

## Future of retail market regulation – Stakeholder Workshop

From	Future Retail Regulation Project
Date of Workshop	28 February 2017
Location	Coin Street Neighbourhood Centre

### 1. Overview

- 1.1 On 28 February 2017 we hosted a stakeholder workshop to discuss the proposals in our recent [policy consultation on broad principles](#) (proposed changes to the Standards of Conduct and Ofgem’s information gathering powers) and our [statutory consultation on new principles for informed choices](#). These proposals are a significant step on our journey to relying more on principles, and less on prescriptive rules, when regulating the retail energy market.
- 1.2 The broad principles in the Standards of Conduct (SoC) set expectations that a competent, responsible supplier, and their representatives, should feel confident in achieving. We also consider that these principles reflect the standard of treatment which all customers might reasonably expect to receive from any supplier. Achieving these principles is critical if we are to improve levels of consumer trust and engagement in the retail energy markets.
- 1.3 The slides from the workshop have been published [online](#) and a list of attendees is provided in Annex 1.
- 1.4 At the workshop we provided stakeholders with an overview of our consultation proposals and gave them an opportunity to ask questions and better understand how we would apply the proposed principles in practice. We also provided an overview of changes we have already made to our monitoring, engagement and compliance activities and emphasised that we will continue to act proportionately where we see negative consumer outcomes. In particular, we will take an increasingly risk-based approach to compliance monitoring and will engage with suppliers where we have concerns that they are not delivering positive consumer outcomes.
- 1.5 Attendees also participated in a brainstorming session using seven different scenarios and examining the flexible approaches suppliers could adopt to comply with the proposed principles. The purpose of this was to demonstrate that we will indeed be focused on [outcomes](#), rather than a prescriptive ‘one size fits all’ approach to achieving these outcomes. We were encouraged by the ideas and suggestions put forward by attendees on how suppliers could adopt a consumer-centric approach in tackling these issues (e.g. vulnerability, debt reduction approaches, ensuring that consumers can make an informed choice on their tariffs and customer services) and delivering better outcomes.
- 1.6 This note captures the main themes and issues raised at the workshop. **Please note that we have attempted to capture the views of attendees and this note does not necessarily represent the views of Ofgem.**

## **2. Standards of Conduct– proposed changes to the *Fairness Test* and *all reasonable steps***

- 2.1 The first session provided an overview of our proposed changes to the *Fairness Test* and *all reasonable steps* threshold within the domestic and non-domestic SoC in standard licence conditions 25C and 7B respectively. Many attendees agreed that more clarity would be helpful on the proposed changes to the fairness test: 'Acts or omissions would not be "Fair" where they give rise to a likelihood of detriment to the [...] Customer, unless the detriment would be reasonable in all the relevant circumstances.' Attendees particularly raised questions regarding the scope and meaning of the reference to '...reasonable in all the relevant circumstances.'
- 2.2 Some supplier attendees had reservations about the proposed removal of the *all reasonable steps* threshold in the SoC. This threshold has been used by some suppliers as a decision-making framework for measuring and assessing their compliance. The main concern of suppliers was that we may not act proportionately – particularly in any enforcement action. Some suppliers also expressed concerns about potential unintended consequences as we move to a greater reliance on principles. For example, some suppliers expressed concern with uncertainty over what is and is not 'compliant', which could lead to a reluctance to innovate or try new things. Suppliers will need to be more comfortable in making their own judgements on compliance with the principles and harnessing the innovation potential to deliver better consumer outcomes. This will mean moving away from a 'tick-box' approach to compliance. This approach will be new and some suppliers may be more risk-averse initially. We emphasised that we will continue to focus our enforcement action on the most egregious consumer harm, not where there have been technical or minor breaches. We encouraged suppliers to innovate and try to do things to support improved consumer outcomes.

## **3. Proposed vulnerability and informed choices broad principles**

- 3.1 The next session provided an overview of our proposed vulnerability and informed choices broad principles in the domestic SoC. There was strong support among attendees on the policy intent of the vulnerability principle and the important signal it sends. This includes prioritising customer services where customers are at risk of substantial detriment and reflecting this in supplier processes.
- 3.2 There was a difference of views between some suppliers and consumer groups on our proposed new vulnerability principle requirements and whether they would deliver the desired outcome. Some suppliers suggested that we were placing too high an expectation on them to identify each domestic customer in a vulnerable situation, whereas consumer groups were concerned that the proposed drafting was not specific enough. The proposed requirement for suppliers is to implement procedures that enable vulnerability to be identified. One consumer group's main concern was that the requirement to identify vulnerable consumers was not active enough, and that suppliers could easily meet this requirement (i.e. by having any process in place, even a poor one) which may not be delivering the desired outcome. This consumer group suggested having a process in place for identifying each type of vulnerability.
- 3.3 Attendees were also supportive of the policy intent of our informed choices principles proposals in the domestic SoC. Given that energy can be a difficult subject to engage with for many customers, attendees recognised the importance of providing clear and understandable information to customers, including on tariffs. This is particularly important for customer communications as a whole. There was also strong support among attendees for customer communications being our next

priority area for review of the rulebook. Prescription in the licence has not been very successful in delivering the policy intent of customer communications to date.

#### **4. Standard licence condition 25 (SLC 25) proposals**

- 4.1 There was strong support among attendees for our SLC 25 proposals (i.e. the proposed inclusion of five narrow principles on tariff comparability and sales and marketing and removal of significant prescription).
- 4.2 Nevertheless, attendees had a number of other comments and questions relating to our SLC 25 proposals. These included:
  - Requesting us to be more specific on what we mean by 'characteristics' and explaining how this differs from 'preferences'.
  - Seeking further clarity on the capturing and keeping of records for more indirect sales and marketing activities at different stages of the consumer journey.
  - Indicating support for the definition for 'recommend' to aid understanding of scope – but there was not universal agreement for this among suppliers and some questions were raised on the drafting of the definition.

#### **5. Supporting suppliers through our operations**

- 5.1 We discussed some of the ways we have changed how we operate internally, including changes to how we approach compliance monitoring and engagement. We provided some examples, including our meetings with all new entrants to understand their businesses, our use of a risk-based monitoring framework, and the significant number of compliance issues we resolve each year bilaterally, without the need for enforcement action. We acknowledged the trust being placed in us to act proportionately. We urged stakeholders to take comfort in our track record of applying the SoC, as well as our wider approach to compliance monitoring, engagement and enforcement.
- 5.2 Attendees had a number of suggestions on how Ofgem can better support suppliers. Some of these have already been captured in previous engagement (e.g. at our [Future of Retail Market Regulation – Senior Stakeholder Event](#) held in October 2016). Some suggestions included:
  - Saying more about how we will approach our compliance and enforcement activities in the absence of the *all reasonable steps* test;
  - Increasing the visibility of our compliance work, where appropriate;
  - Recognising the regulatory burden placed on suppliers in responding to ad-hoc requests for information (RFIs) and ensuring a joined-up approach is followed, where possible;
  - Engaging more with suppliers to increase our understanding of the commercial context they operate in; and
  - Continuing to improve our internal practices, including knowledge management.

#### **6. Next steps**

- 6.1 Our recent policy and statutory consultations have now closed. We are currently reviewing responses. We intend to launch a statutory consultation on amendments to the domestic and non-domestic SoC in May 2017. We will also issue our decision on our informed choices proposals.

- 6.2 We will continue to engage stakeholders as we transition to an increased reliance on principles, and in particular on our next priority reform area of rules relating to customer communications. If you have any further views or questions, please get in touch at [FutureRetailRegulation@ofgem.gov.uk](mailto:FutureRetailRegulation@ofgem.gov.uk)

## Annex 1 – List of attendees

Name	Company
Tracey Wilmot	E.ON
John Mason	EDF Energy
Thomas Lowe	Centrica/ British Gas
Rhona Peat	Scottish Power
Pamela Mowat	Scottish Power
Sasha Pearce	Npower
Louise Murphy	SSE
Hoa Doan	Kpmg LLP
Nick Campbell	Inspired Energy
Mark Boyce	Utility Customer Service Management Ltd
Juliette Burroughs	National Energy Action
Jake Beavan	Citizens advice
Joseph Surtees	StepChange Debt Charity
David Pilling	Ombudsman Services: Energy
Craig Salter	Citizens Advice Scotland
Angus McMillan	Extra Help Unit
Monica Davidson	Extra Help Unit
Naomi Grayburn	Citizens advice
James Jackson	Ecotricity
Laurie Walker	iSupply Energy
Nicola Macdonald	Engie
Charlotte Mawdsley	Economy energy
Daphne Yao	OVO Energy
Chris Welby	Bristol Energy
Robert Larkins	The Utility Warehouse
Rachael Mottram	Utilita
Emily Kinson	iSupply Energy
Elizabeth Knox	Spark energy
Andy Came	Affect Energy
Faye Widdowson	Extra Energy
Daniel Alchin	Energy UK
Matthew Collison	Icoss
Vicky Simonds	Cornwall Energy
Alexander Mann	Gazprom Energy
Jacqui Fellows	Opus Energy Limited
Colin Prestwich	Smartest energy
Matthew Bacon	Vattenfall
Rachael Ault	Tethra Energy
Lorna Lewin	Dong Energy
Oliver Zhe Xing	Dong Energy
Rob Johnson	Wingas UK
Joel Chapman	BES Utilities
Sarah Mangalo	Ceres Energy
Ramon Tinub	Haven Power
Mike Rowe	Moneyexpert/ Simply Switch