion held at the meeting and, where able, we have provided visibility of our updated policy thinking. Ofgem will hold a follow up workshop in early October to discuss, further thoughts with regard to the Standards of Conduct, our emerging thoughts on enforcement of the SOC. High-level findings

from our consumer research and collaborative sessions in August will also be discussed at our next workshop, and we welcome any comments on this paper.

Standards of Conduct: issues identified and policy objectives

Issues identified

Based on our research findings¹, it was clear that lack of trust in suppliers and the energy market was leading to decreased levels of consumer engagement with the market. Consumer research shows consumer trust and levels of consumer engagement can be impacted by interactions with suppliers in a wide range of settings. Therefore, the proposed SOC are deliberately designed to cover all interactions between consumers and suppliers (including their representatives).

Objectives of SOC

There are concerns that the existing voluntary Standards of Conduct, which were published in 2009 and introduced as part of the 2008 Energy Supply Probe, have not had the desired outcome for consumers as low levels of consumer trust and negative experiences continue to occur.

In our December 2011 RMR consultation, we proposed introducing revised Standards of Conduct as a legally binding licence condition, covering all supply licence conditions and all interactions between domestic consumers and suppliers (including their representatives). This proposal includes the introduction of the Standards of Conduct into the supply licence as overarching principles. With this proposal, we aim to improve consumer interactions with the energy market, and in turn help encourage greater levels of consumer trust, with a view to increasing engagement in the market and promoting competition.

We recognise efforts some suppliers are starting to make to rebuild trust with their consumers; however, customers still feel suppliers are not consistently meeting their needs. Additionally, consumers expect the Standards to be enforceable because this offers comfort that rules are in place and will be taken seriously, which is also key to rebuilding trust in the industry.

2

¹http://www.ofgem.gov.uk/Markets/RetMkts/rmr/Documents1/IpsosMori_switching_omnibus_ 2011.pdf

http://www.ofgem.gov.uk/Sustainability/Cp/CF/Documents1/Ofgem%20Consumer%20First% 20Panel%20Year%204.pdf

At their heart, our SOC proposal is about the relationship, and interactions, between energy suppliers and consumers. We want to ensure the SOC are centrally about this relationship and any regulatory rules in place are there to support desired outcomes for consumers. For example:

- 1. We want suppliers to refocus their attention on what will best meet the needs of their customers, rather than having the focus of the SOC being about meeting Ofgem's expectations.
- 2. We want suppliers (at the highest level e.g. Board level) to take ownership for delivering the Standards of Conduct by embedding them in their business.

The type of relationship and interactions envisaged, between suppliers and consumers under the SOC, would be one where consumers are treated fairly by their supplier. This would involve suppliers and their senior management taking responsibility for ensuring that the firm and staff at all levels deliver fair outcomes for their consumers, and there would be an expectation that the SOC objectives are embedded in the design, monitoring and revision of all relevant systems and processes.

We would like suppliers to take ownership of delivering the Standards and for this to be a business-wide matter, resulting in the SOC being embedded in an organisation's culture – i.e. understanding of, and compliance with, the SOC are not just an issue for the regulation and compliance teams within the business. It would be for suppliers to decide exactly how they ensure this happens and how it can be demonstrated. We note that in some cases this may mean directly meeting the needs of consumers as expressed, but it may also involve:

- taking account of consumers' expressed desires as well as knowledge of best practice and consumer protection rules; and/or
- consideration of (or dialogue about) how, given practical constraints, business practices can be adapted to most closely meet the needs of consumers.

A potential approach to the SOC would involve suppliers having to have 'due diligence' processes around understanding customer views on what they believe is 'fair' treatment from their supplier and this is understood by all staff and is at the heart of all their business practices. This would include suppliers monitoring outcomes against the SOC principles.

Also, we know consumer needs/expectations evolve, as will technologies and other factors within the market. Therefore, we envisage a continuous dialogue between suppliers and consumers, which can lead to potential revisions to a supplier's business practices, instigated from the monitoring process and/or new information.

Communication of the SOC to consumers is an important way to help consumers understand that the SOC are in place and to understand what suppliers are doing to help meet their needs, both of which will help build consumer trust. Such information can be a useful tool to empower consumers as it can outline clear expectations consumers can hold suppliers to.

There are a variety of ways in which communication of the SOC can occur. Key points of consideration include: (i) **what** will be communicated (e.g. an explanation of the SOC, signposting to further information and/or details of what the supplier is doing to meet the SOC); (ii) **who** will the communication come from (e.g. suppliers and/or Ofgem, third parties); (iii) **how** will communication occur (e.g. via a website, in a customised letter to consumers, on an Annual Statement); and (iv) **when** communication will occur (e.g. annually, quarterly, every time a change to business objectives, standards or commitments to their consumers occurs).

Ofgem is also currently considering how any clarification or guidance can be provided. We consider it will be useful to provide some further clarity about our expectations in relation to the SOC. However, it is important that any such material does not become prescriptive, and that the benefits derived from a principles based approach (e.g. scope for innovation and some flexibility) are maintained. It is also important for suppliers to maintain responsibility for compliance, and we are keen that any potential clarification does not simply lead to a 'tick box' exercise.

Options may include; limited guidance with legal definitions provided, or guidance provided with indicative examples (or 'case studies') of what would be considered to be action that was consistent with our expectations in the context of the SOC.

Consultation Feedback

As part of written responses to the December 2011 RMR consultation document we received feedback on our Standards of Conduct proposals from a range of stakeholders. There was broad in-principle support for the proposed SOC in the domestic market; however, some respondents were more supportive than others.

In addition, a range of stakeholders expressed concerns about the potential administrative burden and/or regulatory risk they say may be associated with the proposal. Many respondents suggested such concerns may be mitigated if they had a better understanding of how the SOC may work in practice.

As part of our discussions on 16 July we did not comment on suggestions about how to approach enforcement, and focused instead on considering the objectives of the SOC and how they may be implemented by suppliers. Ofgem intends to engage further with stakeholders on enforcement in early October.

Next steps

The next steps involving stakeholder engagement include:

1. road testing the SOC scope and proposed SLC drafting with consumers through deliberative workshops was conducted at 3 locations throughout the country (in Nottingham, Cardiff and Glasgow) in late July and early August;

- 2. collaborative workshops with suppliers and customers in the week beginning 13 August; and
- 3. follow up workshop with stakeholder groups on our emerging policy thinking in early October.

Meeting minutes 16 July

Ofgem will feed comments, questions and suggestions raised by stakeholders at the meeting held on 16 July into the development of the SOC as part of this ongoing consultation process. We will also take on board any written submissions by those at the meeting and those who were unable to attend. Ofgem has not landed on a preferred approach to the SOC and we are considering all points raised throughout the consultation process.

At the meeting held on 16 July an overview of and background concerning the SOC policy was presented by Ofgem. This was followed by general reactions and discussion with participants. Attendees were then divided into break-out groups to allow for more in-depth discussions in smaller groups on the topics below:

- the benefits and concerns associated with the overall SOC approach we proposed; and
- if the SOC were to come into force as proposed (as legally binding licence condition covering all supply licence conditions and all interactions between consumers and suppliers/their representatives), consider ways in which the concerns raised by industry stakeholders could be overcome.

Key ideas raised in each group in these discussions were feedback to all attendees. These ideas and points raised by attendees during general discussions are outlined in this section of the paper.

Key views and outcomes from break out groups

Key benefits of the proposed SOC identified by attendees at the workshop include:

- suppliers become more consumer focused and this process provides opportunities for them to showcase what they are doing to meet consumer's needs and wants. Also, if Ofgem provides guidance to the SOC that is not rigid, it can encourage innovation from suppliers in meeting the SOC;
- it will result in better service for consumers, with the suppliers being able to identify and resolve general consumer issues sooner. It will also provide security and reassurance for consumers leading to more consumer confidence and trust in their suppliers and the industry;

- consumers help feed into suppliers' thinking and hold suppliers accountable.
 This process also allows suppliers to differentiate needs for different consumers (including vulnerable customers). It also provides for greater visibility regarding how suppliers factor in customer research into their business decisions;
- Ofgem could possibly use the SOC as a measure of comparisons or to benchmark supplier behaviour. Competition by comparison can be used to place competitive pressure on suppliers by naming and shaming suppliers who are above the 'benchmark'; and
- provides an opportunity for open dialogue between suppliers and consumers and suppliers and Ofgem.

Key concerns raised by attendees were:

- concerns were raised on how enforcement of the SOC will work in practice and questions were raised about whether Ofgem will look to regulate the process suppliers take to comply with the SOC and/or outcomes experienced by consumers in the retail energy industry;
- potential shifts in expectations from consumers and Ofgem could occur which
 will make it difficult for suppliers to know what is 'right' when changes occur
 (e.g. change in consumer's needs and/or the energy industry environment).
 In addition, currently some suppliers feel they need further guidance with the
 SOC and there is a concern that all players may not be on the same page;
- a question as to whether the SOC offer any new protections for customers or whether the intended outcomes are already covered by existing regulations was raised. It was noted that there was benefit in all the protections being on the face of the licence condition with a common set of guidance/enforcement approach;
- identifying the right level of communication and detail for consumers was highlighted. Whether consumers will read the information provided to them was questioned, particularly given the amount of other information already they receive;
- results from customer research for individual suppliers might be very different. It was questioned how Ofgem will deal with the different priorities between all the different research. It was noted at the workshop that Ofgem would want to ensure there was scope for innovation and some flexibility and that the benefits derived from a principles based approach is maintained. It would be for suppliers to decide how they can ensure that their consumers' expectations have been taken into account in their business practices and how they can demonstrate that they have done this.

- regardless of the SOC, some consumers may remain disengaged. Therefore they questioned how suppliers will tackle issues regarding lack of trust and switching among these customers through the SOC. One suggestion was that a regulatory backstop (i.e. an avenue or agent that vulnerable customers can go to for further protection if required) may be needed to protect vulnerable consumers. It was noted that SOC was also seen as only one way to increase trust; and
- additional costs arising as a result of the introduction of the SOC for small suppliers was a concern, as was the timing of the SOC with the number of new obligations suppliers are faced with at the moment.

Some solutions to the concerns raised at the meeting were identified by attendees.

These included:

- early dialogue between suppliers and Ofgem when concerns/issues are identified was viewed as an important way to help reduce regulatory risk and achieve the right outcomes for consumers. A two staged approach² to enforcement was suggested. It was also suggested that findings from this two-stage research and engagement process may help to inform the development of any future guidance, as well as develop a better understanding of how they may be applied across suppliers' interactions and relationships with energy customers;
- an option for managing the transition from the current voluntary SOC to an
 enforceable SOC World could involve a trial period, for example of 1 or 2
 years, where Ofgem would not impose financial penalties for non-compliance
 with the SOC. This would allow suppliers to consider in time what was
 required from them to comply with the SOC and make the necessary changes
 required to their culture and/or processes to ensure positive changes in
 outcomes for all consumers; and
- it was suggested that Ofgem provide additional guidance alongside the SOC. This could set out Ofgem's expectations regarding the process suppliers should take to comply with the SOC and the outcomes that would constitute compliance. It was also suggested that the development of guidance be iterative, and done in consultation with stakeholders. It was also noted that examples of acceptable and unacceptable practice, provided by Ofgem, to help suppliers understand what is required from them under the SOC would be helpful. This may include case studies of what would be considered a

² A 'two staged regime' could involve an initial stage of informal but structured dialogue between the regulator and supplier regarding views on what behaviours constitute compliance. Should the regulator maintain that the behaviour displayed by the supplier is unacceptable, the licensee would be provided with reasonable time to remedy what the regulator considers

to be a breach.

successful implementation of the SOC and an example where there has been failure to meet the SOC. Examples of how consumers have benefited from SOC in other industries was also considered to be useful.

Additional points raised at the meeting

• it was noted that some suppliers recognise the need to put their consumers first and have begun various initiatives to achieve this. Given this, some questioned the need for enforceable SOC.

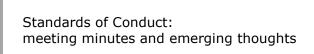
Ofgem noted these positive steps. Our research shows that consumer trust in suppliers is low as are consumer engagement levels. In addition, our research suggest that consumers may find their experience of interacting with suppliers (and even a single supplier) can vary – sometimes it is consistent with their expectations of good service, and at other times it may fall short of this mark. Therefore, it appears some work remains to help create a more constantly positive experience for consumers. Consumers have also stated that they would expect Ofgem to be enforcing 'fair' behaviour in the industry. Therefore, we are proposing to introduce enforceable SOC that apply to all interactions between consumers and suppliers (and their representatives).

attendees questioned whether Ofgem was trying to get all suppliers to adhere
to 'best practice' or whether we would like everyone to provide a basic
standard, with the decision on whether to go above and beyond this standard,
down to the commercial strategy of each supplier.

In the spirit of the SOC we would want all suppliers to provide a service that involved the fair treatment of consumers. We expect that each supplier might have a different way of achieving this outcome and should be able to meet the standards in a way that recognises the needs and priorities raised by their own customers and reflecting their own brand and positioning in the market. This would lead to a positive change in experiences and outcomes for consumers.

- the introduction of an accreditation was one option suggested at the meeting.
 This would involve suppliers being able to apply for the accreditation if they
 wanted to offer a higher standard and be branded for it. Suppliers could opt in
 to the accreditation program and consumers could see which companies have
 it; and
- a question about the role of the Ombudsman in relation to the SOC was raised. We noted that Ofgem is currently exploring what role the energy Ombudsman could take with regards to the SOC in the energy industry.
- questions were raised around whether Ofgem will provide further guidance alongside the SOC as part the rollout of this policy.

As noted at the meeting, and earlier in this document, with respect to guidance, Ofgem's key goal is to strike a balance between providing clarity to suppliers while not being prescriptive in our approach. In doing so our aim is to help achieve the



benefits of a principles based approach while still offering some clarity about our expectations to stakeholders.

It is also important that suppliers maintain responsibility for compliance, and we are keen that any potential clarification does not simply lead to a 'tick box' exercise. We are also keen to maintain the benefits of a principles based approach by allowing for:

- some flexibility regarding the means by which suppliers implement the SOC;
- product, service and technological innovations; and
- flexibility to accommodate the changing needs of consumers.

Actions from round table discussion

Ofgem agreed to confirm the dates for the consumer engagement events and to circulate a note of the meeting. Ofgem also agreed to schedule further meetings to discuss the SOC. These points are all covered in this paper.

In addition to points discussed at the meeting we also welcomed stakeholder views regarding whether they felt the proposed SOC covered all key issues affecting consumers – with a particular interest in stakeholder views based on research and their experience. Due to time constraints we were not able to touch on this area at the meeting in July. However, we remain interested in your views and invite parties to share insights from their own research and experience by sending any relevant information to Ofgem.

Annex 1 – Attendees at round table discussion held on 16 July at 9 Milbank

Name of Delegate

Ann Neate
Claire Antill
Alun Rees
Hannah Mummery
Gillian Cooper
Pamela Kelly
David Watson
Richard Wallace
Roger Hutcheon
Anne Pardoe

David Mannering
Steve Russell
Jude Cummins
Robert Wharton
Julia Williams
Rachel Fletcher

Katie Brennan
David Hunt
Adam Crockett
Kate Smith
Christoph Futter
Rachel Bardiger
Sweta Deb
Sarah Cardell

Organisation

EDF EDF

Energy UK

Consumer Focus Consumer Focus Scottish Power British Gas British Gas

SSE

Citizen's Advice RWE Npower

EON

Insight exchange Co-operative Energy Co-operative Energy

Ofgem Ofgem Ofgem Ofgem Ofgem Ofgem Ofgem Ofgem

Annex 2 - Proposed SOC

Draft Licence Condition for proposed SOC

Licensees shall take all reasonable steps to ensure that:

- "(a), its staff and any Representative behave and carry out any actions in a fair, honest, transparent, appropriate and professional manner;
- (b) the licensee, its staff and any Representative provide information (whether in Writing or orally) to a Customer which:
 - (i) is complete, accurate and not misleading (in terms of the information provided or omitted);
 - (ii) is communicated (and, if provided in Writing, drafted) in plain and intelligible language;
 - (iii) relates to products or services which are appropriate to the Customer to whom it is directed; and
 - (iv) is otherwise fair both in terms of its content and in terms of how it is presented (with more important information being given appropriate prominence);
- (c) the licensee, its staff and any Representative:
 - (i) make it easy for a Customer to contact the licensee;
 - (ii) act promptly and courteously to put things right when the licensee, its staff and Representative make a mistake; and
 - (iii) otherwise ensure that customer service arrangements and processes are complete, thorough, fit for purpose and transparent."

Annex 3 – Objectives of Consumer Engagement

Overview

The overarching objective of this work is firstly to ensure Ofgem's draft Standards of Conduct are fit for purpose and inclusive of consumers' priority concerns; and secondly to enable energy suppliers to understand the 'spirit' of the Standards of Conduct from a consumer perspective, by listening first-hand to consumers' views, experiences and expectations. The findings from this two-stage research and engagement process may help to inform the development of any guidance underpinning the final Standards of Conduct, as well as develop a better understanding of how they may be applied across suppliers' interactions and relationships with energy customers.

Suppliers are invited to take an active role in this engagement process. Consumer groups are invited to join Ofgem as observers at the workshops. This work will take place in mid August.

Please note this process is meant to be informative. This findings and outputs will be a factor feeding into Ofgem's consideration of how the SOC will work in practice. We also hope this process and information coming from it will be useful for industry stakeholders. However, we would like to make it clear that no binding outcomes will come directly from this process.

Objectives

The overarching objectives of this programme of research and engagement are as follows.

- 1. To inform Ofgem, suppliers and other key stakeholders' understanding of:
 - a. consumer expectations of supplier conduct in general;
 - b. consumer attitudes towards Ofgem's draft standards of conduct;
 - c. practical expectations of consumers regarding how they expect suppliers would incorporate the SOC into their ways of working; and

 $^{^{3}}$ i.e. primarily consumer organisations, however may also include other stakeholders such as DECC representatives

- d. how the SOC can be framed or communicated in a way that empowers consumers.
- 2. To facilitate suppliers' thinking about how they can take ownership of the SOC and embed them in their business in a way that serves the needs of consumers.