

**'Standards of Conduct for suppliers in the retail energy market'
Response to Ofgem consultation**

The Centre for Consumers and Essential Services welcomes the opportunity to respond to this consultation. The Centre is a cross-sectoral and inter-disciplinary research centre at the University of Leicester which has carried out significant research into the position of consumers in vulnerable circumstances. Because of this, we have confined our comments to questions relating to the broad vulnerability principle.

Question 8: What, if any, additional guidance on the domestic and non-domestic Standards of Conduct do you consider would be helpful in light of the changes we are proposing?

Although we appreciate that Ofgem would like suppliers to take the lead in developing their approach to consumers in vulnerable circumstances, at the same time it is important that suppliers have a good understanding of the risk factors that contribute to consumer vulnerability in the energy sector in order to inform their policies and practices. Consequently we recommend that Ofgem should publish information to help suppliers' understanding of vulnerability, even if this does not involve formal guidance. This is particularly important given the increasing number of smaller and newer suppliers in the market. Such information should include reference to the BSI standard on inclusive service (BS18477) which is a very useful tool for companies to use to review and audit their policies and practices.

We also recommend that Ofgem considers holding regular seminars or workshops for suppliers, including senior management, on the issues around consumer vulnerability with input from organisations working directly with people in a range of vulnerable circumstances.

Question 10: Do you agree with our proposal to include a broad vulnerability principle in domestic Standards of Conduct?

We strongly support this proposal. We view this as a logical development of Ofgem's consumer vulnerability strategy and a critical step in ensuring that the position of consumers in vulnerable circumstances is properly protected. We note that Ofcom is proposing a similar approach in its review of the general conditions for telecommunications providers.

In order to ensure that this principle is put into practice effectively by the energy suppliers, it will be crucial for Ofgem itself to establish regular monitoring of the companies' policies and performance. Such monitoring should include whether and how the suppliers embed their approach to vulnerability into their processes and management and board reporting. Moreover Ofgem's monitoring should cover relevant data from complaints, including those that go to the energy Ombudsman.

Question 11: Do you agree with our proposed definition of 'Vulnerable Situation'? If not, please explain why with supporting evidence.

We have three major concerns about the proposed definition of vulnerable situation:

First, the new definition removes the words “combine with aspect of the market”. This is undesirable because one of the ideas behind Ofgem’s new approach to vulnerability was that vulnerability was not simply a matter of a consumer’s personal situation but may be created or exacerbated by market conditions or, indeed, specific company policies and procedures. The new wording breaks this explicit link.

It is arguable that the link remains because the personal situation must lead to the consumer being significantly less able to represent their own interests and/or be significantly more likely to suffer detriment and that either of these situations may be caused by market conditions or company policies or practices and this point is made explicitly in the new Condition 25C.3. For example, someone with a disability may be placed at great risk of vulnerability if a supplier fails to provide information or communicate in ways that are suitable for that consumer. A carer on a low income who is in debt may be put at risk if a supplier fails to set up a suitable repayment plan that is affordable for their situation.

In addition, the change in the wording does move the emphasis away from a supplier’s responsibility to design its services in a way that is suitable for all consumers onto one which emphasises the importance of identifying classes of consumers who may be more disadvantaged. This raises the possibility that the transitory nature of vulnerability will be given less emphasis, as it is easier to identify more fixed characteristics. It would also serve to detract from the need for suppliers to recognise and address the ways in which their behaviour or inaction can place consumers at greater risk of vulnerability.

We understand that there may be some concern that the phrase “aspects of the market” will import the requirement to undertake a market definition exercise, which is time and resource intensive. Although such an exercise is important in competition cases, because the effect on competition of an agreement or conduct cannot be understood without understanding the market affected, this is unnecessary in the context of the domestic energy supply market when vulnerability is being discussed. The Competition and Markets Authority says in its guidance that market definition is a useful tool, but not an end in itself.

Secondly, the definition of a vulnerable situation does not mirror the definition of fairness given in the redrafted Condition 25C.3, which says that an action by the licensee or their representative would not be regarded as acting fairly if it gave rise to a likelihood of detriment to a domestic customer. The definition of a vulnerable situation includes the idea that a domestic customer will be significantly less able to protect or represent their interests in the market.

It is our view that Condition 25C.3 should mirror the definition of a vulnerable situation and it should include, as an alternative to detriment, that the actions or omissions give rise to a situation where the Domestic Customer is significantly less likely to be able to protect or represent their interests.

Thirdly, the definition of vulnerable situation uses the term “Domestic Customer” which is defined in the licence conditions as a person who requires a supply of electricity to premises for domestic purposes.¹ One of the consequences of this change is that micro-businesses or sole traders will be excluded from these licence obligations insofar as they are not engaging in the energy market as domestic consumers. This is an increasingly important area given the growth in self-employment in the economy and the consequent blurring of the borderline between domestic and business uses of energy.

¹ . Standard Supply license Conditions, Definition Section and Condition 6.