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Dear Andrew,

Standards of Conduct for suppliers in the retail energy market

Thank you for the opportunity to respond to the above consultation.

We are committed to achieving the Standards of Conduct and putting customers at the heart of our business activity. We therefore support Ofgem's proposals to amend the Fairness Test and thresholds in the domestic and non-domestic Standards of Conduct, to encourage suppliers to focus on consumer outcomes, rather than the steps they take to achieve the Standards.

As we noted in previous responses to the 'enabling informed choices' consultations, there is a natural nervousness from suppliers as to the implications for enforcement of the removal of the 'all reasonable steps' test. We therefore welcome Ofgem's assurance (paragraphs 2.32 to 2.36 of this consultation) that it intends to apply the Standards proportionately. We agree that it would be helpful for Ofgem to publish guidelines setting out its intended approach to compliance and enforcement, which would be more easily referenced than the consultation and provide clarity for market participants in the longer term.

We support the proposed inclusion of a broad 'informed choices' principle within the domestic Standards of Conduct, but we are concerned that the drafting (coupled with some of the comments on the policy intent) could be interpreted to require a greater level of proactive information provision than is appropriate. We suspect that Ofgem's main focus is to ensure that the information provided in the course of the customer journey is suitable for the making of informed choices. We therefore suggest that if Ofgem proceeds with this new principle it clarifies the intended effect.

We also support the inclusion of a broad vulnerability principle within the domestic Standards, but are concerned that the drafting of the licence condition sets too high a standard for the proportion of vulnerable customers that can be identified. We think that this could be addressed by including similar wording to that included in the PSR licence condition and have suggested an amendment along these lines.

We agree that Ofgem should remove the restrictions in SLC 5.2(a) that inhibit its market monitoring activities, given the uncertainties around the scope of its powers following

the 2011 changes. However, we would encourage Ofgem to be aware of the costs of unnecessary collection of information and to try to avoid any significant increase in the volume and scale of information requested. It would be helpful if Ofgem could provide some clarity around what this might mean in practice, and particularly how it intends to mitigate the burden of Information Requests on suppliers (as suggested in Appendix Six to the consultation document).

We have provided answers to your specific consultation questions in the Annex to this letter. We would be pleased to discuss these, or any of the points discussed above, with you in further detail.

Yours sincerely,

A handwritten signature in blue ink that reads "Rupert Steele". The signature is written in a cursive style and is positioned above a horizontal line.

Rupert Steele
Director of Regulation

**STANDARDS OF CONDUCT FOR SUPPLIERS IN THE RETAIL ENERGY MARKET:
SCOTTISHPOWER RESPONSE**

Chapter Two: Ensuring the Standards of Conduct remain fit for purpose

- 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, we agree with the proposal to retain a Fairness Test for all the broad principles within the domestic Standards of Conduct ('the Standards'). We consider that this remains helpful for suppliers in understanding Ofgem's expectations in relation to the broad principles, particularly taking into account the proposal to remove the current 'all reasonable steps' wording from the Standards.

- 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"?**

Yes, we agree with Ofgem's proposed wording for a revised Fairness Test.

The intention behind Ofgem's original wording was to recognise that there may be some situations in which a customer experiences some detriment, but in which the supplier was acting legitimately, for example the proper exercise of a supplier's statutory right to disconnect or licence right to object for debt. We consider that the revised wording would still provide for such circumstances, by recognising that there are some cases in which the detriment to the customer may be necessary or reasonable, but that it will also align more broadly to Ofgem's aim to focus the Standards on 'customer outputs'.

- 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 think it is appropriate that changes to the Fairness Test should be made to the non-domestic Standards at the same time as the domestic Standards. We can see no reason why these should differ.

- 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.**

The proposal to remove the 'all reasonable steps threshold' is one that is likely to be a key area of consideration for most suppliers and we had previously expressed concerns around the rationale for this approach in relation to the 'enabling informed choices' policy changes.

From the further explanation within the consultation document we understand that Ofgem's aim in removing this threshold is to place a supplier's focus more firmly on achieving the consumer outcomes set out within the Standards, rather than on what steps it may or may

not be reasonable for a supplier to take in a particular circumstance. We understand and appreciate this aim. Further, we welcome the confirmation of Ofgem’s intended approach to applying the Standards and undertaking any action in a proportionate manner (as set out in paragraphs 2.32 to 2.36 of this consultation). On that basis, we agree with the proposal to remove the ‘all reasonable steps’ threshold from the Standards.

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?

Yes, we agree that ‘all reasonable steps’ should be removed from the non-domestic Standards at the same time as the domestic Standards. We can see no reason why these should differ.

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

We agree with the proposal to introduce a broad ‘informed choices’ principle into the domestic Standards. We agree that this complements the CMA recommendations and can play a wider role in supporting the narrow principles to be introduced under the revised SLC 25, which will relate specifically to consumers’ sales and marketing choices.

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

Ofgem says the broad principle is intended to make it clear that consumers need to be ‘proactively’ provided with enough information to ensure they can make informed decisions about their energy services, ie the principle goes beyond requiring that information is not misleading.¹ Ofgem also notes that customers may need information on customer service standards, ethics, privacy or environmental impacts in order to make an informed choice.²

We are concerned that the drafting of the licence, in combination with the above comments on the policy intent, could be interpreted as creating an obligation to provide customers proactively with all sorts of information that may be of no interest to them or with a frequency greater than they need. Given the importance of policy context in interpreting such licence conditions, we think it would be helpful for Ofgem to clarify that:

- for certain types of information (eg customer service standards, ethics, privacy or environmental impacts) it may be sufficient to provide information on websites or in response to customer enquiries, rather than proactively to all customers;
- to the extent that suppliers must provide information proactively, this need only be done at points in the customer journey where the supplier might reasonably expect the customer to be making a choice – eg towards the end of a fixed term contract;
- the obligation to provide information about products and services relates only to products and services provided by that supplier (though of course, if a supplier does provide a comparison against other suppliers, that comparison must be accurate and not misleading).

¹ Condoc para 2.45

² Condoc para 2.44

As a general point, we suggest that the principle in each supply licence should relate only to the fuel relevant to that licence, rather than both fuels. So instead of 'about their supply of gas and/or electricity', the gas licence should say 'about their supply of gas' and the electricity licence should say 'about their supply of electricity'.

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?

Our preference would be to move away from requiring guidance to supplement the Standards of Conduct, so that the Licence Conditions are able to stand alone. We therefore agree that there is no need for additional guidance on the interpretation of the Standards (over and above the existing guidance referred to in paragraph 2.46).

However, we think that Ofgem's proposed guidelines (as indicated in paragraph 2.36) on its approach to compliance and enforcement will be helpful for suppliers.

We continue to think that it is helpful to understand examples of supplier practice that Ofgem considers to be 'good' or 'poor' practice, which will help suppliers understand how the Standards might be applied or embedded in everyday scenarios. This could be published on Ofgem's website for ease of reference, and provided within the proposed "Welcome Pack" that would be provided to new entrant suppliers. However, both Ofgem and suppliers should take care to ensure that examples of good practice don't become the standard for achieving the relevant customer outputs over time, recognising that there will be a range of ways in which compliance can be achieved.

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.

ScottishPower has attempted to use the 'Treating Customers Fairly' ('TCF') Statement to demonstrate to customers the actions that we have taken to meet the core values that they have told us are important to them. In that respect, we consider it to be a useful check that we are continuing to deliver against our customers' core 'needs'. However, our own experience, while not conclusive, suggests that few consumers take an active interest in TCF Statement. For example:

- we receive very few requests for copies of the Statement (this may also be because it is freely available online and customers are comfortable accessing it this way); and
- we include a feedback facility in the online TCF Statement (for customers to make suggestions or improvements, or ask for further information on any of the contents) and the volume of contacts through this channel is also low.

Although it is far from conclusive, this evidence suggests to us that customers do not obtain particular value from the TCF Statement.

Chapter Three: 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.

Yes, we agree with the proposal to include a broad vulnerability principle in the domestic Standards of Conduct.

However, we are concerned that the drafting of the vulnerability principle sets a standard for identifying vulnerable customers which is much higher than actually intended (and probably unachievable). The reality is that suppliers' ability to identify vulnerable customers is limited by the extent to which they can obtain relevant information on that customer – which will depend on the opportunities afforded by interactions with the customer and the customer's willingness to disclose what they may consider to be sensitive information. Even the best set of processes is likely to identify well short of 100% of customers in a vulnerable situation.

We suggest that the drafting of the condition is amended to reflect the wording used in a similar context for the Priority Services Register condition (SLC26.1(c)(i)) (additional text in red):

25C.4(d) The licensee and any representative:
(i) implement, review and update processes which are, and continue to be, fit for the purpose of identifying, **in the course of interactions between the licensee and Domestic Customers**, each Domestic Customer in a Vulnerable Situation; and

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

We think that the proposed definition of 'Vulnerable Situation' is generally appropriate and consistent with obligations elsewhere within the supply Licence relating to supporting vulnerable customers and Ofgem's Consumer Vulnerability Strategy.

Chapter Four: Ofgem's information gathering powers

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

If Ofgem is concerned that the current SLC 5.2(a) inhibits it from carrying out its market monitoring duties, then we agree that this should be amended, particularly given the uncertainties around the scope of its market monitoring powers following the 2011 changes.

A possible inference from Ofgem's proposal to amend SLC 5 is that the volume and / or scale of Information Requests could increase. We note Ofgem's commitment to lowering the burden of Information Requests on the industry and we appreciate this. The current volume and timescales for Information Requests can be particularly challenging to manage and any increase has the potential to cause a significant burden for suppliers. Therefore, it would be helpful if Ofgem could set out its expectations for what the SLC5 amendment will mean in practice for suppliers, with an indication of the expected plans for managing Information Requests and or additional market monitoring data gathering and the timescales for these on an ongoing basis.

Appendix Six: Call for Evidence

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?

We do not think that the costs of implementing the proposed changes to the Standards of Conduct should be prohibitive, as we see this as a natural evolution of our existing customer proposition.

In terms of implementation costs, there are three areas where we see additional activity would be required in the immediate term:

- i. training and awareness of management and staff on the new proposals;
- ii. reviewing the process for embedding customer outcomes within decision making; and
- iii. identifying key policies / business processes affected by the updated Licence drafting.

We have already commenced a review of the current application of our Standards of Conduct approach across the different aspects of our Retail business, in anticipation of improving how we currently assess customer outcomes, and we do not anticipate significant additional costs as a result of this. We also expect that the training and awareness of management and staff will form a key element of this review and therefore, while this may incur some costs, these will be manageable.

In terms of the cost of compliance, we do not anticipate that this will substantially increase beyond the current costs, given that the proposals do not change the original policy intent. However, there are some additional costs that may be incurred in terms of managing engagement with Ofgem, particularly in the early days of implementation of Ofgem's new risk-based engagement model, as we anticipate that this will increase engagement with Ofgem (albeit this is a positive development).

We remain unclear on the potential impact of Ofgem's proposed changes to SLC 5 and in particular what this might mean for processes for providing market monitoring data and / or Information Requests.

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

We have not considered any alternatives to Ofgem's proposals, other than the minor amendments suggested above, which we do not consider will have a material impact on the proposals.

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.

We think that the Standards of Conduct themselves provide a useful prompt for suppliers to better understand and deliver the needs of their customers, thereby helping to build reputation and consumer trust. Coupled with the other proposals to remove prescription from the Licence Conditions and replace these with a combination of broad and narrow principles, this creates scope for flexibility and innovation in delivering those customer outcomes, which in the longer terms will hopefully allow suppliers to realise cost efficiencies and take advantage of new technologies or systems to meet the same ends.

We also anticipate that this proposal will help to drive better quality engagement between Ofgem and suppliers, which will help ScottishPower become more responsive to opportunities for change and will further help to drive overall benefits for our customers.

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

We think that these proposals could have the wider benefit of increasing consumer satisfaction and therefore engagement with the industry.

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 (eg from BEIS, CMA)? Please provide evidence and indicate whether this is half the time or less, or twice the time or more.

Based on an assumption of an average of 1 RFI per month, a conservative estimate of the average level of resource required to respond to Ofgem RFIs, would be around 3 FTEs.

This is more than the time spent responding to other organisations, such as BEIS and Citizens Advice, where we would estimate that the average resource level is around 1 FTE for responding to RFIs from both organisations combined.

The CMA's energy market investigation was a special case. Over the two year period of the investigation there were several periods of intense activity responding to RFIs and we estimate that the time spent responding to these was higher than that currently spent responding to requests from Ofgem. However, as the CMA's energy market investigation has now closed, the ongoing volume of CMA RFIs is much less than for Ofgem.

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

We have not identified any unintended consequences that could arise as a result of Ofgem's proposals.