

# Supporting suppliers and brokers with timely interventions for microbusiness consumers

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## Abstract

*This paper forms our response to the proposed changes outlined within 'Ofgem's Statutory Consultation – Microbusiness Strategic Review.*

CNG (Group) Limited<sup>1</sup> (CNG) welcomes the opportunity to further participate in this consultation, we continue to support any change that delivers on enhanced outcomes for microbusinesses. In composing this response, we have not only engaged with the broader business, but we have also held stakeholder sessions with several of our trusted broker partners – we feel that including their thoughts and concerns will assist in ensuring that proposed changes are correctly developed and implemented in an appropriate timeframe.

We feel that the proposal of any indirect governance and regulation of Brokers & TPI's is ill-timed, particularly as BEIS have committed to consult on regulating third parties such as energy brokers and we believe that the timeframes proposed by Ofgem should be revised and aligned to the introduction of direct regulation. This would enable the required structure and governance whilst also ensuring a level of consistency in the treatment of suppliers, brokers, and microbusiness consumers alike. Directly imposing additional licence conditions on suppliers to manage brokers will incur further cost and risk for non-domestic suppliers, whilst an inappropriately costed ADR scheme will in all likelihood adversely impact the broker market, ultimately resulting in increased costs to consumers. CNG supports the principle of an ADR scheme that ensures Brokers take direct accountability for any issues raised by their customer base and provide appropriate resolution and/or compensation where applicable.

If implemented, several of the outlined proposals may be in direct conflict with existing contractual arrangements between brokers and suppliers (or brokers and consumers) and without direct and robust regulation we believe there may be further legislative complications of any indirect regulation by an ADR scheme provider and more time is required for further development in collaboration with suppliers and brokers.

In our original response, we challenged any aspect of indirect and diluted, bilateral assurance via third party and we feel that this has been further stripped back with a complete reliance on the ADR scheme solution. We believe that the proposed changes cannot be implemented within the aggressive timeframes set out by Ofgem and have added further detail in the body of our response below. We remain firmly of the mindset that centralised and unilateral regulation of brokers and TPIs is a more definitive means to deliver the outcomes Ofgem is seeking for microbusiness consumers and Ofgem should await direction from BEIS on direct broker regulation prior to the implementation of any policy or licence condition changes.

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**1. Do you agree that 1 January 2022 represents an achievable start date for implementing a 14-day cooling-off period for microbusiness consumers?**

We do not agree with the proposed timeframe for implementing a cooling-off period for microbusinesses. Despite the best efforts from Ofgem to avoid any impacts on the Faster Switching programme, we feel that more time will be required to implement system and process changes to adequately deliver on the requirements set out within the consultation.

In our original consultation response, we challenged the requirement of a cooling-off period in a broker market, whilst cooling-off is commonplace within the domestic market, non-domestic consumers utilise brokers to inform them and find them the best deal.

By the point a contract has been negotiated and agreed, the broker has completed their role for that microbusiness, a cooling-off period adds the requirement for a broker to introduce a layer of protection into their terms so that they are reimbursed for the work they have completed. We feel that the introduction of a cooling-off period may lead to a consumer facing additional contractual charges with brokers if they decide to take their business elsewhere due to cooling-off.

Should the cooling-off period be implemented, we would recommend that cooling off period should only be offered in instances where the contract is agreed at least 42 days ahead of supply start date, enabling all cooling-off periods to be 14 days as standard. Any contract agreed within 42 days of supply start date would not be eligible for a cooling-off period, this would remove any complexity and/or ambiguity from the sales process and negates the need to explain nuances caused by the current proposals whereby a cooling off period may be 10 days or 1 day. We feel this minor change would have minimal impact in-line with information provided within the impact assessment and would be much simpler for suppliers to implement and explain to consumers.

For consideration:

- In the absence of direct broker regulation, what processes will be in place to prevent or address a broker who actively targets microbusinesses for sales whilst they are within their cooling off period?

**2. Do you agree that 1 January 2022 represents an achievable start date for fully implementing both the proposed supply licence obligation and the associated scheme needed to introduce independent dispute resolution for microbusinesses in dispute with a broker?**

Whilst we understand the benefits that an independent dispute resolution scheme will provide to microbusiness consumers, we cannot support a proposed implementation date of 1 January 2022. This does not give any party adequate time to develop, rollout and embed the infrastructure of an effective, robust, and consistent ADR scheme to the broker population.

We have directly engaged with brokers who either were invited to participate or who actively participated in the trialled undertaken by ombudsmen services and concerns were raised across the board regarding the lack of understanding of the broker market and the dynamics of the triangular supplier-broker-consumer relationship.

Concerns have also been raised regarding the projected costs from Ombudsmen services which do not seem to consider the value of the average broker to consumer contract – costs of £340/£400 would more than likely erode any revenue from the contract and this is before any potential remedy costs are to be considered. We believe the commerciality of this business case needs further analysis as the proposed costs will have a broader impact, more than likely leading to further costs being passed along the chain to the consumer. We would also recommend that more direct engagement is undertaken with Brokers to understand the commercial impacts of the introduction of a potentially over-costed ADR scheme.

We would recommend that any ADR scheme should be implemented with a 'line in the sand' approach, from a fixed date (for example, from go live or 01/01/2022). This would ensure that brokers and suppliers have clear guidelines on the process and protocol of any qualifying ADR scheme. A defined date also reduces the likelihood of creating a bubble of 'PPI type claims' whilst also avoiding an influx of 'commissions claim' companies into the market trying to prey on microbusiness consumers – it is worth noting that we have already seen a small number of these businesses entering the market.

More time is required to further develop a fit for purpose ADR policy framework, with specific criteria as to what is an acceptable trigger for some form of investigation and/or resolution. We would also require more insight as to how any Ofgem approved ADR scheme could effectively address any issue between the broker and consumer with no direct regulatory framework for example, if a consumer was charged a fee in-line with their broker contract for exiting a contract due to the cooling-off proposal.

We feel that an ADR scheme can only be facilitated with backing from a direct broker regulatory framework and that therefore an ADR scheme should not be implemented until BEIS have made a formal decision on how the market will be regulated.

For consideration:

- When will the roadmap of readiness and implementation activity be shared with suppliers, brokers, and consumers?
- Who will take ownership to engage directly with brokers to ensure they are ready for any proposed go-live? Will this sit with Ofgem, the ADR scheme provider(s) or a third party such as Citizens Advice?
- What process(es) will be implemented to enable a supplier to easily understand and identify if a broker is actively subscribed to an ADR scheme

- What would the process be for instances whereby a broker and/or supplier have exited the market prior to a dispute being raised?

### 3. Do you have any other comments on our proposals?

Additional comments are covered within the conclusion.

### 4. Do you have any comments on the draft supply licence conditions?

- We believe that the term 'benefit in kind' is overly ambiguous within **section 1.3** and would welcome further clarity from Ofgem as to what they would consider qualifying as a benefit in kind.
- We would require further clarification regarding Ofgem's **definition of 'Broker'** within the licence conditions, it appears to include direct sales agents which are in all likelihood working exclusively for an individual supplier. We feel Ofgem need to narrow the definition of a Broker to exclude direct sales channels working exclusively for a sole entity and focus solely on those working for multiple entities.
- The proposed Cooling-off Period covered under **conditions 7A.13E.4 (a) & (b)** is not as transparent, or as straightforward as that of a domestic consumer. The current proposal creates a variable and complex approach for suppliers and brokers to explain and apply and even more complex for a microbusiness consumer to understand. This could lead to the incorrect application, complex complaints, and loss of trust in the process, for example in certain circumstances a microbusiness consumer may not be entitled to a cooling-off which could also put suppliers in conflict of SLC 0A. Treating Microbusiness Consumers Fairly. Has Ofgem reached out to any microbusiness consumer groups to gain feedback on the detail behind the proposed cooling-off period? And if so, what was the feedback?
- We would like further clarification as to when the Cooling-off cancellation period ends. **7A13E.4 (a)** proposes '14 calendar days after the day on which the Contract is entered into and the MB Consumer has been provided with a written copy of the Principal Terms', however condition 7A.9A proposes that Principal Terms can be sent via email or by first class

post on the next working day. If the Principal Terms are sent on the next working day after the date the contract was entered, does this add an additional day to the 14 calendar days under condition 7A.13E.4 (a), or is the 14 days inclusive, regardless of the method used to send the Principal Terms?

- Whilst Ofgem advise consideration has been taken regarding multiple scheme providers, the additional obligation outlined on **page 42** of the consultation document is not fit for purpose and adds further weight to the argument that Ofgem need to take more time to develop a robust framework, roadmap and engage further with all impacted parties.
- **Condition 7A.10C.2.** There is a discrepancy between the wording within the consultation and licence condition. The consultation outlines that the brokerage cost should be displayed in pounds and pence, whereas the licence condition advises this is disclosed as "monies". The licence condition leaves this open to interpretation and could lead to information been displayed in multiple formats, we feel that a level of consistency could support the consumer experience. There is also no indication in the licence of how prominent commission should be within the Principal Terms document.

## Conclusion

At CNG, fairness and transparency are core to our values. We believe that our broker community operates ethically and responsibly, and we work with brokers who share our values. We believe the broker community continues to add value within the non-domestic market and we hope that any decision Ofgem makes ensures that policy is implemented that enables suppliers and brokers to continue to be competitive whilst also providing further protections to consumers who need it the most.

To echo the comments from our initial consultation response, we feel strongly that indirect and diluted regulation of Brokers via Suppliers is an inefficient way of delivering better outcomes for microbusiness consumers.

We cannot support the proposed implementation timeframes of 'Autumn 2021' and '1<sup>st</sup> January 2022' for any of the proposals. Many suppliers are reliant on third

party system providers, the majority of which are currently supporting the delivery of the impending Faster Switching systems. The less time permitted for delivery would place additional cost and strain on internal and external IT/change departments to manage the delivery of the requirements set out within the consultation. We feel that implementing system changes at short notice in Winter 2021 would cause risks to BAU customer activity whilst also jeopardising delivery of the flagship Faster Switching programme. We would recommend that more time is taken to allow suppliers, brokers, and other parties to further develop on Ofgem's proposals so that they can deliver on the proposed business case and impact assessment.

We believe that the proposed changes should be implemented collectively on the same date further in the future and would recommend these are in-line with BEIS's plans for direct broker regulation. In the absence of this we would recommend Summer 2022 at the very earliest (implementation post Faster Switching) would be a more sensible implementation timeframe for these policy measures to land effectively.

Whilst the policy proposals appear to be addressing consumer concerns on paper and from a PR perspective, we do have concerns that proposed timeframes do not allow for the measures to have been completely considered. We also believe that the proposed costs need further scrutiny to prevent needless increases in costs to suppliers and brokers, which would ultimately cause consumers to pay more and potentially cause further disengagement within the microbusiness market.

CNG would welcome further bilateral and/or unilateral engagement with Ofgem to further develop and implement robust solutions to address gaps and failures in the microbusiness market.