

Jonathan Blagrove  
Ofgem  
[cdconsultations@ofgem.gov.uk](mailto:cdconsultations@ofgem.gov.uk)

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## **ICoSS Response to Microbusiness Strategic Review: Statutory Consultation to modify the SLCs of all gas and electricity supply licences.**

The Industrial & Commercial Shippers & Suppliers (ICoSS) is the trade body representing the majority of the GB non-domestic energy market. Our members<sup>1</sup>, who are all independent Suppliers, in total supply in excess of three quarters of the gas and half the electricity provided in the highly competitive non-domestic market.

We are responding to the statutory consultation on the Microbusiness Strategic Review.

### **Executive Summary**

The proposals have changed significantly since they were last consulted upon in July 2020 and we do not believe that the industry has been given sufficient time to fully assess their impact and that there may be some unidentified consequences from these proposals.

We acknowledge that some of our concerns have been taken on board in certain areas regarding delivery and we welcome Ofgem's recognition that the changes proposed regarding maintaining prices would have delivered little benefit to the market and result in significant cost. We still have a number of concerns over the remaining proposals however:

- We support in principle the development of an ADR scheme that manages Broker Complaints, that ensure that Brokers deal with their own customer failings and provide compensation where appropriate. The current timescales for delivery are unrealistic and to ensure a successful scheme launch we believe that a minimum of 12 months is required.
- Similarly, though simplified from the initial proposals, the current Cooling-Off proposals cannot be successfully delivered by January 2022 without



increasing risk of failure of the Switching Programme. For the avoidance of doubt, we do not believe the Cooling-Off proposals will bring benefits to customers, but if they are to be delivered then more time is required, at least six months after the Switching Programme delivery date.

- More generally, we do not believe that the aggressive timetable for delivery of the remaining proposals (Autumn 2021) is feasible as contracts with brokers will need to be revised, new operational processes developed to deal with short notice terminations, and potential retrospective processes.
- We believe that all of the proposals must be delivered as a single package to reduce the cost of continual incremental change and that this cannot be achieved before January 2023.
- We are concerned that the current proposals create a requirement for suppliers to retrospectively amend existing contracts and compile all historic broker commission information. This will add considerable costs to suppliers for little gain and clarity should be given in the licence that the proposals only apply to contract that are struck after effective date.
- The current proposals regarding notification of contract termination mean that customers will be able to provide notice with potentially minutes to spare. Suppliers will not be able to process such notifications in such a short space of time and considerable cost and complexity will be added to the solution as suppliers back cast any notifications. We do not see the benefit of such a requirement for customers and so, whilst we believe that the current notices periods are appropriate, any reduction in notice period should give suppliers sufficient time to manage any notification ahead of them taking effect.
- Coverage of Sale Agents in the proposals will place smaller suppliers at a significant commercial disadvantage to larger suppliers who operate their own internal sales teams.

## **Response to Consultation Questions**

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

No. Whilst we acknowledge that the proposal has simplified its proposals, we still have a number of significant concerns regarding them. It is unclear as to when the Cooling-Off period begins, in particular it is unclear as to whether the contract entered into is the point where a customer has been provided a finalised offer for a contract by the supplier (i.e. after the customer has had suitable credit checks undertaken) or when an initial offer, subject to suitable checking, has been made by the Broker. In addition, as it refers to SLC7A.9 this allows a working day for the



information to be provided, which could mean a variable number of calendar days before it arrives.

Owing to the number of different times in which the Cooling-Off period may start or apply after starting the current proposals for a Cooling- Off period will require significant system change to deliver. As currently planned, this will be during Q3/4 of 2021, and so in parallel with the Switching Programme.

The complexity of the proposed varying cooling-off period will likely frustrate customers (because it is not comparable with other '14-day cooling-off periods' that they will have experienced as a domestic energy consumer or when purchasing other retail products and services more generally with a guaranteed 14 days to cool-off) and could result in increased complaints. By delaying implementation of the cooling-off period remedy until post go-live of the Faster Switching programme consumers could get a 'full' 14-day cooling-off period – this would prevent consumer perception of the remedy being offered to microbusiness consumers being 'less than' what is given with a domestic energy supply contract/ other retail products and services and would also be much less complex for suppliers and brokers to explain and introduce to their systems and processes. Or a cooling-off period could potentially be introduced before Faster Switching by moving the cut-off day for cooling-off period to apply, from 28 days to 42 days in front of the contract start date.

Note also that for non-domestic only suppliers the introduction of a cooling-off period is a significant new change to systems and processes, compared with domestic suppliers who have already built Cooling-Off into their business models (and were provided adequate timescales to do so – Ofgem could look at those timescales to see the precedent set for lead time to introduce such a remedy).

We continue to believe that a Cooling-Off period does not provide material benefits to customers but will increase costs as suppliers attempt to price in the risk of a contract being cancelled. It is our view that the ADR scheme will be able to manage any broker mis-selling.

If Ofgem does implement this solution as currently devised, then we believe that the legal drafting will need to be clarified to ensure that there is certainty as to when a Cooling-Off period begins and that the commencement of this new process is set so that its delivery does not interfere with the Switching Programme with a six month lead time so January 2023.

**Question 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?**

No. The current timescale is not achievable. We note from recent discussions with the Energy Ombudsman that there remains a considerable amount of development work for their ADR scheme. We note that there are a significant number of questions outstanding at present, including:

- How will Brokers accede, fund and engage with this scheme?
- How can Suppliers monitor accession?
- What role do Suppliers have in evaluating the Broker process?
- What timescales will be used for managing customer complaints?
- How do suppliers get visibility of a related complaint?
- What are the implications for suppliers of upheld broker complaints?
- How will Broker engagement be managed by the energy ombudsman, considering the number of brokers in the market.

We are supportive in principle of increased oversight of Broker activities and a complaints mechanism to support that, and any process put in place must be credible. We believe that a minimum of 12 months from the formal statutory consultation decision is required to implement this new scheme.

Irrespective of the timescales required to deliver the ADR scheme, it is important that Brokers take the lead for any delivery and management of their scheme and that supplier are not required to manage Broker accession or any unduly impacted by its operation.

**Question 3: Do you have any other comments on our proposals?**

*Timescales for Delivery*

In addition to our concerns above regarding the ADR scheme and the Cooling-Off period, we have a number of concerns over the capability of members to deliver these proposals in line with the proposals, which is proposed to be 56 days after decision for the majority of the proposals.

- The need to renegotiate all broker contracts to require the publication of commission information will require significant time.
- There are significant operational changes to take account of minimal notice termination periods.
- If there is a retrospective element to these proposals as we currently believe there is (see below), then the need to back cast these new obligations onto historic contracts and commissions will take significant time to be undertaken as contracts are revised and historic costs retrieved.



We believe that these proposals will require a significant lead-time and if Ofgem seeks to progress with them, that Ofgem should provide the same time as required as the Cooling-Off and ADR regime for delivery.

#### *Retrospectivity*

As currently drafted the proposals seem to apply to all existing contracts, even ones which have been in force for several years. Retrospectively applying requirements regarding termination periods would require the alteration of all existing contracts to take into account the new licence requirements. This will result in a significant cost for suppliers to contact all customers to inform them of the new arrangements as well as amending contracts. It would also require a significant back casting exercise for determining Broker commissions paid for historic contracts, on the off chance that the customer may request the information.

There seems to be little value in requiring such a significant one-off exercise in aligning all existing contracts with the new processes. This is recognised by Ofgem in the consultation *“we acknowledge that the majority of the benefit to be gained from obtaining information about brokerage costs is likely to occur at the point when a microbusiness is considering entering into a new contract...”*.

We believe that any new processes should only apply to future contracts struck after the new requirements come into effect.

#### *Notification Timescales*

The current drafting of the licence proposals removes any form of notice period from contracts. We have a number of concerns over this in that it gives the customer the ability to change its mind on contracts (either through the proposed Cooling-Off period or preventing the rollover of a contract) with potentially only minutes notice. It is not feasible for suppliers to be able to act of such short notice periods and so suppliers will be required to develop retrospective processes to correct contractual positions. This will be extremely costly and provide little benefit to consumers. We believe that current notice periods are appropriate, but if Ofgem wishes to reduce them, that sufficient time (say 5 working days) is given to suppliers to acknowledge and act on any notification.

#### *Principal Terms*

It is currently unclear how the provision of Principal Terms will work in practice as currently drafting. At present suppliers will be required to bring to the attention of the customer the Principal Terms of any contract before prior to its agreement (7A.4), prior to its renewal (7A.8), but also 1 working day after it is entered into (7A.9(iii))



Unlike the domestic market, initial customer contract offers will be subject to credit checking and may vary (security deposits may be required for example) and so it is our interpretation that any notification of Principle Terms should occur after the contract offer is finalised by the supplier, which may vary from when the Broker provides initial terms.

We request that the process for when Principal Terms is provided is clarified in the licence to take account of existing processes operated by suppliers when checking the credit position of a customer.

#### *Broker Classification*

The proposed definition of brokers seems to include Sales Agents, which are directly employed 3<sup>rd</sup> parties working for a single supplier and operate in the same manner as direct sales employees of the supplier. As the intention of these changes is not to cover direct sales by suppliers, we request that the definition of Broker is enhanced to cover only those organisations that seek to sell for a range of suppliers.

#### *Broker commission & ADR scheme*

To introduce the commission transparency remedy earlier than go-live of the ADR scheme may cause microbusiness consumers additional frustration. If the additional transparency increases the level of customer dissatisfaction at the commission paid to brokers, consumers may wish to progress a complaint, but without the new ADR scheme in place they are limited to the same action they can take against a broker as they have today.

#### *Sales Agent*

We have communicated concerns over the definition of "Broker" may cover sales agents. Sales agents are not the same as Brokers, in that they operate for a single supplier, not a range of suppliers and so are not subject to the same drivers as that of a Broker. We have concerns that covering Sales Agents, who operate in the same manner as internal sales teams with Broker requirements will place smaller suppliers at a significant competitive disadvantage to larger suppliers with their own sales teams. We request that the licence drafting is clarified to cover Brokers.

#### **Question 4: Do you have any comments on the draft supply licence conditions at Appendix 1 in this document?**

Yes. There are a significant number of areas where there is some ambiguity on the proposals, further to what we have identified above.

- 7A.13A refers to a "Evergreen Supply Contract" which is defined as a domestic contract under SLC1 Definitions, which we believe is an error in drafting.



- The definition of Brokerage Costs' means any fees, commission or other consideration including a benefit of any kind. On this basis the definition is very broad and could cover a broad range of activities e.g. taking a TPI out for lunch. Would it be possible to apply some form of materiality test so as to not cover de-minimis values activities?
- There is no indication in the licence of how prominent commission information should be on the principal terms.
- A 'reasonable' qualifier could be added to SLC 7A.4 (on Notification of MBC Contract terms and other information), given that suppliers will only be party to broker activities that occur as part of the introduction process, and not any other procurement activities that a consumer could have agreed with their broker. We would recommend wording as follows to make this clear:

*7A.4 Before the licensee enters into a Micro Business Consumer Contract, it must ~~ensure~~ bring, or it must take all reasonable steps to ensure that the relevant Broker brings, the following information to the attention of the Micro Business Consumer and ensure that the information is communicated in plain and intelligible language:*

Regards

Gareth Evans

ICoSS

[gareth@icoss.org](mailto:gareth@icoss.org)