



FAO Andrew Thomsen
Ofgem
9 Millbank
London
SW1P 3GE

13th March 2017

Dear Mr Thomsen,

Consultation on Standards of Conduct for suppliers in the retail energy market

Opus Energy is the largest business energy supplier outside of the Big Six, providing electricity and gas to more than 275,000 businesses. Since its start in 2002, it has been delivering outstanding levels of service, embracing renewable energy sources and providing competitively priced energy, powering businesses ranging from your local newsagent to brands such as LEON and White Stuff. Opus Energy has ranked in The Sunday Times Top Track 250 for the last six years, most recently in 6th position, and was named one of the Top 100 Best Companies to Work For in 2015 by The Sunday Times. Opus Energy is a Drax Group company.

We welcome the opportunity to respond to Ofgem's consultation and are supportive of efforts to move more towards a Principles Based Regulation approach. Removing prescriptive conditions out of licence will allow suppliers to focus on differentiating themselves from the competition and look into innovations they can develop to continue to deliver positive outcomes for consumers. This should however be underpinned by Standards that encourage innovation rather than stifle it due to the perceived threat of greater enforcement.

Question 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. Under the current arrangements, the Fairness Test is used to understand whether the consumer has been treated unfairly. The test includes an assessment of two key elements – whether the supplier's (or Representative's) actions or omissions significantly favour the interest of the licensee; and, give rise to a likelihood of detriment to the customer. If the issue under consideration fails both of these criteria, the action or omission is considered to be unfair to the consumer. This seems to be a clear test that both the supplier and the consumer can understand and as the fairness test has worked successfully since the introduction of the Standards, there seems to be no clear reason to remove it. We do not feel that it creates unnecessary duplication with the basic expectations set out in the Standards.

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"?

We agree that removal of the 'significantly favour' element of the fairness test makes the test simpler and concentrates the focus on the consumer outcome.

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.

Question 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.

Please see answer to Q5.

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?

No. To remove 'all reasonable steps' would leave the Standards of Conduct without any reasonableness or proportionality test and we would be concerned there is a danger that suppliers could face uncontrollable costs in meeting the standards implied by an absolute principle.

We found little in the consultation document that provides information or assurance around how Ofgem would propose to manage their approach to enforcement under the Standards. 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.

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

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

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?

Rather than introducing 'prescription by the back door' by designing additional formal guidance, it would be more useful to deliver examples of best practise demonstrating what Ofgem believes good consumer outcomes look like. Similarly, examples of approaches that Ofgem believe would not meet the Fairness Test may also be useful along with how Ofgem would approach enforcement to these examples.

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? Please provide an explanation for your answer.

Yes, although not in its current form. This obligation is fairly prescriptive in nature, resulting in similar statements being produced by all suppliers, potentially devaluing them in the eyes of the consumer. Removing prescriptive elements of this condition would allow suppliers to innovate under the spirit of Standards of Conduct, allowing consumers to see differences between suppliers and help them make meaningful choices.

Question 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.

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

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

Requests For Information (RFI) require significant time and resources to answer and whilst Ofgem have signalled in the past that the approach to RFIs would be streamlined, the proposed amendments to SLC 5 seem contrary to this along with the volumes of RFIs we continue to receive. When a supplier works on an RFI, key business resource is

taken up which could otherwise be spent innovating and focussing on delivering good outcomes for consumers. We would therefore require assurances from Ofgem that amendments to this clause would not result in the volumes of RFIs increasing.

It would also be beneficial for Ofgem to share in advance a clear picture of when future RFIs will be received to afford suppliers the maximum amount of time possible to schedule them in to plans and ensure sufficient resource can be allocated whilst managing business as usual workloads. Ofgem should also take into consideration the scale of each RFI and the volume of other RFIs/consultations etc that are concurrently being worked on to ensure the timescales offered are both proportionate and achievable.

Suppliers are often asked for the same information from various parties e.g. Ofgem and BEIS asking for Smart Meter roll out plans separately, therefore it would be beneficial for parties to consider what they request and form a more collaborative approach to ensure suppliers can work efficiently on similar requests.

When an RFI is released we believe it would also be beneficial for the industry that Ofgem share the rationale behind why they have asked for certain information and what they intend to do with it. Ofgem had signalled in 2015 that they do not intend to look into the TPI market¹ to implement any type of regulation however the non-Domestic RFI in October 2016 required suppliers to go to great lengths to produce a considerable amount of information about TPIs which was inconsistent with Ofgem's prior positioning and the purpose and intended use of this data is still unknown.

If you would like to discuss this further, please feel free to contact me.

Yours sincerely,

Gemma Newsham
Regulations Director

¹ Ofgem letter titled "Next steps on our project for a code of practice for the non-domestic Third Party Intermediary (TPI) sector", 5th March 2015