

Jonathan Blagrove
Microbusiness Strategic Review, Retail Policy Area
Ofgem
10 S Colonnade
London
E14 4PU

Email to: cdconsultations@ofgem.gov.uk

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Dear Jonathan

Statutory Consultation – Microbusiness Strategic Review

EDF is the UK's largest producer of low carbon electricity. We operate low carbon nuclear power stations and are building the first of a new generation of nuclear plants. We also have a large and growing portfolio of renewable generation, including onshore and offshore wind and solar generation, as well as energy storage. We have around five million electricity and gas customer accounts, including residential and business users.

EDF aims to help Britain achieve net zero by building a smarter energy future that will support delivery of net zero carbon emissions, including through digital innovations and new customer offerings that encourage the transition to low carbon electric transport and heating

EDF fully supports the Ofgem Microbusiness Strategic Review, and the final proposals are a significant first step that will reduce the harms that are currently faced by some microbusinesses in the energy market.

Brokerage costs

It is very welcome that the model for providing Brokerage Costs is a simple, comparable, prescriptive measure of the total payments a broker will receive for each Microbusiness contract entered into. It is vital if a customer is to make an informed choice on whether to proceed with a sale that there is full transparency on the payments that a broker will receive. However, at the point of sale a broker may not know, or be able to reasonably estimate, the total value of *all* payments that they may receive for the full contract duration, as they may receive future performance related pay for reaching sales targets after the sale has completed. This presents a risk that brokers could negotiate contracts with low commission amounts but high performance-related bonuses in order to hide the true value of the payments they receive from microbusinesses at the point of sale.

EDF considers that Ofgem should act to mitigate this risk by placing an obligation on suppliers to ensure that the brokers they work with disclose any potential future payments that they may receive for a contract, as part of the Principal Terms, even if the broker cannot specify the value of those payments at the time. Suppliers must ensure brokers update the customer with the value (£) of the additional payments they have or will receive for a contract, when these can be calculated

accurately. This information should be provided to the customer in writing as a standalone document that matches the consumers communication preferences (e.g. paper, or electronic).

This approach would replicate the disclosure requirements for mortgage brokers set by the Financial Conduct Authority (FCA)¹.

We have set out below a small number of additional concerns that Ofgem must address before their final decision to ensure the best possible outcomes are achieved for microbusinesses.

Cooling off period

- The final proposal for a cooling off period while complex, is a welcome approach that will not jeopardise the faster switching programme. Ofgem's upcoming collaboration with Citizens Advice provides an opportunity to raise awareness and understanding of the new cooling off period among microbusinesses, including the importance of agreeing a contract in advance to benefit from the full 14-day cancellation period.
- In order to simplify the proposal a minimum cancellation period must also be set e.g. EDF would view five days until the earliest registration date as appropriate, but customer insight would be helpful before finalising this period.

Written Principal Terms

- Suppliers should be able to provide Written Principal Terms up to two working days after entering into a Microbusiness contract rather than one. For example, if a contract is agreed after 4pm on a working day there will be little time for administrative processes to complete. This time will enable essential checks to ensure the Broker contract is accurate and Valid (to prevent Erroneous Transfers).

Timelines

- We have made specific comments on the feasibility of the timelines in our detailed response below. However, we strongly advise against a 1 January implementation date, for both the ADR and a new cooling off period, as resource and capacity for system changes will be severely limited due to the holiday season. As a minimum any start date in January should be towards the end of the month.
- As suppliers will also be preparing for faster switching, the earliest start date for the introduction of a cooling off period that is feasible for EDF is six months from Ofgem's decision date. While we will work to prepare for the new cooling off period beforehand, it will only be cost effective to enact system changes once we are certain of the final requirements. In order for a late January start date to be achievable, Ofgem must announce their final decision on the cooling off period promptly, and potentially prior to the publication of their formal response.

We would like to highlight while we support the proposals set out in the review, it is still the case that only the direct regulation of TPLs will fully eliminate unscrupulous broker activity – as not only will this tackle brokers that work directly for microbusinesses, rather than for suppliers, it will also

¹ Mortgage Conduct of Business Rules (MCOB) [Section 4.4A](#)

bring about the possibility of real and stringent enforcement if a broker fails to comply with their obligations. Direct regulation will act as a clear motivation for brokers to treat their customers fairly. We welcome the BEIS upcoming 'call for evidence' in this area as this will be the first step to achieve this goal.

Our detailed responses are set out in the attachment to this letter. Should you wish to discuss any of the issues raised in our response or have any queries, please contact Nicola Pope or myself.

I confirm that this letter and its attachment may be published on Ofgem's website.

Yours sincerely

A handwritten signature in black ink that reads "R. Beresford". The signature is written in a cursive, slightly stylized script.

Rebecca Beresford
Head of Customers Policy and Regulation

Attachment

Statutory Consultation – Microbusiness Strategic Review

EDF's response to your questions

Q1. Do you agree that 1 January 2022 represents an achievable start date for implementing a 14 day cooling-off period for microbusiness consumers?

No. We strongly advise against a 1 January implementation date, for a new cooling off period, as resource and capacity for system changes will be severely limited due to the holiday season.

In order not to delay the faster switching programme, EDF need at least 180 days from the decision date to build, test and complete the assurance checks necessary for the introduction of a cooling off period. While we will work to prepare beforehand, it will only be cost effective to enact system changes once we are certain of the final outcome. Ofgem must announce their final decision on the cooling off period promptly, and potentially prior to the publication of the wider formal decision document if a start date in late January is to be feasible.

We would also welcome confirmation that a cooling off period will only apply to contracts agreed after the implementation date, and not those agreed before the implementation date, that would still be within the 14-day cooling off period at the point the change came into effect.

Q2. 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?

While we fully support the introduction of an Alternative Dispute Resolution (ADR) scheme for Microbusinesses, lack of progress to date puts a January start date at risk. There is still some opportunity to develop the scheme between now and January, but significant supplier and broker engagement with the O:SE or any alternate ADR, is essential for all impacted to be able to meaningfully contribute to the final terms of reference for the scheme.

It is especially important that any final scheme is robust enough to effectively enforce the redress agreed with the broker (or threaten expulsion from the scheme) but also that there is sufficient interaction with suppliers before any redress is agreed to give suppliers the opportunity to put right any potential broker wrong.

The start date of any ADR scheme, and the start date of any licence conditions changes do not need to coincide. However, as suppliers will only be able to work with brokers signed up to an ADR scheme, from the point at which there is at least one ADR scheme in existence, it will only be from that point in time, that it will be reasonable to enforce the licence conditions. Even after the ADR scheme goes live, time must also be factored in for Brokers to complete the ADR onboarding

processes, as well as for suppliers to complete the necessary assurance and contractual updates to ensure that the brokers' they work with are signed up to a relevant scheme.

Q3. Do you have any other comments on our proposals?

Yes, while we are very supportive of the final proposals, a small number of amends are necessary to ensure the best possible outcomes are achieved for microbusinesses, and for suppliers to be able to implement the changes smoothly. These are set out below:

Brokerage Costs

In order for microbusiness consumers to make an informed choice when making purchasing decisions it is important that brokerage cost transparency covers the totality of all broker costs. This includes costs and commissions that are accrued after a contract has been agreed, such as performance-related bonus payments for achieving sales targets. Performance-related bonuses are common components of contractual agreements between energy suppliers and brokers. However, at the point of sale a broker may not know, or be able to reasonably estimate, the total value of future payments that they may receive for the contract. This could create a situation where brokers negotiate contracts with low commission amounts but high performance-related bonuses without disclosing these costs to consumers.

Ofgem must act to mitigate this risk by placing an obligation on suppliers that the brokers that they work with disclose the amount of any future commissions and costs they will receive to the microbusiness at the point of sale. If the amount of any performance-related bonus cannot be calculated accurately at the point of the sale brokers should be required to disclose the existence of a bonus even if they cannot provide a value to the consumer as part of the Principal Terms. When and if a performance-related bonus is paid, brokers should be required to disclose the amount to the consumer at a later stage when it can be calculated accurately. Such disclosure should be delivered clearly and in writing within a standalone document that matches the consumers communication preferences (e.g. paper, electronic).

This approach would replicate the disclosure requirements for mortgage brokers set by the Financial Conduct Authority (FCA).

Suppliers and brokers must also display 'brokerage costs' prominently, when providing a copy of the written terms, for example next to other key terms such as Charges. If the costs are deliberately hidden, then there is a risk a customer fail to view the cost, and therefore that they will be unable to make informed decision regarding their right to cancel. We recommend a small amend is made to the licence to make this an explicit obligation.

Cooling off Period

Short and variable cooling off periods for microbusiness that agree a contract between 29 and 42 days before their preferred start date are likely to be confusing. Ofgem must look to simplify the proposal by setting a minimum cancellation period for customers of 5 days, as well as a maximum

period of 14 days. This would mean a customer would still have cancellation rights so long as their contract start date was at least 33 days in the future.

We recognise that it is reasonable to provide a cooling off period of less than 14 days to microbusiness rather than no cooling off period at all. However, a short period of just one or two days may not provide customers with a genuine opportunity or time to reflect on their decision and cancel the contract, which while not the intention could lead to customer dissatisfaction. This could create particular problems if a customer cancelled at the end of day one, but it was not possible for a supplier to process the request, as the supplier could then be in a position of gaining a supply erroneously, which would create further confusion and uncertainty for the customer with no guaranteed outcome.

We also recommend that there is careful monitoring of brokers to ensure they do not withhold contracts until 28 days before supply start date to avoid microbusinesses exercising their right to cancel their contract.

Written Principal Terms

Suppliers should be able to provide Written Principal Terms up to two working days after entering into a Microbusiness contract rather than one. For example, if a contract is agreed after 4pm on a working day there will be little time for administrative processes to complete. This time will enable essential checks to ensure the Broker contract is accurate and Valid (to prevent Erroneous Transfers). This additional time will not cause any detriment to customers, as they would have already received the same Principal Terms prior to entering into a contract, and there will now also be the additional protection of a cooling off period for most microbusinesses.

Ofgem should also include provision in the Supply Licence for exceptional circumstances where suppliers are unable to provide the Principal Terms within the timeframe due to missing information or other information outside of a suppliers control that is essential for the contract validation process to complete – for example a missing meter point that is not only required for registration, but also the means to check the Charges in the Principal Terms are correct. Similar provision already exists in the Supply Licence under SLC14A regarding 21 day switching timescales, and this will continue to be a valid exemption even after faster switching goes live.

Q4. Do you have any comments on the draft supply licence conditions at Appendix 1 in this document?

Yes, please refer to our detailed comments in Annex 1.

EDF
July 2021

Annex 1: Review of the draft Licence Conditions for the Microbusiness Strategic Review

Clause	Draft Licence Condition	EDF comments
	'Broker' means a third-party organisation or individual that, either on its own or through arrangements with other organisations or individuals, provides information and/or advice to a Micro Business Consumer about the licensee's Charges and/or other terms and conditions and whose payment or other consideration for doing so is made or processed by the licensee;	Remove 'information' as this could cover representatives other than brokers, for example marketing agencies.
	Notification of Micro Business Consumer Contract terms and other information	
SLC7A.8	On or about 60 days before the end of the Initial Period, unless the licensee has already agreed a new Micro Business Consumer Contract with the Micro Business Consumer, the licensee must provide the Micro Business Consumer with: (a) the Statement of Renewal Terms; (b) if paragraph 7A.12A applies and subject to paragraph 7A.8(d): (i) a copy of the relevant Principal Terms which might apply to the MicroBusiness Consumer after the current fixed-term period of the Micro Business Consumer Contract ends, including in the event that the Customer does nothing and the licensee extends the duration of the Contract in accordance with paragraph 7A.13A 7A.12B; and (ii) a copy of the Principal Terms which would apply after the current fixed-term period of the Micro Business Consumer Contract ends, in the event that the Customer sends (or has already sent) a notice notification in Writing before the Relevant Date end of the fixed term period that currently applies to prevent	Our understanding is that where we are providing a copy of the Principal Terms at renewal, we do not have to provide the 'brokerage costs' for the original contract. This is because the Principal Terms provided in the renewal letter are for the contractual position a customer will be in after the initial fixed term has ended, depending on the action they take (Roll-Over, Out of Contract) - not their existing contract. Please could Ofgem confirm that our understanding is correct.

	<p>renewal of the Micro Business Consumer Contract but does not appoint another supplier;</p> <p>(c) if paragraph 7A.12A does not apply, a copy of the Principal Terms, which would apply if the Customer does not change supplier or does not expressly agree a new Micro Business Consumer Contract or a further fixed-term period of the existing Micro Business Consumer Contract by the date that the current fixed-term period is due to end.</p> <p>(d) if paragraph 7A.12A applies but the licensee has already prevented the Micro Business Consumer from extending the duration of the Micro Business Consumer Contract for a further fixed-term period, the requirements in paragraph 7A.8(b) shall be replaced with a requirement to provide the MicroBusiness Consumer with a copy of the Principal Terms which would apply after the current fixed-term period of the Micro Business Consumer Contract ends if the Customer continues to be supplied by the licensee.</p>	
	<p>For the purpose of this Condition 7A.9: 'providing' a Micro Business Consumer with any relevant Principal Terms means the supplier or the relevant broker must send the Principal Terms by email or by first class post to the Micro Business Consumer on the next <u>second</u> working day after agreeing the contract at the latest; and that where they are sent by email, the Principal Terms will be 'provided' on the next working day after they are sent and if sent by first class post, they will be provided on the second working day after posting</p>	<p>The wording here is overly complex, and the intention of the second part of the paragraph is unclear. This should be removed as it will simplify the drafting while still covering the policy intent.</p>
	Information on Bills etc	
7A.10B (b) (i)	a statement to the effect that the Micro Business Consumer may send a notification in Writing to the licensee	As no notice is required to terminate a contract the second part of this clause is now redundant so should be removed.

	before the end of any fixed term period that currently applies in order to prevent the licensee from extending the duration of the Micro Business Consumer Contract for a further fixed term period and in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed term period which currently applies; and	The equivalent requirement to 'terminate' the contract set out in the Statement of Renewals (7A6.ii) has been removed, and only retains the notification to prevent a roll-over (extending the duration).
7A.10B (c)	a statement to the effect that the Micro Business Customer may send a notification in writing to the licensee at any time before the end of the fixed term period that currently applies in order to terminate the Micro Business Consumer Contract with effect from the end of the fixed term period which currently applies.	This clause should be removed as it is superfluous if a customer does not have to provide notice to terminate a contract.
	Micro Business Consumer Cooling-off Period	
7A.13E.4	The cancellation period ends at the earlier of: (a) 14 calendar days after the day on which the Contract is entered into and the Micro Business Consumer has been provided with a written copy of the Principal Terms as required under paragraph 7A.9; or (b) 28 calendar days (or such other period as the Authority may specify from time to time) before the date on which the supply of electricity under the terms of that contract, is due to begin	As the Written Principal Terms may be provided later than the date a contract is entered into, the two dates are not equivalent so cannot both be the end point for the cooling off period. The day the contract is entered into is the most appropriate date to use for calculating the duration of the cooling off period, as this will be consistent and the same across suppliers, but the point the written principal terms are sent could differ, if only slightly. The day the contract is agreed will then become Day 0 of the 14-day cooling off period in all instances.