



Headline Views

Love Energy Savings are extremely supportive of the strategic aims outlined by Ofgem to improve the services offered to microbusinesses. Aligning with our own ethos, we always aim to exceed the expectations of our customers and find the best outcomes for their businesses. We have helped more than 370,000 customers save over £100 million in total on their energy. Delivering great deals to our customers is just the beginning. We want them to have a great experience. We always ask our customers for feedback, and we have amassed over 13,000 reviews on Trustpilot with an Excellent rating.

Not only do we support our direct customers, but we also go one step further and support TPI's through our Evolve Online Tech brand to ensure that our expertise and guidance goes some way in driving improvements within the industry. Our panel of broker partners have provided us with over 650 reviews on Trustpilot, with an Excellent rating, showcasing not only our expertise but also the trust we have built with our partners.

Following the publication of the Statutory Consultation on 1st June 2021, we have liaised with several suppliers on our panel and other key stakeholders within the market to understand potential challenges in the practical implementation of the proposed changes, including the potential impact on the customer and the market.

The main output from the above discussions have centred around the timescales for implementing these changes and questions around consistency, regarding how the changes are to be implemented within the market, specifically to ensure the right customer outcomes are being driven.



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Awareness: Knowing about opportunities and risks

As mentioned within our response to the previous consultation, we fully support microbusinesses being empowered with more information to help them make informed decisions. We believe an independent body, Citizens Advice, would ensure the quality, content and dissemination of the information is within the best interest of the microbusiness, taking away any concerns around impartiality.

We recommend that the improvements made to allow microbusinesses to effectively engage in the market, will work most effectively if all stakeholders in the market are involved. To ensure the information produced has the desired positive impact on the microbusiness/ TPI market, it is important Citizens Advice also looks to actively work with TPIs to understand the market further and proactively share their findings with TPIs. This 'feedback loop' will allow responsible TPIs in the market to improve their standards further and help ensure the work carried out by the Citizens Advice has a positive tangible impact on the market.

Furthermore, in our previous response, we commented that consideration should be given to the delivery of key information via various channels. Citizens Advice are generally perceived by customers as relating to consumer advice and we would strongly recommend Ofgem and/or Citizens Advice work with other parties that microbusinesses have direct relationships with (i.e., they liaise with for guidance/ assistance), e.g., the Federation of Small Businesses (FSB).

In relation to customers being able to browse effectively, we continue to recommend that Ofgem consider the lack of price transparency within the market and the resulting impact on the ability for microbusinesses to carry out effective comparisons. Online price comparisons allow customers to compare a wide range of options, whereas offline comparisons are restricted to the presentation of a sample of prices. Greater price transparency online will enable microbusinesses to search a variety of options at their convenience, which would promote more informed decisions and increase their engagement in the market. In addition to this, we would recommend Ofgem consider discouraging online sales activities which incorrectly lead customers to believe they are able to obtain prices online, when they are in fact call back/ lead generation activity; this leads to poor management of customer expectations and can dissuade customers from using online price comparison services, which in turn reduces a customer's ability to take advantage of the options available in the market to pick the best option for their business.



Browsing: Searching for deals

Providing Principal Terms in Writing

Currently when microbusinesses agree contracts, they are sent a written copy of the terms and conditions by the supplier within ten days of entering into the contract. We support Ofgem's proposal for microbusinesses to be provided (post-sale) an additional slimmed down version of these terms and conditions, in the format of written Principal Terms. The current proposed timescales for the broker/ supplier to provide these within the Standard Licence Condition wording is 'one working day after the contract has been entered into'. From reviewing this wording, liaising with suppliers, and reviewing the sale to submission process, we wanted to discuss the post-sale process in detail.

Contracts agreed via TPIs are not automatically processed to the supplier as soon as the customer agrees to the contract. TPIs, such as Love Energy Savings (including our aggregator platform Evolve Online Tech), have in place quality checks for all energy contracts to ensure every contract meets the relevant compliance and supplier criteria, prior to processing the contract to the supplier. These checks can include, but are not limited to, carrying out credit checks to confirm the customer is eligible for that product, checking the customer meets the criteria to be accepted for the product/ by that supplier and validating the details provided by the customer to ensure the switch or renewal can proceed smoothly. The quality checking stage is crucial for verbal contracts, to ensure the customer is fully aware of the Principal Terms and understands they are agreeing to a legally binding contract. At the quality checking stage, the customer may need to be contacted for further information or documentation, or the supplier may need to be contacted for further guidance. Whilst efforts are always made to contact the customer as soon as possible, it is not always possible to successfully contact the customer the same day. Once the quality checking function has confirmed the contract meets the relevant standards, the contract is then processed to the supplier. As Love Energy Savings work with multiple suppliers, contracts can be processed by various methods dependant on the relevant supplier's processes. Some contracts are processed directly by Love Energy Savings onto the supplier's platform once they are quality checked, whilst some are sent to the supplier in bulk one working day after the quality check has been completed for the supplier to upload the contracts to their systems.

We are aware that most, if not all, TPIs have in place the same or similar processes. This is based on the regular conversations we have with suppliers around improving existing processes and the KPIs TPIs have placed upon them to ensure compliant and good quality submissions. Based on this, our recommendation would be for Ofgem to amend the proposed wording of the Standard Licence Conditions to state Principal Terms must be sent to the microbusiness within one working day after the contract has been received by the supplier.

The existing processes are regularly under review to promote efficiencies in the sales process, however, the above processes are in place to protect the customer, ensure the switch/ renewal can go ahead smoothly, as well as accounting for the individual processes and requirements of the various suppliers we work with. For the year to date¹, it took on average 0.25 of a working day for the sale to be quality checked once the customer had agreed a contract, with 6% quality checked >1 working day after the sale had been completed. As a result of the quality checks completed, a number of contracts required further clarification/ information from the customer. From quality checking to processing (i.e., sending the contract to the supplier, via the process applicable for that supplier), this took on average 0.17 of a working day, with 4% processed >1 working day after the quality check was completed. In terms of how contracts are processed, 47% of sales were processed by the supplier themselves and 53% were processed directly

¹ Data taken from sales agreed via Love Energy Savings from 01/01/2021 to 23/06/2021.



onto the suppliers' platforms by Love Energy Savings. We have also highlighted 3 instances where sales were delayed in being processed by the supplier, 2 were processed 17 days after quality checking due to errors on the supplier's portal and 1 took 15 days due to a delay in the supplier confirming the contract had been locked in.

The processes and statistics explained above demonstrate there may be challenges in the practical implementation of this requirement based on the current suggested wording of the Standard Licence Conditions; therefore, consideration should be given to amending the proposed wording to match existing post-sale processing procedures to ensure this proposal can be implemented swiftly (i.e., for an Autumn 2021 implementation date). Failure to act promptly runs the risk of these changes being badly implemented across the market and creating inconsistency around delivery, which would work against the clarity and consistency these changes are designed to provide. Sending the Principal Terms in writing one working day after supplier acceptance could be a suitable alternative to the current proposal. This suggestion is based on 99.22% of sales being processed to the supplier within 5 days of the sale date;² therefore, in conjunction with the proposed cooling off period of 14 days from sale date, this would allow for ≈ 7 days for the microbusiness to consider the information they have received in writing (which is in line with other business utility cooling off periods)³. As noted within our previous consultation response, on average our customers agree contracts 4.5 months prior to their contract end date. For microbusinesses who agree contracts closer to the contract start date (i.e., < 28 days prior to the supply start date) who will not benefit from the full proposed 14 day cooling off period, whilst they might not be provided with written Principal Terms as soon as the sale has been agreed under this recommendation, they would still receive them. Therefore, if the customer has been misled by a broker, the supplier can still allow the customer to leave the contract on the grounds the contract is invalid; the microbusiness would never be trapped in a contract that is unsuitable or they have been misled into agreeing.

Fee Transparency

Overview

Love Energy Savings understand customer choice is important, which is why we work with a panel of suppliers to provide our customers a comparison, empowering them to pick an option which is right for their business. From reviewing the proposed wording of the Standard Licence Conditions, we feel the disclosure wording of total monies (actual or estimate) to be earned across the term of that contract is very clear in how much the broker is expecting to earn from that contract; however, the current wording could be viewed as still open to abuse potentially and there is room to improve the wording further to ensure the disclosure is transparent but given the necessary context to truly promote the microbusiness being given the right information to make an informed decision.

Key Discussion Points

As noted within Ofgem's consultation and the Standard Licence Conditions, proposed are three points where broker commission disclosure would occur (point of sale, post-sale, and ad hoc microbusiness requests). From discussing the proposals with other stakeholders, below are the key themes which have arisen:

² Data taken from sales agreed via Love Energy Savings from 01/01/2021 to 23/06/2021.

³ 7-day cooling off period for business water contracts - Ofwat, Customer Protection Code of Practice for the non-household retail market, section 6.2, April 2017

What type of 'benefits' are covered?

The proposed wording of the Standard Licence Conditions covers 'benefit of any kind', which is far reaching enough to cover everything a TPI might receive from a supplier, i.e., all financial arrangements; however, we would request clarification as to whether Ofgem intended this wording to cover everything, i.e., a supplier offering a TPI declared hospitality or gifts. Also, whilst the definition as to what should be disclosed is very wide, the disclosure mechanism itself falls short of covering all financial arrangements. Whilst it may be difficult to speculate exactly every financial arrangement in the TPI market, there are potential loopholes; for example, where arrangements are in place for the TPI to be paid a certain fixed amount for delivering X number of contracts. In addition, some brokers offer additional services outside of negotiating a new contract for a microbusiness which are all included within the cost of the uplift, therefore, clarification on how these disclosures should look would be welcomed.

Potential unintended loopholes?

The disclosure wording proposed looks to be geared towards specific financial arrangements where a commission per contract can be drilled down, e.g., an uplift model. In an uplift model, the commission earned or estimated to be earned is dependent on the consumption. Some suppliers have expressed concerns around unscrupulous brokers using a lower consumption to calculate a lower commission at point of sale, to allow the commission total to appear more favourable to the microbusiness, to then be paid a higher amount upon reconciliation and ultimately avoid disclosing the true estimate. The supplier (if an acquisition) will not know the microbusiness's true annual consumption until they receive the D19 and will only review the annual consumption upon reconciliation (which can be annually or at the end of the contract dependant on supplier). Given the microbusiness market generally leans towards longer term contracts, it could be 3 or 4 years until a pattern of wrongdoing emerges. This could give rise to significant harm to microbusinesses, who could be given false mis-leading information and it would not be highlighted quickly enough to mitigate the impact on other customers.

Accuracy of commission?

Commission received by a broker based on an uplift model is considered subject to change up until the final point of reconciliation, as consumptions can vary for many reasons from point of sale throughout the term of the contract. Whilst some consumptions can be validated at point of sale via industry accessible data (e.g., ElectraLink), in the absence of industry confirmed consumption, a reasonable estimate based on the evidence available will be used; however, there is still the potential for the estimated consumption provided to be inaccurate and by a large degree, e.g., change of tenancy contracts. For these reasons, the commission quoted to a microbusiness at point of sale could vary greatly from the one initially disclosed to the final solidified amount the broker receives post-reconciliation. Providing the total amount of commission upfront to a microbusiness, even if packaged as an estimate, could be very different to the total the microbusiness ends up paying across the term of the contract and could lead to poor management of microbusiness expectations.⁴

⁴ Data from contracts sold after 01/01/2018 where the final reconciliation occurred prior to 01/04/2020 (COVID-19 had not yet impacted consumptions) showed an average of £119 difference in projected commission vs final commission figure received; the standard deviation on the commission variance is 530.27, which shows the commission variance can range greatly. For annual



Context of the disclosure?

The proposed wording of the disclosure will make clear the total amount of commission but falls short of mandating the disclosure also be given in comparable terms. Specifically, disclosing total commission expected to be earned over the term of a 3-year contract, differs greatly to commission over a 1-year contract (if the commission is calculated on an uplift model). Without these explanations, the microbusiness could be dissuaded from the benefits of a longer-term contract because they have been given the headline of the total commission and not also given the figure which truly allows them to compare between TPI offerings on a like-for-like basis. This has the potential to change the landscape of the market from longer term contracts to shorter term contracts, the impact of this can only be forecasted by suppliers and other stakeholders in energy purchasing/ pricing. Also, the disclosure covers a total, but does not require a breakdown of commission per meter, which is crucial for customers who have agreed contracts for multiple meters. We appreciate Ofgem may not choose to mandate that TPIs/ suppliers must give the additional context, therefore, we are working proactively with suppliers to ensure microbusinesses are educated on the commission TPIs earn to ensure that can make a truly informed decision.

Consistency in practical application?

During the various discussions we have held with suppliers, it has become apparent that suppliers are considering their disclosures in different locations and formats to satisfy the proposed wording of the Standard Licence Conditions. Some suppliers are interpreting the proposed wording differently as to where the disclosure should be located and how it should be formatted. Ofgem's Updated Impact Assessment⁵ states that post-sale written Principal Terms will ensure consistency and remove ambiguity, however, if all suppliers display the disclosure in different locations this might be difficult for a microbusiness to find and compare easily. This could potentially render the disclosure ineffective and hinder the microbusiness's ability to make an informed decision. Furthermore, whilst TPIs and suppliers work together in partnership, it cannot be overlooked that suppliers are also a TPI's direct competition. The current proposed wording provides the competitor the flexibility to make disclosures without consideration of the relationship between the TPI and its microbusiness customers, and without any controls around prominence (i.e., more prominence than necessary). This could turn the disclosure from being impartial information designed to educate the microbusiness, into a sales tactic to push the microbusiness to the direct sales route. Whilst we acknowledge that flexibility is required to allow for differing systems, processes, and supplier personalities, for the disclosure to truly empower microbusinesses to compare broker commission and drive informed decisions, the disclosure should be in prescribed set locations – i.e., with the other key terms within the Principal Terms.

Summary

Ofgem's strategic aims are underpinned by the driver to ensure microbusinesses have impartial information and transparency to make informed decisions. The current proposed disclosure wording may not in practice empower

consumptions, there was on average -129 difference in annual consumption confirmed at point-of-sale vs final annual consumption confirmed by the supplier; the standard deviation was 26875, which shows the consumption variance can also range greatly. Therefore, whilst some annual consumptions and commissions may vary slightly, there can be very large differences; this would make it very difficult to manage a microbusiness's expectations at point of sale around the commission they should expect to pay over the term of the contract.

⁵ Ofgem's Microbusiness Strategic Review: Updated Impact Assessment, 1st June 2021, page 19



microbusinesses with sufficient impartial information to decide whether that contract is right for their business and further consideration should be given to the controls in place to ensure the desired outcome is achieved; specifically, what benefits are intended to come within the scope of this disclosure, is the wording of the disclosure flexible enough to cover the various financial arrangements between suppliers and TPIs, what can be done to guarantee disclosures are made in good faith and how can we ensure as a market that microbusinesses are given/ have easy access to the relevant information to fully benefit from comparing their options.

The only way for Ofgem tackle this problem would be for further discussions with suppliers to ensure all commission structures between suppliers and TPIs within the market are established, then assessed as definitively coming within the scope of the proposed disclosure wording. Also, if Ofgem were to include within the mandated disclosure mechanism that microbusiness be provided with the breakdown/ explanation as to how the commission is calculated (for any commission estimated), this will truly give the microbusiness the right information as to how the commission could vary. For example, for uplift-based commission, this could be in the simple form of $\text{uplift} \times \text{annual consumption} \times \text{term}$, with the exact figures for that specific contract being provided (per meter and per annum). Understanding this mechanism is crucial to providing the microbusiness with key knowledge to compare options and highlight those which provide the best value service, as mandating a disclosure that covers only the total commission (actual or estimated) across the term of the contract could be likened to providing the microbusiness with half the story. Providing the calculation for estimated commission will help close any consumption-based loopholes and avoid a disclosure without the relevant context. As noted above, consideration should be given to suppliers also being a TPI's competitor as well as partner. The disclosures should be a controlled balance between promoting positive customer outcomes and ensuring microbusinesses are not unnecessarily disengaged from the TPI market, at their own detriment.



Contracting: Signing up to a new contract

Broker Conduct Principle

Consistent standards applied across TPIs operating within the market will drive the right behaviours and promote the right outcomes for customers. Love Energy Savings are keen to be involved in the Department for Business, Energy & Industrial Strategy's (BEIS) consultation to help shape the market moving forward. We note BEIS stated their consultation would be published in Spring 2021⁶ and we would welcome any update on the progress of their review.

Cooling-Off Period

Overview

We are pleased to see Ofgem's amendment to the cooling off period proposed wording considers the work being carried out under the Switching Programme. We would request additional clarity from Ofgem in relation to the below key points to help understand how the cooling off period would work in practice and what mitigations are in place for any unintended consequences.

Key Discussion Points

Within Ofgem's Statutory Consultation, the question has been asked as to whether implementing this proposal is feasible from 1st January 2022 and the below summarises our considerations on the proposal in general, along with the outcomes of the discussions with other stakeholders:

Impact on competition within the market?

Within Ofgem's Statutory Consultation, an assessment was made of the potential impact on increased competition within the market resulting from the introduction of a cooling off period. The outcome of this assessment was that there would be minimal impact as only the microbusiness, the new supplier, and the broker (if applicable) would know if the microbusiness had recently agreed a contract. As a TPI operating within this market, we are aware of the competition within the market to service customers both with other TPIs and suppliers' direct sales channels. Given the rules around direct unsolicited marketing in place for businesses, customers who are not registered with telephone preference service can be contacted by phone, they are often subject to contact from various TPIs looking to help customers with their business energy. During these calls, along with educating the customer on the benefit of using a TPI to obtain a business energy comparison, the TPIs collate information on the customer's current energy contract, to then contact the customer when they are able to agree a new contract (i.e., back in window). Alternatively, leads generated from third parties where microbusinesses have proactively requested quotes for their business energy can often be shared with more than one TPI.⁷ Based on this current landscape, we can confidently say there will be multiple TPIs who will know if a customer has recently agreed a contract. In addition to this, even with the proposed requirement

⁶ Department for Business, Energy & Industrial Strategy (BEIS) Energy White Paper, Powering Our Net Zero Future, December 2020, page 40.

⁷ From 01/05/2021 – 30/06/2021 15% of new customers requesting business energy quotes were also contacted by other TPIs.

to issue a notification of termination to the current supplier, suppliers have in place retention teams and processes to look to keep existing customers on board. From the discussions with other stakeholders, we are all unable to see how further increasing competition within the market, i.e., fuelling further microbusiness contact beyond what currently occurs, will not harm the microbusiness and ultimately the market significantly. Increased contact will likely cause microbusinesses to disengage and choose to renew with their current supplier and avoid comparing prices (thereby ultimately not improving competition and pricing by energy suppliers), rather than opening themselves up to the market and seeing the benefits of comparing their options.

Furthermore, given the competition within the existing market, consideration needs to be given to implementing potential controls to stop microbusinesses abusing a cooling off period by agreeing multiple contracts one after the other. If there were a lack of controls to prevent this, this would impact both the suppliers and TPIs where there is a cost to serve that customer and their contract, for them to ultimately not receive the business. There will be a line where either the TPI and/or the suppliers will need to increase their commission and prices (respectively) to account for these losses or (more likely) the services that a TPI provides in supporting customer choice will suffer as a result and this will ultimately harm microbusinesses market.

When does the clock start?

In line with the above explanations around the post-sale process, we would again seek clarification as to when Ofgem deem the contract as being 'entered into' to ensure consistent application of the cooling off period across the microbusiness market. Currently some suppliers deem this point as when the contract is agreed by the customer (verbally or in writing), whereas some choose to interpret this as when the contract is processed on the supplier's system as the supplier is fully aware of the contract.⁸ This could give rise to varying cooling off periods between suppliers, which would not provide the desired transparency, clarity, or consistency that Ofgem seek for microbusinesses. For this to be accurately observed, Ofgem must be clear as to the point in which the contract is deemed to be 'entered into' and therefore any cooling off period applies from that point.

Which contracts will this apply to?

Further to the above point as to when a contract is deemed as being 'entered into', to ensure fair and correct practical implementation, additional guidance is sought on which contracts are subject to this cooling off period following the date of implementation. There are two potential ways to interpret how this, a) any contracts which are yet to go live or b) those which are sold on and after the date of implementation. The latter would draw a very clear line in the sand for microbusinesses, suppliers and TPIs. It would be clear when the obligations in relation to cooling off periods start to apply and which microbusinesses they apply to, there will be no scope for any to 'slip through the net'. Whereas if all microbusinesses whose contracts are yet to go live as of the date of implementation, i.e., those sold less than 14 days ago and are not less than 28 days before their supplier contract start date, could be open to interpretation and result in some microbusinesses not being given their cooling off period or informed of it. Specifically, it could become very complicated when assessing at point of sale whether the microbusiness has those rights to make sure the contract completed is

⁸ This is from our direct experience when customers have changed their mind after agreeing a contract, there are differing approaches from suppliers as to when the contract is 'entered into'.



correct and valid. Again, we would ask that Ofgem provide specific and clear rulings as to which contracts this applies too.

A simple microbusiness-friendly explanation?

A key theme from our conversations with other stakeholders is how the proposed cooling off period should be explained to microbusinesses to ensure they understand they are being treated fairly in line with the Standard Licence Conditions. Most customers are familiar with the cooling off period within the consumer world and believe they are automatically entitled to a cooling off period, normally of 14 days. Given the complexities involved in explaining why the cooling off period ends at 28 days prior to the supply start date, it is important a consistent uniformed explanation in plain and intelligible language is readily available to explain this to a microbusiness. We would seek this explanation from Ofgem in a way they believe a microbusiness would best understand this, potentially in conjunction with support from Citizens Advice, to help guarantee an unambiguous and transparent explanation.

Summary

We would request for Ofgem to provide assurances to stakeholders and microbusiness that there are controls in place to counteract/ mitigate the increased marketing contact and harms once this proposal is introduced. Suppliers and TPIs have expressed concern around the risk of the cooling off period being manipulated as a sales tool by less compliant brokers to falsely winback the microbusiness as a customer, causing further confusion for the microbusiness and potential further disengagement from the TPI market. There are also concerns amongst stakeholders that increased customer contact could lead to further disengagement from the market, along with encouraging a 'race to the bottom'. TPIs earn commission to provide customers with comparisons and enable them to pick an option which is right for their business, squeezing this commission to out-price other participants in the market will not improve the quality of the service provided but will instead have the opposite impact, resulting in efficiencies which compromise quality and potentially compliance. This would ultimately impact customer experience and choice.

In general, clarity is sought from Ofgem on their expected interpretation of when a contract is 'entered into' (i.e., when the clock starts on the cooling off period) and whether it is Ofgem's intention to draw a clear unequivocal line in the sand by deeming any microbusiness sale completed on or after the date of implementation will be entitled to the cooling off period (i.e. the proposal is forward looking). In addition to this, for practical implementation of this proposal, we would request Ofgem provide a microbusiness-friendly standardised explanation of the cooling off period in plain and intelligible language to better allow suppliers, TPIs and other key stakeholders within the market to explain the cooling off period to prevent avoidable microbusiness dis-satisfaction/ complaints.

Lastly, in relation to the implementation date proposed, we would ask Ofgem to consider this date in line with the current market that microbusinesses are trading in. Businesses, especially microbusinesses, have struggled over the last year to continue trading given the impact of COVID-19. The Government have provided financial assistance to help these microbusinesses and reduce the financial burden where possible, however, we are starting to see the withdrawal of this support as the country slowly starts to resume normality. The next 12-18 months are vital to these microbusinesses as they try and navigate their way through their respective markets, with reduced Government financial support and COVID-19 still impacting everyday life. As noted by suppliers, a cooling off period will undoubtedly increase prices after factoring in additional risk premiums to account for a certain percentage of microbusinesses triggering the cooling off period. A risk of market-wide price increases at a time where



microbusinesses are already struggling may not be well received by customers and may exacerbate already delicate financial situations.



Dialogue: Two-way communication with service providers

Broker Dispute Resolution

Overview

We understand and support the requirement for better complaint handling processes and improved quality of service within the market. Customers of Love Energy Savings (and those via Evolve Online Tech) are given a multiple stage complaint process, which allows for a fair and independent review at each stage. It is an integral part of our business which is supported by our Trustpilot rating.⁹ To further demonstrate our support to Ofgem's proposal, we have been liaising with the Energy Ombudsman on an ongoing basis since the last consultation and took part in their broker ADR scheme pilot.

Key Discussion Points

From reviewing the update within Ofgem's Statutory Consultation with other stakeholders, there are some key concerns surrounding the detail of the practical implementation:

What is the roadmap to implementation?

Implementing a mandatory alternative dispute resolution scheme with members who are not directly regulated is potentially a large undertaking. Currently there are no documented complaint handling standards that TPIs must adhere to and there is no centralised list of brokers for there to be a true understanding of how many brokers (including sub-brokers) operate within this market. On this basis, it will take time to onboard all brokers onto the scheme and allow brokers who may not have in place rigid complaint handling standards reasonable opportunity to implement new processes/ systems to help mitigate any ADR escalations. Considering this, in the absence of a specific roadmap which sets out how Ofgem intend to implement the ADR scheme between the Statutory Consultation response date of 9th July 2021 and 1st January 2022, we and other stakeholders are unsure as to whether this date is feasible. If a roadmap were to be published and consulted on, along with the implementation date within the Standard Licence Conditions being amended to 'the relevant date', this would help facilitate an open discussion around what work is required to ensure the proposal is implemented in a timely manner and ensure any roadblocks are resolved. Currently by not publishing this as part of the Statutory Consultation, the ADR scheme proposal has missed a vital step as no opportunity has been given to allow stakeholders crucial input on how this scheme would work in practice, including (but not limited to, the below key issues):

- The consultation would also allow for an open discussion with key stakeholders on how the ADR scheme could be applied in the aggregator market. From the previous discussions with the Energy Ombudsman, a decision was yet to be made on how the scheme would work for sub-brokers and whether it was too time-consuming for the sub-brokers to be involved in the scheme given the time it may take to onboard them all. As discussed with the Ombudsman, to truly meet the aims behind Ofgem's proposals, all brokers (including sub-brokers) must be part of the ADR scheme to help drive the right behaviours in the market.

⁹ Over 13,000 reviews, rated 4.7* as of 23rd June 2021.

- Discussions can take place around backstops for such a scheme, like those in financial services, where only cases can be taken to the relevant ADR scheme if the event complained of occurred after a certain point in time. This would help minimise the volume of historical complaints that could be raised and might result in the cancellation of contracts which have been live for a significant period (which would be costly and time consuming for the supplier to unpick).
- Whether the lack of a documented complaint ownership responsibility within the Standard Licence Conditions truly promotes flexibility or whether it could give rise to delays in complaint handling. For example, it could result in the TPI taking on more complaints than necessary due to having to agree ownership ad hoc with a supplier and there being an imbalance of power between the two parties. This could be resolved by additional wording within the Standard Licence Conditions stipulating a broker is responsible for any alleged error made within their portion of the customer journey, where there is evidence to confirm the error has not been made because of a supplier mandate, process, or system.

Costs of an ADR scheme complaint?

Within the Impact Assessment Ofgem published alongside the Statutory Consultation, Ofgem noted example broker ADR scheme costs that had been proposed by the Energy Ombudsman, i.e., annual subscriptions and case fees which are subject to review/ increase dependant on volumes of complaints handled in relation to a TPI by the scheme. Upon review of the costs, there are no calculations noted as to how they arrived at those figures; specifically, how many complaints the Ombudsman have forecasted receiving on a yearly basis for them to estimate the annual subscriptions and case fees, including their evidential basis for these figures. Love Energy Savings during the broker ADR scheme stakeholder engagement event with the Ombudsman in March 2021 highlighted to the Ombudsman the proposed costs of the scheme are not proportionate to the average commission earned on a microbusiness sale.¹⁰ We understand there will be a minimum cost to fund a scheme of this nature, however, this cost should be balanced with the economics of the average contract commission amount. Additionally, broker complaints should be simple in nature as they relate to issues at point of sale and post-sale which can often be reduced to communications with the customer, therefore, the impact and complexity of broker complaints would be lower than those of a supplier (given the complexities of a supplier managing a customer's business energy supply on an ongoing basis) – has this been taken into account with the calculation of the costs of the scheme? The costs of the scheme will likely result in TPIs paying above and beyond reasonable remedies to prevent escalation. Also, there are concerns for the smaller brokers operating in the market, who are doing so compliantly and engaging microbusinesses in a valuable/ meaningful way, and the associated costs of an ADR scheme could have dire consequence on their business and lead them to disengage from this market. This could also act as a barrier to entry for new TPIs. We believe the economic costs of running such a scheme should reflect the unit economics of an individual sale for both the energy broker/ comparison service and energy supplier. Failure to do so will lead to the following direct consequences:

- Increased unit costs across the market as suppliers and brokers/ comparison sites 'factor in' potentially unrealistic costs of an ADR scheme into their specific business models.

And/or

¹⁰ Average commission earned on contracts 01/01/2021 – 30/06/2021 was £542.07.



- Reduced customer choice via comparison services/ independent market comparisons for the customer as the cost of the ADR scheme makes independent third-party comparisons uneconomic.

Consistency in complaint handling?

One of the instrumental factors within a market that allows for dis-satisfaction to be resolved amicably without escalation, but also the smooth running of an ADR scheme, is consistency in complaint handling standards. Within regulated industries, they have both the complaint handling standards and an ADR scheme to ensure dis-satisfaction is dealt with appropriately and efficiently. Whilst we understand BEIS are going to consult on direct regulation, which will likely include complaint handling standards, we would recommend Ofgem consider some basic rules to help TPIs ensure they are given a fair opportunity to resolve complaints prior to escalation to an ADR scheme. For example, a documented complaint definition, confirmation as to whether the clock for the 8-week escalation to the ADR scheme starts as soon as a complaint is received into the business and when ADR referral rights should be given. These are key definitions to help promote smooth complaint handling for customers and provide the ADR scheme the opportunity to get off on the right foot.

Further to this, we would recommend Ofgem consider stipulating within the Standard Licence Conditions that suppliers are required to assist TPIs they work with in handling complaints in a timely manner. Currently we experience delays with some suppliers when it comes to complaint handling which impacts our complaint resolution timescales, ultimately causing further distress and inconvenience to the customer. Complaints relating to broker conduct are currently handled by the TPI and are usually not considered as a priority by the supplier unless the supplier has received the complaint directly from the customer and they are required to handle it in line with their complaint handling requirements or risk escalation to the Energy Ombudsman. In the interest of ensuring a speedy resolution for the customer, this change would be very welcome and would help protect a microbusiness's engagement with TPIs and in the market.

We note that Ofgem have included within the proposed Standard Licence Condition wording that every supplier must disclose a microbusiness's rights to ADR (in relation to a broker or a licensee) within/ on relevant promotional materials, bills, statements or annually; with information having to include, but not limited to, how to initiate a complaint to a qualifying ADR scheme. We understand suppliers already have existing methods of meeting these requirements in relation to their own potential complaint escalations to the Energy Ombudsman and we would request that Ofgem mandate a format no more prominent be utilised for detailing the broker ADR scheme. This will help reduce costly changes on the part of the supplier to implement this proposal and will ensure undue prominence is not given to the TPI ADR scheme (in line with the comments above regarding a supplier also being a TPI's direct competitor as well as partner). Within the consultation Ofgem have not explained why they have included an additional sentence regarding the promotion of ADR scheme ('information including, but not limited to'), we would ask Ofgem to clarify their intention behind this additional wording and the benefit they feel it would provide to the market and microbusinesses.

Summary

The common theme of every discussion we have held with other stakeholders is around the lack of clarity both timescales to implement a broker ADR scheme and the details of how such a scheme will run exactly in practice. As the timescales and details were not published by Ofgem in this Statutory Consultation, no detailed feedback can be provided to assist with the smooth implementation of such a scheme. Therefore, we would request that Ofgem publish a roadmap of their intended implementation schedule and look to work with stakeholders before finalising the



mechanics of the ADR scheme. If such a scheme is not implemented carefully it will likely not achieve its desired potential and could risk harming the market irrevocably.

Lastly, ADR schemes are successful within regulated markets as there are documented principles/ requirements governing behaviours and standards within that market, to help guide the ADR scheme provider as to what is 'right' or 'wrong'. Without this clear guidance, the broker ADR scheme provider is at risk of making decisions that are not consistent or setting their own standards, rather than measuring a broker's behaviour against an existing code. Whilst we note Ofgem decided against the implementation of a broker conduct principle given the impending BEIS consultation, we would request for Ofgem to advise on how a broker ADR scheme in a non-directly regulated environment would rationalise the decisions they make to guarantee consistency in complaint outcomes and prevent TPI standards being decided ad hoc on case-by-case basis by the scheme provider.



Exiting: Switching away from an old contract

Banning Notification Requirements and Contract Extensions

We fully support Ofgem's decision in relation to the above proposals. We support removing the burden on the microbusiness of providing notice, which should improve the switching process and make the journey smoother for the microbusiness, with the ultimate hope of increasing engagement in the market. In our response to the Policy Consultation, we highlighted the benefits of removing unnecessary contractual burdens from customers to minimise the costly out of contract rates a microbusiness may have to pay. This proposal, in conjunction with the Switching Programme, would make switching more appealing to microbusinesses, which should encourage them to assess the different options the market has to offer and change the mindset that switching is too complex. Love Energy Savings welcomes any improvements made to promote customer choice.

Also, we can understand the complexities of contract extensions may outweigh the benefits and ultimately may not have the desired impact.



Summary

Love Energy Savings are wholly supportive of Ofgem's strategic aims and the improvements they are looking to make to the microbusiness market. We have long recognised a need for change to make the market work more effectively for customers and look forward to the benefits these changes bring.

We have detailed above the challenges faced in the practical implementation of the proposals and have summarised them below, with the key points highlighted. In short, there are some key themes around timescales for implementation and the need for further detail/ controls to ensure the impact to the market does not outweigh the benefit of the changes, which could ultimately impact the customers in the short or long term.

Love Energy Savings' Key Recommendations/ Discussion Points:

- **Awareness:**

We agree microbusiness require more information and engagement to allow them to make informed decisions and fully benefit from the options available to them on the market. As noted above, consideration should be given to whether other key independent stakeholders who liaise with microbusinesses more readily can help disseminate key information to ensure it reaches its target audience. Also, we continue to champion the need for online price transparency to fully enable customers to engage and compare the market; without this, customers will never be able to carry out comparisons like they do in the domestic market.

- **Browsing:**

- **Principal Terms**

There are benefits to a microbusiness being provided with the Principal Terms in writing post-sale, as they act like summarised terms and conditions; however, all the post-sale processes within the TPI market would require significant changes to allow the Principal Terms to be sent in writing one working day after the contract has been entered into (assuming this is when the microbusiness agrees to the contract). To enable Ofgem to achieve their desired aims and allow for Autumn 2021 implementation, we would recommend amending the wording of the Standard Licence Conditions to reflect the Principal Terms must be sent in writing one working day after supplier receipt of the contract. This issue is the only barrier to the practical implementation of this proposal as the data provided above demonstrates the current proposed wording will not be practically feasible, without leaving suppliers open to regularly breaching the Standard Licence Conditions or a costly overhaul of all existing processes.

- **Commission Disclosure**

Clarity is required from Ofgem on exactly what benefits are excluded from the mandated commission disclosure, to ensure the disclosure does not capture arrangements or transactions which Ofgem does not intend to include (i.e., declared gifts or hospitality). For example, is it Ofgem's intention for disclosures only to relate to financial arrangements between TPIs and suppliers, where the customer bears the cost of that financial arrangement? Also, additional guidance is required on the location where Ofgem envisage these disclosures to occur in the Principal Terms, to help promote consistency in approach, support microbusinesses being able to identify this information from supplier to supplier and prevent unnecessary prominence being given to the information. These are the key outcomes of our conversations with stakeholders, as it is clear different approaches are emerging which may impact the ability for a microbusiness to effectively compare products and could impact competition within the market. We would recommend Ofgem mandate that all commission disclosures are also given a cost per annum figure and, where a disclosure is estimated, the calculation behind the estimated commission figure is explained clearly to the microbusiness per meter. This will prevent



abuse of the disclosure based on the loophole in the current proposed wording, aid microbusinesses in understanding the mechanics of the commission, provide them with the necessary tools to make an informed decision/ carry out a comparison and educate them on why it is an estimate, including what variable/s could impact how much they pay in commission to a TPI.

- **Contracting:**

Love Energy Savings would seek assurances from Ofgem around the impact assessment that has been undertaken on the potential consequences of a cooling off period on the microbusiness market. As noted above, Ofgem's assertion that only a limited number of people know if the microbusiness has entered into a contract is inaccurate. Therefore, to ensure the cooling off period is not manipulated by the customer or other TPIs in the market with more aggressive sales tactics, we would request that Ofgem revisit the risks associated with the implementation of this proposal and ask for further information on the controls they will put in place to mitigate those risks, which could likely include the disengagement of microbusinesses from the market due to an influx of contact/ aggressive sales tactics. Also, we would request consideration is given to pushing back the implementation date to ensure the unnecessary burden of potential supplier price increases (as a result of implementing this proposal) do not hit microbusinesses at a time when they are likely already struggling financially. Further to this, please can Ofgem confirm when the contract is deemed as 'entered into' and which contracts will be subject to the cooling off period when the implementation date occurs, to ensure sales are conducted compliantly and the microbusiness is given the right information. To ensure this change does not create confusion amongst microbusinesses, we would also request a simple explanation in plain and intelligible language which accurately summarises the cooling off period, so this can be used as standard across the microbusiness market to prevent avoidable microbusiness dis-satisfaction.

- **Dialogue:**

The broker ADR scheme will undoubtedly raise standards within the TPI industry to ensure microbusinesses receive a fair review and outcome to their complaint. However, we are concerned the Statutory Consultation contains very few details about the scheme, how it will operate and a confirmed cost structure; in essence, this proposal has 'skipped a step' in the consultation. Following on from this, we are concerned around the feasibility to onboard all brokers onto such a scheme by 1st January 2022, especially as TPIs are expected currently to sign up to the scheme imminently without knowing the details of it to meet the proposed deadline. Therefore, we would request Ofgem update the wording of the Standard Licence Conditions to replace the proposed implementation date with 'relevant date', to allow the necessary flexibility for such a scheme to be set up once further consultations have been held with stakeholders to ensure the scheme meets the desired aim and not implemented without due consideration to the market. We would request for Ofgem to require supplier mandatory assistance in resolving TPI complaints in a timely manner to help promote efficient complaint handling and provide TPIs with further mandated guidance on the key elements of complaint handling as noted above. Finally, clarification has been requested as to the specific wording in the Standard Licence Conditions as to why Ofgem have chosen to provide a minimum requirement on the information provided by suppliers on the broker ADR scheme but have given them the flexibility to include further information. We would like to understand the reasoning behind this wording and how Ofgem envisage it to be used by suppliers.

The proposals made will assist microbusinesses in navigating the business energy and TPI market, however, there are risks of potential harm to the market which could have unintended consequences on microbusinesses. From discussions with stakeholders, the biggest concerns are around the lack of clarity as to what commissions are to be covered within the disclosure and the narrow mechanism around the mandated disclosure, which is open to abuse on both sides and lacks context to fully to explain to a customer how the commission is calculated to ensure the microbusiness fully understands it (rather than being given a headline figure). The secondary point arising from this,



is the cooling off period and the risk of it being abused by those who have more commercially aggressive approaches, including the resulting impact on the landscape of the market and potential further microbusiness disengagement. The cooling off period's resulting impact on supplier prices if implemented could cause further financial difficulties to those microbusinesses who are already struggling. Another key point relates to the current wording proposed for sending the written Principal Terms to the microbusiness post-sale, as they are not feasible and would require a complete overhaul of all TPI and supplier sales processes to accommodate them, which is not proportionate to Ofgem's intended aims. From speaking with suppliers, it has been agreed amending this wording to 'one working day after the supplier has received the contract' is feasible and preferable to ensure minimal changes are required, the aim is still achieved and promote efficient implementation. Lastly, both TPIs and suppliers are unsure how the implementation date of 1st January 2022 is achievable for the onboarding of all brokers onto the broker ADR scheme. As the Statutory Consultation has omitted details around the scheme, a roadmap of implementation and the ability for stakeholders to submit further comment, we would request that Ofgem reconsult on this matter and look to publish a transparent roadmap of how they envisage the implementation would occur.

As Ofgem intend for some of the proposals to be implemented in Autumn 2021, we would also ask for Ofgem to provide further details on exactly when they expect this to be, so we can plan and ensure any necessary changes are implemented on time.

Ofgem have proposed changes which in theory will help microbusinesses navigate this market and utilise it to its fullest, however, consideration needs to be given to the impact these changes will have on the market. These changes could restrict the market by forcing out TPIs who do not have the financial means to meet these requirements or dissuading new TPIs from entering the market, whilst simultaneously increasing supplier prices. All of these will ultimately impact customer choice and engagement in the market. A fine balancing act is required to protect microbusinesses and minimise unnecessary market harm.



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