



Andrew Thomsen,
Future Retail Regulation,
Ofgem,
9 Millbank,
London,
SW1P 3GE

7th March 2016

Dear Andrew,

Consultation on the Standard of Conduct in the retail energy market

Thank you for the invitation to respond to the above consultation. Bristol Energy is an independent supplier of electricity and gas with a business model that has a regional focus on the South West of England, although we supply customers across Great Britain.

Executive Summary

Bristol Energy welcomes Ofgem's continuation of the move from prescriptive to principle-based regulation. We believe that the treatment of consumers in vulnerable situations is well suited to principle-based regulation as the area can be complex and multifaceted and thus regulating the outcome rather than the means of delivery will allow suppliers to be more focused and differential in their approach.

We are concerned about the removal of all reasonable steps. Whilst we support the view that in focussing on the outcome, it does not seem sensible to caveat the actions of the supplier. Nevertheless, there will be situations where reaching a suitable outcome for the consumer, there will be no action that can achieve it without significant intervention or cost, which would be borne by a suppliers' wider customer base. We are also concerned that it may be used in future to require suppliers to copy other suppliers in delivering to the same standards without consideration for their size, customer demographics or business model. If Ofgem decided to remove all reasonable steps we believe, the issue should be clearly addressed in any guidance so that the boundaries of where delivery becomes unreasonable lay, and prevent the bar of acceptability being raised over time.

Finally, whilst we support the proposal to introduce an "informed choice" principle (with some concerns about the drafting). We strongly believe it can only be implemented once Ofgem has withdrawn prescriptive regulations around all forms of customer communications. If this is not possible, then Ofgem should be willing to deprioritise compliance with the prescriptive regulations if the overall principle of informed choice is met.

We have answered your specific questions below, expanding our response where necessary.

Q1. Do you agree with our proposal to retain a fairness test for all the broad principles within the domestic standard of conduct? If you don't agree, please provide an explanation in support of your answer.

We agree with the proposal to retain a fairness test for all the broad principles. This is useful as it sets the question of fairness into context rather than relying on a subjective viewpoint.

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Q2. Do you agree with our proposed wording for a revised fairness test: “the licensee or any Representative would not be regarded as treating a Domestic Customer/ Micro Business customer fairly if their actions or omissions give rise to a likelihood of detriment to the Domestic customer/ Micro Business Customer, unless the detriment would be reasonable in all the relevant circumstances”?

We support the principle that the fairness test should be refocused on the outcome for customers and believe the proposed wording is an improvement from that perspective. We do believe that the phrase “give rise to a likelihood of detriment” is too broad. As it stands then a supplier could be deemed to be unfair even if where there was a remote chance of insignificant detriment. We would propose a rephrasing of “was reasonably foreseeable to cause measurable detriment”. As this then requires the supplier to be able to show due diligence of the result of their action or omission.

Q3. Do you agree that the changes to the fairness test should be made to the non-domestic Standards of Conduct at the same time as the domestic Standards of Conduct?

We agree with this proposal.

Q4. Do you agree with our proposal to remove the all reasonable steps threshold from the domestic Standard of Conduct? If you don't agree, please provide an explanation in support of your answer.

Ofgem's proposal to move the emphasis from what the supplier does to one of what the customer outcome is a valid proposal that we support. However, to do this by stating suppliers “must achieve” the outcome, implies that the supplier must take the necessary action no matter how unreasonable it is, or what the impact is on other customers. To this end there must be some reference to reasonableness even if it is not “all reasonable steps”. If not in SLC25C.5, then in the customer objective itself.

As a suggestion maybe SLC25C.5 should state, “The licensee must achieve, interpret and apply, where reasonable the standards of conduct in a manner consistent with the customer objective”, or similarly appropriate wording. This means that a supplier must act reasonably to the customer, but also the customer's expectations should also be reasonable.

Q5. Do you agree that all reasonable steps should be removed from the non-domestic Standards of Conduct at the same time as the domestic Standards of Conduct?

Any changes to the non-domestic Standards of Conduct should be applied in parallel to the domestic Standards of Conduct. Our views on removing the all reasonable steps for non-domestic customers are the same as for domestic customers which we have stated in the previous answer.

Q6. Do you support our proposal to introduce a broad “informed choices” principle into the domestic Standards of Conduct?

We agree that a supplier should be upfront and transparent about its products and services, and that any comparison it makes with other products, either its own or a competitor's is clearly explained and done in an appropriate manner. However, the phrase of “informed choices” implies, even with the “by the licensee” suffix

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that a supplier has to provide a customer with sufficient information about all tariffs offered by all suppliers in a manner that allows the customer to be able to choose the best product for them. This raises a bar to a level of a “perfect market” nirvana, which is not achievable in any market outside economic theory. If this is not the policy intent then we believe this should be clearly stated in some way.

We also believe that if a broad “informed choice” principle is added to the Standards of Conduct, it must be done concurrently with removing the prescriptive regulations around customer communications. Current prescription about the content of bills, annual statements and letters of renewal etc. are hindering suppliers’ ability to ensure that the outcome is a customer being able to make an informed choice, because they are bamboozled by unhelpful regulated information.

If this principle is implemented before the excessive regulation on customer communications are removed, then there is a conflict in the regulations and Ofgem must provide clear guidance as to which takes precedence.

Q7. Do you agree with the proposed drafting of the broad “informed choices” principle we have set out?

As mentioned above, we believe that, as currently drafted it creates an unachievable customer status, by requiring them to make an informed choice over the whole market. To this end, we believe that the proposed drafting should limit the suppliers’ obligation to providing customers sufficient information about their goods and services only so they can make an informed choice about them, including any comparisons made. However, it would not obligate the supplier to give the customer a perfect view of the market.

Q8. What, if any, additional guidance on the Standards of Conduct do you consider would be helpful in light of the changes we are proposing?

If Ofgem proceeds with the removal of “all reasonable steps”, then additional guidance will be required on what Ofgem consider the minimum it expects of all suppliers whilst allowing diversity of offerings from different suppliers with different business models. This includes not expecting all suppliers to follow the lead of any supplier who decides to go beyond the minimum standard expected, creating a continuous raising of the bar, especially in areas around providing for vulnerable customers.

Q9. Do you consider that the “Treating Customers Fairly” statement has a valuable role to play and be retained as an obligation in the domestic and non-domestic Standards of Conduct? Please provide an explanation for your answer.

The visibility of suppliers’ statements is low and in a competitive market, at least the one occupied by independent suppliers, actions speak louder than words and customers will opt to change supplier if they are not treated fairly, and do not need a statement informing them what they should expect. To this end, we believe the statement serves no purpose, and the requirement to produce one should be removed.

Q10. Do you agree with our proposal to include a broad vulnerability principle in the domestic Standards of Conduct? If not, please explain why with supporting evidence.

As Ofgem states in its consultation paper, customer vulnerability is often complex, often transient and can have a multi-dimensional nature. This means that suppliers cannot adopt a one size fits all approach to supporting customers in vulnerable situations, and must accept that each situation will be unique in many cases.

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To this end we strongly support moving vulnerable customer treatment to a principle rather than prescriptive regulation meaning that suppliers must address each customer's needs appropriately rather than classify it and follow the most appropriate regulation, which could be inappropriate or sub optimal in that customer's specific circumstances.

We do not believe that the wording of the customer objective is correct as it implies that customers in vulnerable situations are not included in the phrase "all customers". We would propose that it is redrafted to emphasise that suppliers must take account of a customer's vulnerable situation in assessing whether they are treated fairly. For example:

"25C.2 The objective of this condition is for the Licensee and any Representative to ensure that each Domestic Customer is treated fairly, taking into particular account any Vulnerable Situation that a customer may be facing."

We also believe that SLC25C.4(d)i is badly worded as it implies that suppliers must continually improve its processes in this area rather than strive to deliver an effective process from the first day. We would suggest the words "review and update" are removed.

Q11. Do you agree with our proposed definition of "Vulnerable Situation"? If not please explain why with supporting evidence.

We agree with the proposed definition of Vulnerable Situation. We believe that the use of the word significant is important as it sets the minimum standard whilst allowing suppliers wishing to differentiate themselves by offering a better service to customers in certain vulnerable situations to do so.

Q12. Do you have any comments on the proposal to amend SLC5?

We have no objections to the proposed changes. As ever we continue to ask Ofgem to be more transparent in its use of powers under SLC5 and to use it only when it believes it is necessary, and only request data from those parties which will provide meaningful insight into the area concerned.

Q13. How would your processes change if our proposals are implemented? Can you provide evidence of what costs you think you will incur to a) implement the changes and b) comply with these?

Bristol Energy is already developing its own vulnerable customer strategy and working with partners in this area for referrals to support. We therefore see minimal change to our current process although we will continue to improve our approach to customers in Vulnerable Situations as we grow and can dedicate more resource.

Our biggest area of improvement from these changes will be improving the data capture process in the form of contemporaneous documentation so that we can evidence our compliance with the revised Standards of Conduct if required.

Q14. Can you provide evidence to support any alternative to our proposals?

Not applicable.

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Q15. Can you provide evidence of how the proposal will benefit your business? As an example, these could include greater efficiency and coordination amongst internal processes, development of new business models etc.

Bristol Energy has a mission to be a Force for Social Good and to address fuel poverty in the Bristol area. These proposals will allow us to focus on our mission unhindered by the need to comply with well-intended regulations. This means we can work closer with our partners, including Bristol City Council to make a difference to actual customers in vulnerable situations by both tailoring our approach to the consumer, and working in tandem with partners without trying to meet conflicting requirements of non-energy regulations in this area.

Q16. What wider benefits do you think our proposals could deliver?

There are now around fifty suppliers working in the domestic market. More if you consider white label operators. The move to principle-based regulation allows diversity of products and services that in time will engage customers who have to date not engaged with the market. It should also allow Ofgem to welcome this diversity and, if properly managed, recognise that customers in certain vulnerable situations may be best served by certain suppliers whereas other customers in different vulnerable circumstances will be best served by other suppliers. This will of course require Ofgem to resist the impulse to expect all suppliers to offer the best service to all customers in all circumstances.

A key fundamental of Ofgem's approach to principles must be to recognise that some suppliers will excel in some areas and not in others and thus suit certain customer demographics. Ofgem must see the fairness test as the minimum a customer can expect, and not find it unfair if a supplier does not offer all services that its competitors do, and its competitors all the services they do.

Q17. In a year, how much time (in full-time equivalents/month) on average does your business spend responding to requests for information (RFIs) from Ofgem? How does this compare with time spent responding to other organisations' RFIs (eg from BEIS, CMA)? Please provide evidence and indicate whether this is half the time or less, or twice the time or more.

We do not keep records of the time spent responding to RFIs and they vary significantly in the time required to respond. Our main concern is that they arrive in an uncoordinated fashion and can require the intense involvement of several senior staff members thus distracting them from their role in the business and for a small supplier this can impact on delivering services for customers. There is also a perception that occasionally the compiler of the RFI has chosen the easy option of a mandated request to all suppliers, rather than considering if any questions could be voluntary, and whether all suppliers really need to answer all questions.

Since May last year, we have responded to seven mandatory RFIs from Ofgem, four from Citizen's Advice, two from BEIS and one from the SPAA. On top of this is routine reporting such as the quarterly SO and complaints data, Consultation responses and the occasional voluntary RFIs, although as a rule we decline to respond to voluntary RFIs from any organisation unless the data is readily available.

As a general guide, approximately four fifths of time spent responding to mandatory RFIs is to Ofgem.

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Q18. Can you provide evidence of any unintended consequences that could arise as a result of our proposals?

We believe the proposals put forward by Ofgem are sensible and beneficial to competition. If there is likely to be any unintended consequence then it will be a perception in political circles when an infraction of the Standards of Conduct occurs it is a direct result of principle-based competition and there will be calls for tighter, more prescriptive regulation. It is important that Ofgem continues to engage with stakeholders on the benefits of principles in regulation, and continue to manage infringements with the company concerned and not resort to prescribing tighter regulation all companies, guilty or innocent, as happened under RMR.

I hope you find this response useful. If you have any queries, please do not hesitate to contact me.

Kind regards,

A handwritten signature in black ink that reads "Chris Welby".

Chris Welby
Head of Regulation

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