

Standards of Conduct for suppliers in the retail energy market

CAP's official response to
Ofgem's consultation

January 2017



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CAP

Lifting people out of debt and poverty



Christians Against Poverty (CAP) welcomes Ofgem's consultation on changes to the *Standards of Conduct for suppliers in the retail energy market*. Through our recent engagement with Ofgem's vulnerability team it is clear that meeting the needs of vulnerable customers is a priority for Ofgem. CAP welcomes the effort and considerable resources invested by many suppliers to support customers in vulnerable circumstances, but we are fully supportive of the introduction of a vulnerability principle to embed this emphasis into the Standards.

We agree that this is appropriate due to the essential nature of energy, and the extent and severity of the hardship we come face-to-face with through our home-visiting service supporting people in financial difficulty. We support an enforceable vulnerability principle to ensure that all suppliers give adequate attention to these concerns and that all procedures throughout the customer journey are put under scrutiny. We are hopeful that this will put those in vulnerable circumstances and experiencing detriment firmly on the radar. We are also excited to see this principle do more to extend the focus of initiatives of those in vulnerable circumstances beyond the Priority Services Register (PSR).

How this is operationalised, monitored and enforced in practice is an important consideration to ensure these changes bring positive outcomes for those most in need. We are keen to contribute to the review of the Social Obligations Reporting and input on other outcomes that need to be monitored.

In addition, we agree that the Fairness Test remains a helpful tool to provide a consistent benchmark for treating customers fairly across all the different areas of supplier conduct. We support the proposed changes to the wording to put the consumer at the heart of the test, and also the removal of the 'all reasonable steps' threshold. Both of these changes will complement the broad vulnerability principle well. However, there needs to be a clarity of what constitutes 'unreasonable detriment' to ensure that suppliers understand Ofgem's expectations and their duty of care, as well as encouraging suppliers to take full responsibility for the actions of their employees and third party agents. More formal guidance would be helpful for this.

Furthermore, the introduction of an 'informed choices' principle is also welcomed by CAP. The energy market is complex and making an informed choice can be challenging. We recognise the benefit of this being a broad principle so that this reaches beyond tariff choice. One thing to note is that it is not necessarily 'sufficient' but engaging information that will improve outcomes.

Finally, CAP would like to take this opportunity to thank Ofgem for their engagement with us and commitment to improve customer outcomes for the most vulnerable. It is encouraging to see the progress this consultation represents and we look forward to seeing the intended outcomes from this consultation materialise through future work to ensure that all customers receive good outcomes, regardless of their situation.

A handwritten signature in black ink that reads "Matt Barlow." The signature is written in a cursive, slightly slanted style.

Matt Barlow
UK Chief Executive

Ensuring the Standards of Conduct remain fit-for-purpose

Amending the Fairness Test

- 1. Do you agree with our proposal to retain a Fairness Test for all the broad principles within the domestic Standards of Conduct? If you don't agree, please provide an explanation in support of your answer.**

Yes, CAP agrees the Fairness Test should be retained. An overarching test across principles is useful to provide a consistent benchmark for treating customers fairly across all the different areas of supplier conduct, and also to safeguard against detriment arising from previously unanticipated sources. Such a test is useful to define the meaning of 'fair' in this context and qualify where the Customer Objective has been breached. As well as serving a purpose for monitoring compliance by Ofgem, the Fairness Test also facilitates the challenging of suppliers' actions on a case-by-case basis by consumer groups.

- 2. 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 Consumer fairly if their actions or omissions give rise to a likelihood of detriment to the Domestic Customers/Micro Business Consumer, unless the detriment would be reasonable in all the relevant circumstances'?**

Yes, CAP agrees with the proposed wording for a revised Fairness Test. Due to the essential nature of energy and the imbalance of power in the energy market between suppliers and consumers, it is important to be clear that acting in a way that creates or fails to prevent consumer detriment is unacceptable, irrespective of whether the supplier has explicitly favoured their own interests or has also suffered a net loss. CAP agrees that removing the concept of 'significantly favour' is advantageous for this.

Putting the consumer at the heart of the test is also an important shift, which CAP welcomes. The revised wording is helpful to clarify that consumers are the main consideration in the Fairness Test. CAP supports the emphasis on consumer outcomes and whether the nature of any detriment is reasonable, rather than the steps taken by suppliers to avoid detriment. Like Ofgem, CAP is optimistic that this change will encourage energy suppliers to go further to accommodate the needs of all customers. This will also complement the broad vulnerability principle well.

The main limitation of the proposed wording is the ambiguity of what is considered 'unreasonable detriment'. While CAP appreciates that this wording gives flexibility for Ofgem to pursue enforcement action in response to emerging issues, CAP's concern is that suppliers will perceive the bar for reasonable detriment to be artificially lower or fail to take into account all forms of detriment.

For example, it can be difficult to observe detriment in the form of exacerbated mental ill-health by aggressive collections activity, especially where this has led to the customer making a repayment. Another example is where an unaffordable repayment has been made, leaving a family without food or money for another essential bill. Evidence shows that this is a common occurrence for those in financial hardship, with eight in ten CAP clients who had fallen behind with their gas or electricity bills taking out credit to pay an essential household

bill or another debt repayment. Particularly concerning is that 20% of CAP clients who had fallen behind with their gas or electricity bills report that they borrowed from a payday lender to pay a household bill, and 38% had used a credit card.

CAP welcomes the effort and considerable resources invested by many suppliers to support customers in vulnerable circumstances. However, the Standards need to be built in such a way that acknowledges that in a competitive market place minimising costs is an important business activity, and safeguards against harmful cost-cutting. The test needs to be robust and set a clear line of what is acceptable and what is not, to ensure suppliers do not downplay what is unreasonable detriment.

The review of outcomes monitored by Ofgem will be key in helping operationalise these protections effectively. This needs to consider how wider detriment can be monitored and accounted for.

3. 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?

Yes. In light of the personal consequences, both emotionally and financially, of detriment caused to micro-business customers, CAP agrees that the changes to the Fairness Test should also be made to the non-domestic Standards of Conduct. It also makes sense to streamline the Standards of Conduct and the implementation timescales as suppliers can service both markets.

Removing the 'all reasonable steps' threshold

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

Yes, CAP supports the removal of the 'all reasonable steps' threshold. It is important suppliers focus on achieving good outcomes, rather than doing enough to get by. This change will hopefully promote more innovation and a shift to early and proactive action to improve consumer outcomes, especially where wider circumstances make good outcomes more complex to achieve. This change will complement the introduction of a broad vulnerability principle.

In addition, this change is welcome to ensure suppliers take full responsibility for the actions of their employees and third party agents. Suppliers should be accountable for the detriment caused by anyone working on their behalf, even if they have taken steps to minimise this risk. This shift will hopefully encourage suppliers, rather than simply having procedures in place, to review and ensure their policies and procedures are effective at achieving their aims more broadly.

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

Yes. For the same reasons as stated in response to question three, CAP believes the non-domestic Standards of Conduct should mirror the consumer protection built into the domestic Standards of Conduct.

Broad 'informed choices' principle

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

CAP supports the introduction of a broad 'informed choices' principle. The complexity of the energy market means suppliers should be accountable for ensuring customers can make informed decisions to maximise their outcomes. It is beneficial that as a broad principle, this reaches beyond sales and marketing, as consumers have to make choices at various stages throughout the customer journey not just in relation to tariff choices.

7. Do you agree with the proposed drafting of the broad 'informed choices' principle we have set out?

CAP is concerned that the word 'sufficient' limits the effectiveness of this principle. It implies a reference to the amount of information provided, but often less information improves effective decision making. What is needed is communication tailored to a customer's circumstances which allows them to engage with the information to make an informed decision. A better term to replace 'sufficient' would be 'effective'. This would also clarify that consumers may need different approaches, or more support to make an informed decision, if they have additional needs or are in vulnerable circumstances.

Existing guidance

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?

Formalising as guidance the explanations presented in this consultation paper about the policy intent and thinking behind the changes to the Standards would be helpful. This would complement the Standards by offering more guidance on how to interpret and implement the principles consistently with the policy intent and Ofgem's expectations in a more permanent document.

Furthermore, separate guidance around what it means to treat customers in vulnerable situations fairly, and how to determine reasonable detriment, would be helpful to ensure suppliers are equipped to interpret and apply the Standards in a principles-based world. There is value in this being separate to the Consumer Vulnerability Strategy (CVS), which serves as the core Ofgem definition of vulnerability. This guidance would operationalise this thinking in the context of the Standards and help suppliers put these principles into practice. CAP welcomes Ofgem's intent to be more open with engagement as well, which will further facilitate effective interpretation of the principles.

Treating Customers Fairly statement

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

CAP agrees with Ofgem that the aim of the Treating Customers Fairly statement remains valid, but that the current form has had limited impact.

Broad vulnerability principle

10. 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.

CAP fully supports the introduction of an enforceable broad vulnerability principle. This will put vulnerability high on suppliers' agendas, which is appropriate considering the essential nature of energy and the severity of the detriment currently seen, as stated in the consultation document.

Suppliers have made progress in meeting the needs of customers in vulnerable circumstances, with several suppliers setting up dedicated vulnerable client teams and engaging with consumer groups to understand their experiences. However, there is still a long way to go, especially in terms of ensuring suppliers have considered, catered for and mitigated the risks to customers in vulnerable circumstances across their businesses. This principle will also ensure new market entrants provide adequate support for customers in vulnerable situations from their point of entry.

Ofgem's strong emphasis on ensuring customers in vulnerable situations achieve good outcomes through these changes is welcome. While the CVS plays an important role in setting out Ofgem's expectations, an enforceable principle in the license leaves no doubt about the importance Ofgem places on this issue. CAP is also particularly pleased that this principle clearly extends the focus of meeting the needs of customers in vulnerable situations wider than the Priority Services Register (PSR), which does not provide support within the customer journey or staying on supply where there is financial difficulty.

Furthermore, CAP welcomes embedding the fair treatment of those in vulnerable situations into the Customer Objective as well as introducing a separate principle. These will complement each other well, and also rightly places vulnerability at the forefront of the Standards. Yet, the phrasing does not make explicitly clear that the expectation is on achieving fair outcomes in line with that of customers not currently in vulnerable circumstances, so to treat a vulnerable customer fairly could entail very different treatment. Either amending the wording or issuing accompanying guidance would be helpful for the policy intent to be more clearly communicated.

Further consideration needs to be given to how this principle will be monitored and enforced. Ofgem's review of Social Obligations Reporting will be key to this and CAP is keen to input into this, but other monitoring needs to be considered. This should include consumer-facing surveys and more qualitative research to capture the softer signs of detriment taking place. Special consideration should be given to capturing the experiences and gaining visibility of the poor outcomes of those currently off the radar, including those with prepayment meters, and the role smart meter data could play in this.

11. Do you agree with our proposed definition of 'vulnerable situation'? If not, please explain why with supporting evidence.

CAP welcomes the clearer focus on the consumer in the proposed definition of a vulnerable situation, in terms of focusing attention to meeting the needs of every individual customer, and also clarifying that characteristics, as well as circumstances, play a role in creating vulnerability.

However, removing reference to the energy market altogether fails to appreciate the role supplier action or inaction, and other aspects of the market, can have in creating vulnerable situations. For example, a prepayment customer in arrears with a high deduction rate set is more likely to suffer detriment in terms of being off supply and also less able to represent their interests due to the remoteness of typical communication with the supplier. It would be more appropriate to keep market aspects in the definition, acknowledging that they can also create or exacerbate vulnerability, whilst still making it clear that vulnerable situations can arise aside from market factors. This would make it clear that the context the customer is operating in needs to be taken into consideration when determining if there is vulnerability at play and also keep the definition consistent with the CVS.

Ofgem's information gathering powers

12. Do you have any comments on the proposal to amend SLC 5?

CAP supports the proposal to bring Ofgem's information gathering powers in line with other regulators with marketing monitoring functions.

Requests for further information

This response has been written by Rachel Gregory, External Affairs Analyst, Christians Against Poverty (CAP).

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Christians Against Poverty (CAP) is a nationally recognised charity that works with over 500 churches to help the most vulnerable out of poverty across the UK. The services provided offer both practical and emotional support, are completely free and are available to all, regardless of age, gender, faith or background.

Through a network of 306 CAP Debt Centres, CAP offers a free face-to-face debt management service, with advice and ongoing support provided from head office. In addition to this, CAP provides face-to-face adult financial education across the UK in partnership with 849 churches who run the CAP Money Course. This is a three-week money management course, which equips over 11,500 people each year to budget, save and spend wisely.

CAP has also recently expanded to tackle more causes of poverty. To this end, CAP now operates 169 CAP Job Clubs, 74 CAP Release Groups to tackle life-controlling dependencies, and is piloting 56 CAP Life Skills groups to empower members with the essential skills and support they need to live on a low income.



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