

StepChange Debt Charity response to the Ofgem consultation on Standards of Conduct for suppliers in the retail energy market

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StepChange Debt Charity London Office
6th Floor, Lynton House, 7-12 Tavistock Square, London WC1H 9LT
Policy Contact: Joseph Surtees
Tel: 0207 391 4589
Email: joseph.surtees@stepchange.org

Introduction

Background

StepChange Debt Charity welcomes the opportunity to respond to this consultation. We are the largest specialist debt advice charity operating across the UK. In 2016, we provided advice to almost 55,000 clients with debts to an energy or gas supplier.

Our response covers proposals on the Fairness Test, the reasonable steps threshold, an informed choices principle, Treating Customers Fairly and a broad vulnerability principle.

Fairness Test

- We agree with the proposal to retain a Fairness Test for all the broad principles within the domestic Standards of Conduct. However, we would stress that a Fairness Test alone is not enough to ensure adequate behaviour by suppliers
- We are not sure the new wording is an improvement over the existing wording. There are potentially situations where the removal of the 'significantly favour' provision could result in additional consumer detriment.

Reasonable steps threshold

- We agree with the proposal to remove the 'all reasonable steps' threshold from the domestic Standards of Conduct. This would put the responsibility on suppliers, rather than entirely on the regulator, to ensure good customer outcomes.
- However, we would note that it is important to ensure Ofgem monitors the effects of the changes and continues to emphasise the importance of the Standards to prevent a gradual slump to non-compliance.

Informed choices principle

- While we support the introduction of a broad "informed choices" principle into the domestic Standards of Conduct we urge the regulator not to assume this will end significant detriment in the energy market.

Treating Customers Fairly

- It is clear from Ofgem research that the concept of Treating Customers Fairly has not embedded itself within the energy sector.
- Therefore, although we believe the statement should be retained, we also believe the regulator must do far more to ensure suppliers use it as a genuine prompt to improving behaviour.

Vulnerability principle

- We strongly support the proposal to include a broad vulnerability principle in the domestic Standards of Conduct.
- We agree with the proposed definition of 'Vulnerable Situation'.

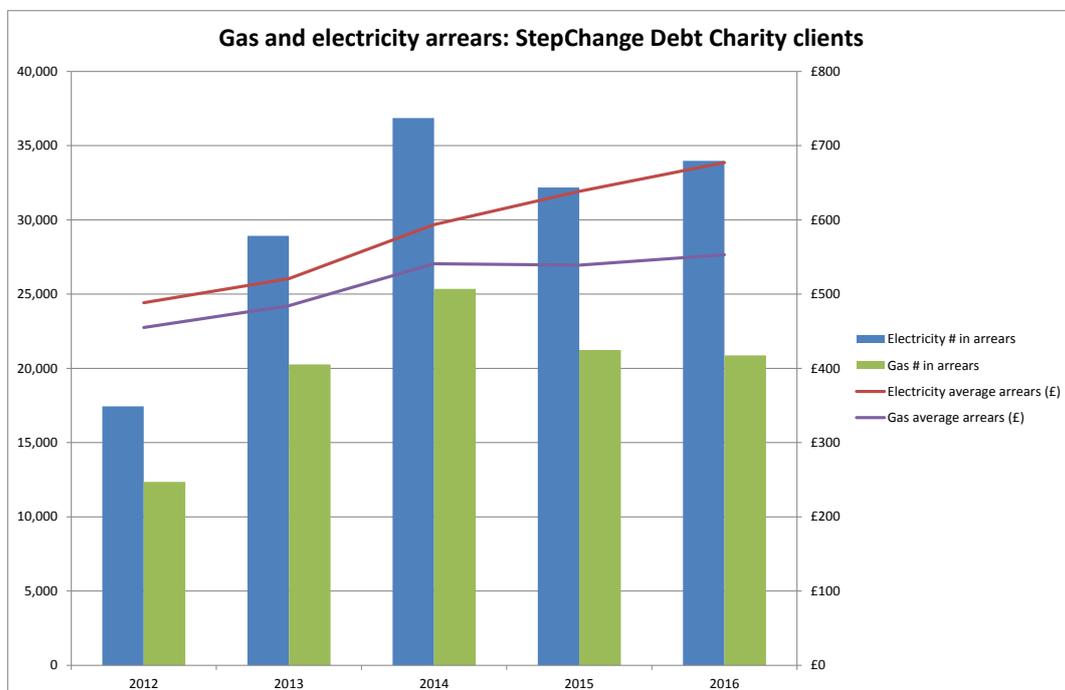
Question 1: Do you agree with our proposal to retain a Fairness Test for all the broad principles within the domestic Standards of Conduct? If you don't agree, please provide an explanation in support of your answer.

We agree with the proposal to retain a Fairness Test for all the broad principles within the domestic Standards of Conduct. This is for two reasons:

- It is important regulators have an objective measure against which to base enforcement decisions.
- An emphasis on fairness encourages suppliers to improve their customer service

As the Ofgem 'Challenge Panel' found when reviewing the Standards of Conduct, the Test has helped embed principles of fairness within suppliers. We understand that at least one supplier has taken the emphasis on fairness as an opportunity to introduce 'customer ambassadors', whose role it is to challenge colleagues if they see behaviour that does not put customers first. This is positive.

However, the same Panel notes Ofgem 'remain concerned that some suppliers' practices... may not result in good consumer outcomes.'¹ We note a significant number of people have continued to contact us with debts to energy suppliers. We have also seen an increase in the average size of their arrears (Figure 1). This may indicate suppliers are still not doing enough to prevent detriment.



The experience of our clients shows that poor treatment of struggling customers still occurs frequently in the energy market.

Case study

We recently spoke to a client with arrears to one of the 'Big 6' energy suppliers. Her financial problems had been exacerbated by the continual failure of the company to bill correctly or deal with her inquiries. At one point it had two accounts open under the client's name and didn't know which was hers. This resulted in sending her conflicting figures as to how much her regular payment for her usage should be. At another juncture it was taking more money from her than the direct debit was set up for.

Case study

A StepChange client moved his energy supply to another provider but the process took some time to complete. His original provider advised him to pay half what he had been paying until the situation was resolved. He was paying £112pm and was advised to reduce this to £60.

When the switching problem was resolved the original supplier sent the client a bill for an amount owing of £1,400. He was paying this back at £40pm for over 12 months but the original supplier recently wrote to him and requested he increase the arrears payments from £40 to £146pm.

Therefore we would stress that a Fairness Test alone is not enough to ensure adequate behaviour by suppliers. In addition, Ofgem must have an ambition to maintain a consumer-centric culture within energy on a par with the best service providers elsewhere in the economy.

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 are uncertain whether the new wording is any improvement over the existing wording. There are potentially situations where the removal of the 'significantly favour' provision could result in additional consumer detriment. For example, imposing a pre-payment metre can significantly favour the interest of a supplier by shielding it from further arrears. But it can be very unclear whether this benefits customers; it might not if a pre-payment metre is imposed in lieu of signposting to free debt advice.

Could Ofgem clarify whether in a situation such as this the new Fairness Test, reliant entirely on the regulator ascertaining the exact likelihood of detriment, will work adequately to protect consumers? It is, after all, a situation where the long term potential to demonstrate detriment is tricky but the action does quite obviously favour one party, the supplier.

Another example is the imposition of a third party deduction order by an energy supplier. This has distinct benefits for suppliers, safeguarding arrears repayments, whereas the impact for customers can be negative – especially when deductions are imposed instead of signposting to debt advice. Again, in circumstances such as this we wonder will the removal of any consideration of favour actually make it more difficult for Ofgem to regulate? Again, this is an occasion where quantifying ‘detriment’ can be immensely difficult.

We are also concerned that the revised wording regarding likelihood of detriment is unnecessarily confusing, especially for consumers seeking to assert their rights. The phrase ‘unless the detriment would be reasonable in all the relevant circumstances’ is so vague as to allow the possibility of significant abuse.

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?

There were a record 5.5 million private sector small businesses at the start of 2016. This is an increase of 97,000 since 2015 and 2.0 million more since 2000².

But despite the growth in this market, research from Citizens Advice has demonstrated that micro-business customers currently receive fewer protections than domestic customers. It is crucial that regulation evolves to ensure they have equal protection. Therefore, we 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.

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.

We agree with the proposal to remove the all reasonable steps threshold from the domestic Standards of Conduct. This would put the responsibility on suppliers, rather than entirely on the regulator, to ensure good customer outcomes. It would help challenge a condition where, as Ofgem found, ‘some larger suppliers appear to approach the Standards of Conduct as a compliance exercise rather than a cultural issue.’³

Case study

A client recently set up a direct debit to pay their energy supplier. However, after a few months she realised the supplier had not been taking payments and arrears had reached £245. The supplier had not noted this situation or contacted the client.

She spoke to the supplier, sorted out the issue and agreed to make a lump sum payment of £100. However, she was not told this would be used towards a cash deposit which she understood had been waived. She is now trying to argue this with the supplier, who have

done little to assist her bearing in mind the arrears have accrued due to the direct debit not being set up properly

If Ofgem shifts the balance of its activity towards setting out desirable regulatory outcomes firms' behaviour should change to adjust to this shift in emphasis. We hope this will rectify a situation where less than one in four consumers believe that their energy supplier has ever offered them help and support.⁴

However, we would note that it is important to ensure Ofgem monitors the effects of the changes and continues to emphasise the importance of the Standards to prevent a gradual slump to non-compliance.

Previous research by Ofgem has illustrated that suppliers generally do not make sufficient effort to determine whether they are achieving the right outcomes for their customers. For example, few suppliers report using metrics to understand if customers felt they were being treated fairly.

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 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 answer to Q3 above).

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

The Competitions and Markets Authority report on the energy market pointed out the importance of informed choice. If customers are unable to make an informed choice about the relative merits of available options, for example regarding switching, then competitive pressures on suppliers to reduce prices and improve quality of service is substantially reduced⁵.

However, informed choice alone is not enough. As the European Agency for the Cooperation of Energy Regulators has pointed out:

‘Consumers will need to be properly informed, as well as protected and empowered, if they are to make informed choices.’⁶

Regulators cannot only rely on firms providing information to ensure a reduction in detriment. This is especially true when firms are dealing with vulnerable consumers. We are concerned firms can provide too much information and that information can be confusing.

We would urge Ofgem to consider issues like simplicity and standardisation when embedding this principle.

Therefore while we support the introduction of a broad “informed choices” principle into the domestic Standards of Conduct we urge the regulator not to assume this will end significant detriment in the energy market.

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

We agree the proposed wording is sufficient for the “informed choices” principle.

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.

It is clear from Ofgem research that the concept of Treating Customers Fairly has not embedded itself within the energy sector and consumer awareness of the statements is low. The variation in approach and level of detail means that consumers do not gain much in practical terms from being aware of the statements.

A few suppliers used their annual Treating Customers Fairly Statements as an opportunity to communicate their intentions to consumers. However, other suppliers struggle to articulate to customers what treating them fairly means in practice⁷.

Therefore, although we believe the statement should be retained, we also believe the regulator must do far more to ensure suppliers use it as a genuine prompt to improving behaviour.

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.

We strongly support the proposal to include a broad vulnerability principle in the domestic Standards of Conduct.

How to deal with vulnerable customers is a key issue for companies and one energy suppliers have not yet completely mastered. For example, in its review of the Standards, the Challenge Panel were concerned that very few suppliers seemed to be taking special steps to ensure that customers in vulnerable circumstances chose an appropriate tariff and payment type.

Work by the Royal College of Psychiatrists has shown that if creditors do not address vulnerability sensitively it could result in⁸:

- a broken repayment arrangement
- additional costs of negotiating a new arrangement for the creditor
- a financial impact on the customer in the form of penalty charges, further arrears, and legal action
- a potential worsening of the customer's mental health (e.g. due to distress and anxiety)
- a reduced likelihood of the customer engaging with the creditor or addressing their financial problems

These problems can be exacerbated in the energy market because debt collection practices create extra stress and complexity.

Analysis of our vulnerable client base demonstrates significant problems with arrears to energy companies¹.

- 21% of our vulnerable clients have electricity arrears, compared to 16% of none vulnerable clients
- On average vulnerable clients with electricity arrears owe £698 to one or more suppliers
- 20% of our vulnerable clients have gas arrears, compared to 15% of none vulnerable clients
- On average vulnerable clients with electricity arrears owe £561 to one or more suppliers

Policy around guidance and advice on debt needs to be considered alongside strategies for prevention and mitigation of debt (for instance, our ideas around a new “breathing space” protection, and consistent regulatory vigilance on collection and enforcement standards). Approaches on financial vulnerability should not just address issues such as fuel poverty. It is an issue to be considered much more broadly.

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

We agree with the proposed definition of ‘Vulnerable Situation’. Our experience shows that vulnerability can affect almost anybody at any time.

As the FCA paper on vulnerability describes, ‘some circumstances that cause vulnerability may be longstanding, others may happen almost overnight, and could affect anyone, whatever their circumstances, level of income or capability.’⁹ Up-to three-quarters of our

¹ Based on a range of vulnerabilities, including mental and physical disabilities, poor health, and low literacy and numeracy skills.

clients could be affected by some form of vulnerability, including ongoing mental health conditions¹⁰.

In the energy market we are particularly keen that understanding of vulnerability is raised in the debt collection sphere. One in three clients with utilities arrears have had a prepayment meter forced upon them. 27% of these prepayment meters are from electricity providers and 24% are from gas providers¹¹.

¹ Ofgem (2016), Enabling Consumers to make informed choices: Findings from the 2016 challenge panel

² Federation of Small Businesses website, Small business statistics – retrieved March 2017

³ Ofgem (2016), Enabling Consumers to make informed choices: Findings from the 2016 challenge panel

⁴ Citizens Advice (2017), Good practice Guide: How energy suppliers can signpost and refer vulnerable consumers to the right source of help

⁵ Competition and Markets Authority (2016), Energy Market Investigation: Final report

⁶ Agency for the Cooperation of Energy Regulators (2016), Energy Regulation: A Bridge to 2025 Conclusions Paper

⁷ Ofgem (2016), Enabling Consumers to make informed choices: Findings from the 2016 challenge panel

⁸ Money Advice Trust / Royal College of Psychiatrists (2015), Lending, debt collection and mental health

⁹ Financial Conduct Authority (2015), Occasional Paper No. 8: Consumer Vulnerability

¹⁰ StepChange Debt Charity (2016), Creditor and debt collector conduct

¹¹ Ibid