

# Standards of Conduct for suppliers in the retail energy market

## Energy UK response

March 2017

### Introduction

Energy UK is the trade association for the energy industry. We represent over 90 members made up of generators and gas and electricity suppliers of all kinds and sizes as well as other businesses operating in the energy industry. Together our members generate more than 90 per cent of the UK's total electricity output, supplying more than 26 million homes and investing in 2012 more than £11 billion in the British economy.

Energy UK strongly believes in promoting competitive energy markets that produce good outcomes for consumers. In this context, we are committed to working with Government, regulators, consumer groups and our members to develop reforms which enhance consumer trust and effective engagement. At the same time, Energy UK believes in a stable and predictable regulatory regime that fosters innovation, market entry and growth, bringing benefits to consumers and helping provide the certainty that is needed to encourage investment and enhance the competitiveness of the UK economy.

These high-level principles underpin Energy UK's response to Ofgem's Standards of Conduct for suppliers in the retail energy market. This is a high-level industry view; Energy UK's members may hold different views on particular issues. We would be happy to discuss any of the points made in further detail with Ofgem or any other interested party if this is considered to be beneficial.

### Executive Summary

Energy UK welcomes the publication of Ofgem's consultation on Standards of Conduct for suppliers in the retail energy market. The way customers interact with the market is evolving, and suppliers are responding to the demand for more flexible and innovative services and products. At the same time new and different suppliers are entering the market, and transformative technology and industry system changes are being introduced. Energy UK welcomes Ofgem's ambition to develop a regulatory framework which supports these changes.

As set out in Energy UK's response to the initial Future of Retail Regulation consultation in March 2016, we believe that a move towards Principles-Based Regulation (PBR) can bring significant benefits to both consumers and suppliers. In order for these benefits to be realised PBR must be operationalised in line with the following guiding principles in mind:

- Communication
- Trust
- Flexibility
- Clarity and consistency
- Collaboration

EUK supports the move towards PBR and in particular agrees with Ofgem's proposal to introduce vulnerability into the Standards of Conduct for domestic suppliers. It is right that suppliers take accountability for protecting and empowering consumers in vulnerable situations, from frontline customer advisors to senior management and boards.

Our answers to the specific questions posed by the consultation are set out below.

## Questions

**Q1: 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. It is important that the Standards of Conduct are rooted in whether a particular outcome or action is fair.

**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 Consumer Fairly if their actions or omissions give rise to a likelihood of detriment to the Domestic Customer/Micro Business Consumer, unless the detriment would be reasonable in all the relevant circumstances”?**

In our response to the working paper on the future of retail regulation we stated that we didn't feel the wording needed revising. The existing Fairness Test provides appropriate regulatory certainty. Suppliers have spent the last three years embedding SOC, including the Fairness Test, across their businesses. The current structure and wording of the test is, as a result, readily clear and understandable for suppliers.

We understand that some of our members also have further concerns about the revised wording and its potential to limit their ability to exercise their statutory rights as set out in the Electricity Act (1989) and Gas Act (1986). We expect individual suppliers to elaborate further in their responses.

**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?**

See response to question two above. The same considerations apply to both domestic and non-domestic.

**Q4: 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.**

We sympathise with the aim of the proposal to remove “all reasonable steps” and agree with Ofgem that suppliers should focus on delivering good and fair outcomes for domestic consumers. However, without any reasonableness or proportionality test in the Standards of Conduct– as currently provided by ‘all reasonable steps’ – some Energy UK members are concerned there is a danger that suppliers could face uncontrollable costs in meeting the standards implied by an absolute principle.

With this in mind, we would welcome further clarification from Ofgem about how it proposes to manage and assess compliance following the removal of the ‘all reasonable steps’ threshold.

**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?**

See response to question four above. The same considerations apply to both domestic and non-domestic.

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

In principle, Energy UK agrees that customers should make informed choices about their energy. We have supported Ofgem introducing principles to cover informed choices around tariffs and we can see the rationale for introducing a principle that all choices are informed. However, it is unclear what

precisely 'informed choices' means in this context. We believe that an informed choices principle should mean that any choice made by the customer about their energy is an informed choice. The principle should not mean that, for any choice, suppliers must ensure the customer is informed about every related possible choice.

It would be helpful for Ofgem to provide examples of how they envisage the application of this principle working in practice.

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

See response to question six above.

**Q8: 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?**

It is clear that a move towards a greater reliance on PBR places demands on both suppliers and Ofgem to change the way in which they operate. While we expect that our members will respond to this question on an individual basis we would encourage Ofgem to set out in greater detail how they believe they will operate differently in a world where regulation is increasingly principles-based.

**Q9: 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**

In the absence of robust consumer research suggesting that customers value and use the Treating Customers Fairly statement, Energy UK believes the obligation should be removed. We believe there is more value in suppliers focusing on treating customers fairly than in producing a paper explaining how they have treated customers fairly.

**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.**

Energy UK is supportive of the proposal to include a vulnerability principle in the domestic Standards of Conduct. It is right that suppliers take accountability for protecting and empowering consumers in vulnerable situations, from frontline customer advisors to senior management and boards.

It is, however, important Ofgem recognise that suppliers' frontline agents and employees are not care professionals. Energy suppliers have to strike a fine balance where vulnerability is identified and make important but often difficult decisions on whether to take further steps into the lives of customers.

Some of our members have concerns about the way in which the new principle will work in practice. The drafting could be interpreted to suggest that suppliers are required to identify all of their vulnerable customers. Ofgem should recognise that this would be a practically impossible standard for suppliers. We believe Ofgem's desired policy intent should be to ensure that suppliers have processes in place to identify vulnerability and are active in responding to signals from customers that display characteristics which may make them vulnerable.

**Q11: Do you agree with our proposed definition of ‘Vulnerable Situation’? If not, please explain why with supporting evidence.**

We welcome Ofgem's drafting of “vulnerable situation”, which makes clear that suppliers should be particularly alive to vulnerability when the customer's personal circumstance or characteristics “significantly” affect their ability to protect their interests.

We note that the word 'where' appears to be missing after the word 'means' in the first sentence of the drafting. We believe it would aid understanding for it to read:

*“A vulnerable situation means where the circumstances...”*

**Q12: Do you have any comments on the proposal to amend SLC 5?**

We believe that any increase in Ofgem’s powers to request information should be accompanied by greater predictability and clarity in relation to when information is going to be requested. It would be useful for Ofgem to provide examples of the sorts of information that it would likely request under the amended SLC 5.

**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?**

It is clear that a move towards a greater reliance on PBR places demands on both suppliers and Ofgem to change the way in which they operate. While we expect that our members will respond to this question on an individual basis we would encourage Ofgem to set out in greater detail how they believe Ofgem will operate differently in a world where regulation is increasingly principles-based.

**Q14: Can you provide evidence to support any alternatives to our proposals?**

We expect that our members will respond to this question on an individual basis.

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

We expect that our members will respond to this question on an individual basis.

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

We expect that our members will respond to this question on an individual basis.

**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 the 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 expect that our members will respond to this question on an individual basis.

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

We believe there is a danger that Ofgem-published best practice could come to define minimum standards in a PBR environment. We recognise that Ofgem is alive to this risk, which may be particularly pronounced in relation to the vulnerability principle. Suppliers will have different methods of trying to achieve good customer outcomes and Ofgem and consumer groups should accept this as a positive consequence of PBR. However, if Ofgem publishes best practice, a supplier may consider such practice as inappropriate for their own processes and fear enforcement action.

There is also a wider question about what constitutes a fair customer outcome and ultimately who decides. Were Ofgem to provide greater detail on how they intend to operate in a PBR environment it should help clarify how enforcement action will work in relation to determining fair customer outcomes.

**For further information or to discuss our response in more detail please contact Daniel Alchin on 020 7747 2965 or at [daniel.alchin@energy-uk.org.uk](mailto:daniel.alchin@energy-uk.org.uk) / Natan Doron on 020 7747 2932 or at [natan.doron@energy-uk.org.uk](mailto:natan.doron@energy-uk.org.uk)**