

MICRO BUSINESS STRATEGIC REVIEW

We have carefully considered the content of your Micro business strategic review dated the 1st July 2021. Our further responses / comments are below.

Our response deals with focus areas;

1. The reforms themselves;
2. Ofgem's statutory remit and tortious interference;
3. Failure to consider important issues.

First of all, in considering whether to introduce the remedies proposed, Ofgem have failed to provide any clear evidence that there is any harm to microbusinesses. The cost and risks of the reforms are not clearly calculated against any calculation of harm to microbusinesses.

By way of example – how much do Ofgem think that brokers are “overcharging customers”? How much do Ofgem think brokers are saving customers?

How much do Ofgem think cooling off periods will save customers and why are they a benefit?

Ofgem have failed to detail how many contracts are submitted by brokers, the average uplift, term. How can Ofgem make any clear conclusions without any basic awareness of how many contracts and brokers there are?

Any defined theory of harm needs to be fully quantifiable – Ofgem have failed to complete this activity.

Cooling off periods

1. How much do Ofgem believe introducing this remedy will cost?
2. How much will the remedy save, and how?

Ofgem are only considering the contract between the consumer and the energy supplier. How could cooling off periods applied to these contracts affect the contractual relationship between the broker and the consumer?

Ofgem have no remit to regulate brokers and no direct legal means. Regulation is being created through supply licence changes and via the back door. We at Utility Bidder support consumers having rights to terminate contracts that have been created in unstable circumstances such as coercion, mistake, etc. We do not think that consumers should be afforded such rights to cancel legitimate and properly explained / consented contracts.

The costs of cancelling contracts within 14 days will affect both brokers and suppliers. This extra admin cost will be passed back to consumers.

Have Ofgem considered these unintended consequences?

We may see the introduction of contract penalties between brokers and their customers where a contract with a supplier is cancelled, and the broker charges a cancelled contract fee to the customer.

Ofgem need to carefully consider their remit, and their ability to control the contractual relationship between brokers and their customers.

The relationship in these circumstances is complex in that there are effectively three parties contracting separately – the consumer and the supplier, the broker and the consumer and the broker and the supplier. Ofgem are, and legally can only look at part of this triangle.

What happens in a falling market? Do Ofgem want customers to have the ability to cancel contracts to avail themselves of a cheaper price?

Have Ofgem considered how suppliers may add risk cost to their prices to deal with cooled off contracts?

Can Ofgem provide a very clear calculation of the amount of money consumers will save?

Are there different levels of harm depending on how contracts are executed? IE would cooling off periods be better only for cold called ones – like doorstep selling regulations, but digital or customer engaged ones not allowed?

ADR

Utility Bidder agreed to pilot the Ofgem ADR, but due to the failure of the providers to be able to give any framework at all as to how decisions would be made, we declined to continue.

How much will ADR Cost? Have Ofgem considered again that ADR can only deal with contractual disputes between the supplier and contracts submitted by the broker? How will ADR deal with contractual disputes between brokers and their customers? Do Ofgem have the remit to control this activity?

Have Ofgem considered the average commission per contract versus the cost of the scheme? IE brokers could be faced with ADR costs higher than the value of the contract commissions which would be equitable and would create an unstable playing field.

How many disputes each year do Ofgem calculate that ADR would deal with? What number of disputes currently arise on brokered contracts and what is the cost calculated to be the theory of harm here to consumers?

Failure to consider other matters raised

Utility Bidders detailed submissions sent to Ofgem (and acknowledged) 20th July 2020 do not appear to have been considered. They are neither referred too or included within the submissions bundle.

Can these matters urgently be considered and commented on – specifically the issue or win backs.

Can Ofgem explain why these submissions have not been considered?

Chris Shaw