



By Email

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13th March 2017

Dear Andrew,

Standards of Conduct for suppliers in the retail energy market

Npower welcomes the further progress towards principles-based regulation and the opportunity to provide our views on proposed changes to the Standards of Conduct. We believe this will provide a platform for suppliers to deliver positive consumer outcomes in increasingly innovative and diverse ways. This response is submitted on behalf of all our UK retail energy supply activities within the Npower Group PLC.

Summary

Whilst we are supportive of the intention to rely more on principles and less on detailed prescriptive rules, we would like more clarity on how Ofgem will approach compliance under this new approach. We understand that Ofgem is developing a risk-based methodology for assessing which suppliers will need greater attention from and interaction with Ofgem going forward – we would welcome more insight into this methodology and assessment process. Also, where issues arise, more detail is needed on how Ofgem will decide what level of consumer detriment is reasonable under the circumstances and how “fairness” will be assessed.

It is important too that prescriptive rules are kept to a minimum; a principles based framework with a high volume of prescription is in our view unworkable. We are concerned that, with the introduction of a new high level broad principle relating to vulnerable customers whilst prescriptive rules are still retained, the potential benefits of the new principle may not be realised. We would therefore encourage Ofgem to take steps to identify those prescriptive rules relating to vulnerable customers that can be removed sooner rather than later without any impact on overall consumer outcomes.

You asked what more could be done to make the transition to a greater reliance on principles a success. We have a few ideas to offer:

- We would welcome more information about what is being done in relation to the provision of guidance. Although we accept that some forms of guidance could in fact

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lead to prescription by the back door, we believe that further guidance may be needed to enable suppliers to understand how to apply the principles. We emphasise the importance of Ofgem making its policy intent crystal clear. Also, we are keen to understand how guidance issued in the past in relation to prescriptive rules will be treated in the future where those rules have now been replaced by principles.

- Whilst we have seen significant progress in terms of the engagement between Ofgem and suppliers, we believe that there is more that could be done here. We think it would be helpful for Ofgem, alongside the work it is doing in developing its risk-based assessment process, to develop a deeper and broader understanding of each supplier's business and we think this could be done through visits to suppliers' premises and closer interaction through single or specific points of contact – a relationship-manager type approach.

Our responses to the specific questions you pose in the consultation are set out below. If you require any clarification on any of the points we have made please do not hesitate to contact me.

This response is not confidential.

Yours sincerely,

A handwritten signature in cursive script that reads "Sasha Pearce".

Sasha Pearce
Regulation

Question 1: Do you agree with our proposal to retain a *Fairness Test* for all the broad principles within the domestic Standards of Conduct?

Yes, we agree that a Fairness Test should remain, but please see our concerns set out below.

Question 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 Customer/Micro Business Consumer, unless the detriment would be reasonable in all the relevant circumstances?”

No, we have concerns about the proposed wording and we do not agree that this change is a necessary step in customers’ interests. The existing wording recognises that there are scenarios where consumer detriment is unavoidable, and provides a way of assessing that. We have some key questions:

- In future, how will Ofgem assess whether the likelihood of consumer detriment is “reasonable”?
- Suppliers have statutory rights and rights to act in certain scenarios, where the outcome is likely to result in consumer detriment. Will such scenarios be specifically recognised?
- Would Ofgem look at a supplier’s policy in such circumstances, rather than individual cases? This is particularly important given the point raised in paragraph 2.35 that Ofgem “will not rule out investigating instances of particular detriment affecting individuals or small groups, especially if those affected are in vulnerable situations”.

Ofgem states that the Fairness Test is based on the Unfair Terms in Consumer Contracts Regulations 1999 – these were subsequently replaced by the Consumer Rights Act in 2015. The CMA and before them the OFT provided guidance to assist businesses with understanding what makes terms and conditions unfair. We think that Ofgem will need to take similar action now to clarify how fairness will be assessed and what level of detriment would be regarded as unreasonable.

Question 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, we agree. We believe that there should be consistency between the domestic and non-domestic licence conditions wherever possible and practicable and keeping these aligned will make it easier to promote clear understanding and awareness within our organisation.

Question 4: Do you agree with our proposal to remove the *all reasonable steps* threshold from the domestic Standards of Conduct?

No, we disagree with this proposal. The proposed drafting introduces an absolute, unqualified obligation on suppliers to achieve the Standards of Conduct in a manner consistent with the Customer Objective. There is no opportunity for suppliers to demonstrate that they have taken “all reasonable steps”. As a consequence, we think that the risk of failing to achieve the Standards may well stifle innovation, rather than encourage suppliers to try something new. We disagree that it is possible to separate the internal processes of suppliers from consumer outcomes – in our view they are inter-twined. We do not believe that the retention of “all reasonable steps” disadvantages the customer in any way while the *Fairness Test* remains.

Whilst we note what you say about the removal of “all reasonable steps” not signalling a change in your approach to enforcement, this would mean that enforcement action could be initiated in more cases than it is currently. Whilst Ofgem may give verbal assurances that it will act proportionately and continue to work with suppliers to resolve many instances of non-compliance without enforcement action, there is no guarantee that this will remain the case in future.

We believe that the removal of all reasonable steps could create a climate of uncertainty and mistrust, thus restricting a supplier’s ability to innovate and act quickly when things go wrong. As an alternative, we suggest that the wording of the threshold could be amended by the removal of the word “All”, so that the Standard would read: “Suppliers must take reasonable steps to achieve, interpret and apply the

Standards in a manner consistent with the Customer Objective". Suppliers are happy to accept that they have a duty to do this, and we consider such a change in wording would help to achieve the desired shift of focus onto customer outcomes whilst still providing a clear message that suppliers need to apply due diligence to their activities. However, we would welcome further clarification from Ofgem on what would be deemed to be reasonable or unreasonable.

If Ofgem decides to proceed with the removal of all reasonable steps, then we would like to understand what Ofgem will use in its place when reviewing customer outcomes, recognising that the approach taken will differ from supplier to supplier and also on a case by case basis. Suppliers will need some guidelines to follow to ensure they are capturing the right evidence and framing their decisions on a solid foundation.

Question 5: 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?

We support maintaining consistency between the two sets of Standards of Conduct. For the reasons explained above, we do not agree that *all reasonable steps* should be removed from either version, but instead propose that the Standard should be amended to read "Suppliers must take reasonable steps to achieve, interpret and apply the Standards in a manner consistent with the Customer Objective".

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

Yes, we support the introduction of this new broad principle. However, success in this area will be dependent on the measures announced to amend SLC25 and we would like to understand what Ofgem would expect from suppliers here and what test of reasonableness would be applied, particularly in respect of tariff comparability and "recommending" choices according to customer circumstances and/or preferences.

Question 7: Do you agree with the proposed drafting of the broad "informed choices" principle we have set out?

Yes, with the reservations stated in response to Question 6 above.

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?

We would welcome clarification from Ofgem on how you will assess compliance with the Standards of Conduct across the supplier community. We expect there to be a level playing field in terms of approach and expectations. Also, some practical examples showing how Ofgem would apply the amended Standards would be helpful. See also our points under Question 2 and 4 above.

Question 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?

Whilst we understand and support the intention of the Treating Customers Fairly (TCF) statement to demonstrate that we are acting with the customer in mind, from the feedback we have received from customers, we do not believe it adds much value. We do not therefore think this obligation should be retained. We strongly believe that suppliers should be given more flexibility to interact with their customers and future customers to find better ways of communicating such messages. A principles-based framework provides the opportunity for suppliers to develop new customer communications as part of their chosen approach to and strategy for achieving good customer outcomes. For example, suppliers could take the opportunity to incorporate the key message from the TCF statement within other more customer-focussed communications, such as a Customer Charter or a statement setting out "What customers can expect".

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

Yes, we support this in principle, but we are concerned at how this will work in practice while so much prescription in relation to vulnerable customers remains in the Licence. See also our reservations in response to Question 11 below.

Question 11: Do you agree with our proposed definition of “Vulnerable Situation”?

We are concerned about the wording of this definition, which we interpret as requiring suppliers to identify each and every vulnerable customer without exception. This is clearly not possible, as some customers do not wish to be identified as vulnerable and may not provide the information needed for vulnerability to be recognised. Also, supplier interaction with many customers is very limited – after registration, contact may only be in relation to billing and payment, and those processes do not provide opportunity to identify vulnerability.

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

We would like to understand what information Ofgem is currently unable to gather because of the existing wording of the Licence. Could some examples be provided? Whilst we understand Ofgem’s desire to ensure that Licensees do respond and provide full and helpful information when requests for information are issued, we are concerned that this change could enable Ofgem to require suppliers to provide much more information. This would clearly carry cost and resource implications that are ultimately borne by the consumer, at a time when we are trying to reduce internal costs to keep prices as low as possible.

We would find it helpful if Ofgem could provide advance indication of the information that it will need in future, so that we can ensure the relevant data is collected and consider making system developments so that information can be easily gathered.

Question 13: 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?

The Standards of Conduct are already integral to our business and part of our culture in thinking about the whole customer’s journey, so additional costs are likely to arise only through extending this further. We are still considering the detail of what this means, and cannot provide information on costs at this stage, but our initial thoughts are that we would:

- Extend our current approach to the Standards of Conduct, make changes to our internal management information and compliance assessment processes, implement new governance and controls to ensure decision-making is focused on customer outcomes and strengthen contingency planning to address scenarios where things don’t go to plan.
- Consider opportunities for better engagement with customers, for example a review of customer communications, bill design etc.
- Review our current processes and all communications to customers in the light of the changes.

If the TCF statement is no longer an obligation, this will lead to a saving, but any savings achieved are likely to be diverted into other new communications to customers, so this will end up cost-neutral.

Question 14: Can you provide evidence to support any alternatives to our proposals?

Other than our suggestion in relation to “all reasonable steps”, we do not have any alternatives to suggest.

Question 15: 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.

Again, we are still considering this, but our initial thoughts are that these changes to the Standards of Conduct will enable us to tailor our products and customer service to respond to customer feedback and insight, to introduce new products and pursue new business models. We will use intelligence gathered by our call centre and other channels, for example focus groups, in relation to customer feedback to help us determine our future approach.

Question 16: What wider benefits do you think our proposals could deliver?

We think that the changes will enable suppliers to respond more easily to customer feedback, to innovate more and be more flexible in our customer service approach. There will be a shift in focus away from ticking boxes towards achieving successful customer outcomes.

Question 17: 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 (e.g. from BEIS, CMA)? Please provide evidence and indicate whether this is half the time or less, or twice the time or more.

We have reviewed the number of RFIs received by us in the past year, and these have come from a wide range of sources e.g. Citizens Advice, industry codes and agreements working groups and panels, Which?, BEIS, and others. In addition, the RFIs have differed greatly from one to another in terms of the type of information being requested and the timescales for responses which, when these are short, also has an impact on business resource. It is also worth pointing out that we often receive RFIs from two or more sources asking for information about the same topic but from different perspectives. Recent examples are the RFIs from Ofgem, EUK and Citizen's Advice on the topic of switching, and the RFIs from Citizen's Advice, Which? and Ofgem on the subject of complaints. To reduce duplication of effort and make the RFI process more efficient, it would be helpful if a way could be found to better co-ordinate requests such as this.

On average, we have 4FTE/month managing and responding to Ofgem RFIs. Roughly the same amount of time is spent on RFIs received from other sources. We would like to point out that the level of resource focused on responding to RFIs does fluctuate throughout the year, and at times the number of FTEs that are committed to working on RFIs will be much higher than the figure given here. We take a similar approach to managing RFIs from all sources, and from experience our view is that the time and effort spent responding to an RFI is not driven by its source, but instead on the content requested.

It is also important to recognise that RFI responses require input from staff at all levels of our organisation, including senior managers who review and sign off responses, as well as the teams involved in gathering data from our systems and other relevant information.

One-off RFIs are very different to regular information provision and reporting. Use of templates can be helpful, ensuring less ambiguity/room for differing interpretations. We are sometimes asked to review draft RFIs, which can help to ensure the final request is properly framed but carries additional cost in terms of resource.

Question 18: Can you provide evidence of any unintended consequences that could arise as a result of our proposals?

Please see our concerns set out in our answer to Question 4.

We also have concerns that unless Ofgem apply a consistent compliance approach to all suppliers in the market, this could lead to unfair treatment and distortion of competition.

We think that there is a need to make clear what is the minimum standard of acceptable service that customers should expect and we seek reassurance that the benchmark for this will not be influenced by examples of best practice.

We would also flag up the potential for misalignment between oversight of broad principles, such as informed choices and vulnerable customers, with continuing narrower objectives in these same areas.

Finally, we are concerned that whilst we will take every step available to achieve compliance, suppliers may struggle to maintain the Standards of Conduct while meeting specific government targets such as Smart rollout.