

Report

Energy Ombudsman performance for the period 2019 - 2021

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In September 2015, Ofgem appointed The Ombudsman Service (Ombudsman Services) as the alternative dispute resolution (ADR) body for the energy sector under the Alternative Dispute Resolution for Consumer Disputes Regulations 2015

The Ombudsman Services plays an important role in ensuring good consumer outcomes and trust in the energy market by investigating disputes between consumers and energy suppliers when consumers remain dissatisfied with the way their energy company has handled their dispute.

In accordance with Ofgem's role as the Competent Authority, every two years we are responsible for assessing whether the Ombudsman Services still meets the approval criteria under which it was appointed. We have completed this assessment for the period 2019-2021.

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1. Introduction

Context

- 1.1. The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 were introduced in 2015, revising the required standards for such redress schemes. Ombudsman Services (ADR entity) were approved to be the provider of the Alternative Dispute Resolution (ADR) service for the GB gas and electricity markets. Schedule 3 of the regulations set out the requirements that a competent authority (Ofgem) must be satisfied that the ADR entity meets. Under provision 11.3, the ADR entity must, within a month of the second anniversary of the approval date and within a month of the expiry of each successive period of two years, supply Ofgem with the information in Schedule 6 relating to the preceding two year period. It is then the responsibility of Ofgem under provision 12 to review the information and assess whether the ADR entity still meets the requirements in Schedule 3.

- 1.2. This document sets out each of the areas and individual requirements listed under Schedule 3. Each requirement has been individually assessed to determine whether the ADR entity still meets the requirements.

2. Summary

Section summary

This review has determined that the Energy Ombudsman continues to meet all relevant criteria to the extent necessary to retain its status as ADR provider. However, several areas for improvement have been identified, and recommended steps to improve the Energy Ombudsman’s services and processes have been offered.

Recommendations for improvement

2.1. In the previous Energy Ombudsman performance review, which assessed the period 2017-2019, the following recommendations for improvement were made:

	Criterion	Ofgem’s observations on areas for improvement
2.2i 2.2j	permits the consumer to file an initial complaint submission by post, if the consumer wishes. enables the consumer to progress their complaint via a range of methods, including telephone, email and post	Postal address information can be located on The Ombudsman Service’s ‘Contact Us’ page or after a case has been created via the online portal. Alongside prompts on the website enabling consumers to start their complaint via the online portal, consumers should be presented with information in a prominent location advising that complaint submissions can be sent via the post, whilst enabling the consumer to progress their complaint, at a minimum, via the post, telephone and email.
2.2m	provides a wide range of translation services for those consumers that do not speak English as their first language, including a Welsh Language Service and additional services for those that are hearing or visually impaired	Translation services are provided for Welsh speakers. There is no information available to consumers on which additional languages are supported under the translation service. Further information should be provided on the range of services available, and the languages supported.
2.2o	offers to complete any forms that are necessary in order for the	Support can be requested by consumers via The Ombudsman Service’s enquiries

	<p>scheme to investigate the complaint (excluding any signatures that are required to give staff the authority to proceed with the investigation)</p>	<p>function. Information on the types of support which can be provided to consumers and how they can access the support should be displayed more clearly and in a prominent location to promote consumer engagement.</p>
3.3a	<p>ensures that officials possess a general understanding of the law and energy regulation, and the necessary knowledge and skills relating to the out-of-court or judicial resolution of energy disputes, to be able to carry out his or her functions competently</p>	<p>On at least a biennial basis, and before Ofgem is due to complete its ADR assessment. The Ombudsman Service should provide Ofgem with an update on the training Ombudsman staff receive. We suggest this is included with the biennial report The Ombudsman Services already provides.</p>
3.3d,	<p>ensures that no official discharges his or her duties in a way that is biased as regards a party to a dispute, or the representative of a party</p>	<p>On at least a biennial basis, and before Ofgem is due to complete its ADR assessment. The Ombudsman Service should provide Ofgem with the latest version of the Ombudsman Service’s Conflict of Interest Policy. We suggest this is included with the biennial report The Ombudsman Services already provides.</p>
3.3f,	<p>where it appoints more than one official, ensures that an official, without undue delay, discloses to the body a circumstance that may, or may be seen to—</p>	
3.3g,	<p>(i) affect the official’s independence or impartiality; or</p> <p>(ii) give rise to a conflict of interest with a party to the dispute which the official is asked to resolve</p> <p>ensures that the obligation to disclose a conflict of interest is a continuing obligation throughout the alternative dispute resolution procedure</p>	
5.3c	<p>its officials, jurisdiction, powers, the method of their appointment and the duration of their appointment</p>	<p>Information pertaining to The Ombudsman Service’s officials, jurisdiction, powers, the method of their appointment and the duration of their appointment needs to be publicly available on the Ombudsman Service’s website in a clear and easily</p>

		understandable manner for consumers. We are unable to locate this information in full.
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2.2. The 2019-2021 assessment has determined that the recommendations made for improvements to criteria 3.3a, 3.3d, 3.3f, and 3.3g have been satisfactorily put into place. However, the Energy Ombudsman has not yet made substantial improvements to criteria 2.2i, 2.2j, 2.2m, 2.2o, or 5.3c.

2.3. The recommendations for improvement for the period 2019-2021 are set out below. They have also been included at the end of this report:

	Criterion	Ofgem’s observations on areas for improvement
2.2i	permits the consumer to file an initial complaint submission by post, if the consumer wishes	Postal address information is available on the ‘Contact Us’ page. However, the ‘Complain Now’ and ‘FAQ’ pages should indicate that consumers can complain through other methods. The ‘When can I complain to the Ombudsman Services?’ video only indicates ability to submit and progress complaints online. The website should feature information about how a consumer can file a complaint via post/telephone/email in a prominent location.
2.2j	enables the consumer to progress their complaint via a range of methods, including telephone, email and post	Postal address information is available on the ‘Contact Us’ page. However, the ‘Complain Now’ and ‘FAQ’ pages should indicate that consumers can complain through other methods. The ‘When can I complain to the Ombudsman Services?’ video only indicates ability to submit and progress complaints online. The website should feature information about how a consumer progress their complaint via post/telephone/email in a prominent location.
2.2m	provides a wide range of translation services for those consumers that do not speak English as their first language, including a Welsh Language Service and additional services for those that are hearing or visually impaired	The ‘How do I create and submit a complaint via the website?’ and ‘When can I complain to the Ombudsman Services?’ videos both include English subtitles. We would advise that they also include subtitles in other languages. Translation services are provided for Welsh speakers, however, there is no information available to consumers on which

		additional languages are supported under the translation service. Further information should be provided on the range of services available, and the languages supported.
2.2o	offers to complete any forms that are necessary in order for the scheme to investigate the complaint (excluding any signatures that are required to give staff the authority to proceed with the investigation)	As per the OS:E Schedule 3 Criteria 2021 v1, support is available if requested via telephone. A team member will then fill in the details on the system. The availability of this service should be displayed in a prominent location on the Accessibility page to promote customer engagement.
3.3a	ensures that officials possess a general understanding of the law and energy regulation, and the necessary knowledge and skills relating to the out-of-court or judicial resolution of energy disputes, to be able to carry out his or her functions competently	The Ombudsman Services, on request of the previous biennial report, has now included additional details about the training its employees undertake. The Ombudsman Services should continue to provide details of new training undertaken in future submissions.
5.3c	its officials, jurisdiction, powers, the method of their appointment and the duration of their appointment	We were unable to locate information regarding the duration of the Ombudsman Services' appointment. The 5.3c information should be available in full on the website in a clear and easily understandable manner.

3. Performance review for the period 2019-2021

Services offered by the body

3.1. The Authority must be satisfied that the body meets the requirements of:

	Criterion	Assessment	
1.1a	offers alternative dispute resolution services in relation to a domestic dispute or cross-border dispute brought by a consumer against a trader	The biennial report confirms that OS:E offered ADR services in 134,068 cases for the reporting period. ¹	
1.1b	has the power to resolve disputes by requiring that regulated providers pay compensation, give an apology and/or explanation or take some other form of action which is considered advantageous to the complainant	OS:E has this power under the Membership Rules for Participating Companies, clause 1.1(d). ²	
1.1c	is able to consider all types of complaint as indicated in the Gas and Electricity Regulated Providers Redress Scheme Order 2008	OS:E is able to do this under its Terms of Reference Section 6. ³	
1.1d	does not offer alternative dispute resolution services in relation to a domestic or cross border dispute in	OS:E is an independent legal entity, and its officials are directly employed by it. The independence of	

¹ OS:E Biennial Report 2019-2021:

http://sharepoint2013/ma/drmp/Account_Management_Lib/Ombudsman/Ombudsman%20Assessment%202022/2022%20Assessment%20-%20ENERGY%20Biennial%20Activity%20Report%20Final.pdf

² OS:E Membership Rules for Participating Companies:

http://sharepoint2013/ma/drmp/Account_Management_Lib/Ombudsman/OSE%20-%20Membership%20rules%20for%20suppliers.pdf

³ OS:E – Terms of Reference post-2015, accessed 01/02/2022: <https://www.ombudsman-services.org/scheme-rules/terms-of-reference-post-2015>

	<p>circumstances where an official responsible for the dispute is either employed or remunerated directly by a trader who is a party to the dispute.</p>	<p>the Chief Ombudsman is safeguarded by OS:E’s Articles of Association.⁴</p>	
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Access to the redress scheme

3.2. It is essential that the scheme is, and is seen to be, easily accessible to consumers. Several factors are capable of impeding access, including a lack of awareness of the scheme, processes and procedures that prevent timely access to the scheme and its ease of use (or perceived ease of use) across all groups of consumer, including consumers in vulnerable situations. In order to ensure that these requirements are met, the Authority must be satisfied that the body meets the criteria of:

	Criterion	Assessment	Outcome
2.2a	<p>takes appropriate steps to ensure consumer awareness of the scheme, working with third parties as appropriate and accommodating consumers’ varying circumstances</p>	<p>Under OS:E’s Term of Reference, all energy suppliers with a domestic supply licence must participate in the OS:E scheme.⁵ Participants are required to issue a ‘deadlock letter’, referring customers to OS:E in the event further assistance cannot be provided with a complaint. OS:E details are set out on the back of customer bills. Consumer groups such as Citizens Advice share details of the Ombudsman.⁶</p>	

⁴ OS:E Articles of Association: http://sharepoint2013/ma/drmp/Account_Management_Lib/Ombudsman/Ombudsman%20Assessment%202022/2022%20Assessment%20-%20APPENDIX%201%20Articles%20of%20Association%2024052018.pdf

⁵ OS:E – Terms of reference for energy sector, accessed 01/02/2022: <https://www.ombudsman-services.org/scheme-rules/terms-of-reference-energy-sector>

⁶ Citizens Advice – Complain to the energy ombudsman, accessed 01/02/2022: <https://www.citizensadvice.org.uk/consumer/energy/energy-supply/complain-about-an-energy-company/complain-to-the-energy-ombudsman/>

2.2b	periodically analyses the profile of complainants to inform its work to raise awareness of the scheme	Periodic analysis is published on OS:E website touching on different areas regarding how different consumer cohorts are raising complaints and the type of complaints being received. ⁷	
2.2c	ensures that the scheme is available free of charge to consumers	OS:E is a free service. ⁸	
2.2d	maintains procedures and processes for raising a complaint with the scheme that are easy to understand and use and are not overly bureaucratic	OS:E website sets out its procedures and processes within both written and video format. ⁹ The process is explained step by step, including what information to collate and that the service is free of charge. OS:E website also sets out the process if a consumer is unhappy with the OS:E's service. ¹⁰	
2.2e	maintains an up-to-date website which provides the parties to a domestic dispute or crossborder dispute with information regarding the alternative dispute resolution procedure operated by the body	OS:E website provides a guide to the complaints process. See criterion 2.2d.	

⁷ OS:E – News, accessed 01/02/2022: <https://www.ombudsman-services.org/news?page=1>

⁸ OS:E – How it works, accessed 01/02/2022: <https://www.ombudsman-services.org/how-it-works>

⁹ OS:E – The Complaints Process, accessed 01/02/2022: <https://www.ombudsman-services.org/how-it-works/process>

¹⁰ OS:E – Unhappy with our service, accessed 01/02/2022: <https://www.ombudsman-services.org/unhappy-with-our-service>

2.2f	provides the information referred to in sub-paragraph (e) to a party on a durable medium, if a party requests it	The OS:E’s response sets out how information on a durable medium can be requested. ¹¹	
2.2g	maintains an easy to understand guide explaining what the consumer needs to do to raise a complaint with the scheme and what the scheme’s processes are for investigating a complaint must be provided to consumers contacting the scheme	OS:E website provides a guide to the complaints process. See criterion 2.2d.	
2.2h	ensures that its website enables a consumer to file an initial complaint submission and any necessary supporting documents online	Consumers initiate a complaint submission by searching for an entity to raise a complaint against. Consumers must then create an account to progress the complaint and add supporting evidence.	
2.2i	permits the consumer to file an initial complaint submission by post if the consumer wishes	Unable to find information on front pages of website advising that complaints can be raised via post. Once an account is created and the complaints process has begun, a postal address is provided (also available on the Contact Us page). ¹² Feedback provided advising OS:E to ensure this information is available to customers in a more easily accessible manner. This was also discussed during the previous	Criteria met. Feedback provided to improve information provision.

¹¹ OS:E Schedule 3 Criteria 2021 v1:

http://sharepoint2013/ma/drmp/Account_Management_Lib/Ombudsman/Ombudsman%20Assessment%202022/2022%20Assessment%20-%20OSE%20Schedule%203%20Criteria%202021%20v1.docx

¹² OS:E – Contact Us, accessed 01/02/2022: <https://www.ombudsman-services.org/about-us/contact-us>

		biennial review, and we would encourage OS:E to look into the feedback provided.	
2.2j	enables the consumer to progress their complaint via a range of methods, including telephone, email and post	The 'Contact Us' page includes email, postal, and telephone contact details. ¹³ Feedback provided advising The Ombudsman Services to improve information provision around the ability to progress complaints via other methods.	Criteria met. Feedback provided to improve information provision.
2.2k	enables the exchange of information between the parties via electronic means or, if a party wishes, by post	Consumers can create an account and add evidence. Alternatively, evidence can be posted.	
2.2l	ensures that the cost to the consumer of accessing the scheme, such as the cost of making a call, is minimised	Consumers are provided with an '03...' contact number. ¹⁴ A statement is provided regarding costs. There is no cost associated with the use of the online system.	
2.2m	provides a wide range of translation services for those consumers that do not speak English as their first language, including a Welsh Language Service and additional services for those that are hearing or visually impaired	Translation service available via telephone for Welsh speaking consumers. No additional languages noted. Additional services include British Sign Language interpreters and documents in large print, coloured paper, audio, and Braille. ¹⁵ Videos are included on	Feedback provided to advise how to fully meet criteria.

¹³ OS:E – Contact Us, accessed 01/02/2022: <https://www.ombudsman-services.org/about-us/contact-us>

¹⁴ OS:E – Contact Us, accessed 01/02/2022: <https://www.ombudsman-services.org/about-us/contact-us>

¹⁵ OS:E – Accessibility, accessed 01/02/2022: <https://www.ombudsman-services.org/statements/accessibility>

		the website detailing the complaints process feature English subtitles, but no other language. ¹⁶	
2.2n	adopts processes that allow for additional help in accessing the scheme to be given to those consumers that need it. For example, this will include allowing persons to act on behalf of the relevant consumer	The OS:E’s response sets out the required information. ¹⁷ This is referred to in a FAQ about the complaints process on the OS:E website. ¹⁸	
2.2o	offers to complete any forms that are necessary in order for the scheme to investigate the complaint (excluding any signatures that are required to give staff the authority to proceed with the investigation)	The OS:E’s response confirms that consumers can contact them over the phone to submit a complaint, following which a member of the team will fill in the details on the system for the consumer. ¹⁹ Feedback provided advising The Ombudsman Services to advertise the availability of this service.	Criteria met. Feedback provided to improve information provision.
2.2p	accepts disputes covered by Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes	The OS:E’s response confirms that this is no longer applicable following the UK’s withdrawal from the EU. ²⁰	

Expertise, Independence and Impartiality

¹⁶ OS:E – The Complaints Process, accessed 01/02/2022: <https://www.ombudsman-services.org/how-it-works/process>

¹⁷ OS:E Schedule 3 Criteria 2021 v1

¹⁸ OS:E – The complaints process FAQs, accessed 01/02/2022: <https://www.ombudsman-services.org/faqs/the-complaints-process#can-i-ask-a-solicitor-or-other-advisor-to-help-with-my-complaint>

¹⁹ OS:E Schedule 3 Criteria 2021 v1

²⁰ OS:E Schedule 3 Criteria 2021 v1

3.3. The Authority must be satisfied that the body meets the requirements of:

	Criterion	Assessment	Outcome
3.3a	ensures that officials possess a general understanding of the law and energy regulation, and the necessary knowledge and skills relating to the out-of-court or judicial resolution of energy disputes, to be able to carry out his or her functions competently	<p>As set out in Article 58 of the Articles of Association,²¹ the board shall appoint an individual as Chief Ombudsman who appears to have the appropriate qualifications and experience to fulfil that function.</p> <p>The OS:E’s response confirms the range of training staff members receive as an investigation officer.²² This includes the additional training staff have undergone since the previous review.</p>	Criteria met. Feedback provided.
3.3b	ensures that the person responsible for the scheme alone has the power to decide whether or not a complaint is within the scheme’s jurisdiction	Under section 6.1 of the Terms of Reference, ²³ the Ombudsman has absolute discretion.	
3.3c	appoints each official for a term of office of sufficient duration to ensure the independence of that person’s actions and provides that no official can be relieved of his or her duties without just cause	There are no restrictions on the duration that the Chief Ombudsman and serve for. The current Chief Ombudsman has been in place since December 2018. ²⁴ Article 61 of the Articles of Association sets out the events upon which the	

²¹ OS:E Articles of Association

²² OS:E Schedule 3 Criteria 2021 v1

²³ OS:E – Terms of reference post 2015, accessed 01/02/2022: <https://www.ombudsman-services.org/scheme-rules/terms-of-reference-post-2015>

²⁴ OS:E – The Board and Leadership Team, accessed 01/02/22: <https://partners.ombudsman-services.org/the-board>

		Chief shall vacate his/her position. ²⁵	
3.3d	ensures that no official discharges his or her duties in a way that is biased as regards a party to a dispute, or the representative of a party	<p>As set out in Articles 63-65 of the Articles of Association,²⁶ the Chief Ombudsman must set out their material interests which may conflict with his/her responsibilities.</p> <p>Section 2 of the OS:E's 'Our Code of Conduct' sets out the requirements to acting ethically and includes the OS:E's conflict of interest policy.²⁷ This details requirements around bribery, conflicts of interest, gifts, hospitality and how to report a breach</p>	
3.3e	remunerates an official in a way that is not linked to the outcome of the alternative dispute resolution procedure	<p>Initial assessment advised that staff are remunerated on an annual salary basis.</p> <p>As set out in Article 59 of the Articles of Association,²⁸ the Chief Ombudsman's remuneration is determined by the Board.</p>	
3.3f	where it appoints more than one official, ensures that an official, without undue delay, discloses to the body a circumstance that may, or may be seen to— (i) affect the official's independence or impartiality; or	Section 2 of the OS:E's 'Our Code of Conduct' sets out the requirements to acting ethically and includes the OS:E's conflict of interest policy. ²⁹ This includes requirements around	

²⁵ OS:E Articles of Association

²⁶ OS:E Articles of Association

²⁷ OS:E Code of Conduct:

http://sharepoint2013/ma/drmp/Account_Management_Lib/Ombudsman/Ombudsman%20Assessment%202022/2022%20Assessment%20-%20APPENDIX%20%20Code%20of%20Conduct.pdf

²⁸ OS:E Articles of Association

²⁹ OS:E Code of Conduct

	(ii) give rise to a conflict of interest with a party to the dispute which the official is asked to resolve	bribery, conflicts of interest, gifts, hospitality and how to report a breach	
3.3g	ensures that the obligation to disclose a conflict of interest is a continuing obligation throughout the alternative dispute resolution procedure	<p>As set out in Article 63 of the Articles of Association,³⁰ the Chief Ombudsman must maintain a written statement detailing the nature and extent of material interests which may conflict his/her responsibilities. For all other employees this forms a part of their contract of employment.</p> <p>Section 2 of the OS:E's 'Our Code of Conduct' sets out the requirements to acting ethically and includes the OS:E's conflict of interest policy.³¹ This includes requirements around bribery, conflicts of interest, gifts, hospitality and how to report a breach</p>	
3.3h	ensures that in circumstances where its officials are employed or remunerated exclusively by a professional organisation or business association, the body has a ringfenced budget at its disposal which is sufficient to enable it to carry out its functions as described herein	The OS:E's response confirms that no officials are employed or remunerated by a professional organisation or business association. ³²	
3.3i	reports to a body or person independent of those subject to	As set out in article 14 of the Articles of Association, the Chief Ombudsman reports to OS Board of Directors. ³³	

³⁰ OS:E Articles of Association

³¹ OS:E Code of Conduct

³² OS:E Schedule 3 Criteria 2021 v1

³³ OS:E Articles of Association

	investigation (this does not exclude their minority representation on that body). The body or person must also be responsible for safeguarding the independence of the person responsible for the scheme	The OS:E’s response confirms that the Board ensure independence by appointing the Chief Ombudsman, and that an independent assessor is appointed to deal with complaints regarding the OS:E. ³⁴	
3.3j	maintains a majority of independent members on any Body or Council which appoints the person responsible for the scheme	As set out in Article 17 of the Articles of Association, ³⁵ non-executive directors are in the majority.	
3.3k	ensures that any terms of reference for a scheme, or changes to the terms of reference, are agreed by a body or person independent of those subject to investigation (this does not exclude their minority representation on that body)	As set out in Article 14(j) of the Articles of Association, ³⁶ amendments are carried out in accordance with the agreed recommendations of the board.	
3.3l	is governed such that those appointing or terminating the appointment of the person responsible for the scheme must be- (i) independent of companies that are subject to investigation (this does not exclude their minority representation on the body which is authorised to appoint or terminate); and (ii) employed for a limited tenure	The OS:E’s response confirms that the Board ensure independence by appointing the Chief Ombudsman. ³⁷ Companies subject to investigation by the OS:E have no role on the board or the running of the OS:E. The full list of Directors is included in	

³⁴ OS:E Schedule 3 Criteria 2021 v1

³⁵ OS:E Articles of Association

³⁶ OS:E Articles of Association

³⁷ OS:E Schedule 3 Criteria 2021 v1

		the Ombudsman’s Annual Report. ³⁸	
3.3m	ensures that the governance arrangements and fee structure of the scheme shall not have a disproportionate effect on any particular group of members	<p>The OS:E’s response confirms that the amount Ombudsman Services charges for the annual subscription is based on the expected fixed costs of the Energy Ombudsman and apportioned based on member size and on case volumes over the last two years.³⁹ Companies also pay a fee for each complaint that is handled by the OS:E.</p> <p>In October 2019, analysis was conducted by the Retail Compliance team looking at the new fee structure proposed by the OS:E for 2020.⁴⁰ The analysis found that particular groups of suppliers were not disproportionately impacted and that criteria 3.3m was met. In an email exchange during the production of the latest review, the OS:E confirmed that their funding system as of 2022 continues to be an annual subscription fee based on the size of the supplier, alongside case fees for individual cases.⁴¹</p>	

³⁸ OS:E – Annual Reports, accessed 01/02/2022: <https://www.ombudsman-services.org/about-us/annual-reports>

³⁹ OS:E Schedule 3 Criteria 2021 v1

⁴⁰ Assessment of Ombudsman fee structure: http://sharepoint2013/ma/drmp/Account_Management_Lib/Ombudsman/Assessment%20of%20Ombudsman%20fee%20structure.docx

⁴¹ OS:E funding structure confirmation email 18/02/2022: http://sharepoint2013/ma/drmp/Account_Management_Lib/Ombudsman/Ombudsman%20Assessment%202022/Pay%20structure%20confirmation%20180222.msg

3.3n	makes provision for the person responsible for the scheme to reallocate the case fee and compensation to another scheme member, if as a result of the decision of the person responsible for scheme fault lies with that other scheme member	Under Section 10.7 of the Terms of Reference the Ombudsman will determine which participating company will pay the case fee and provide the remedy. ⁴²	
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Conflict of interests procedure

3.4. The Authority must be satisfied that the body has in place the following procedure in the event that an official declares or is discovered to have a conflict of interest in relation to a domestic dispute or cross-border dispute.

	Criterion	Assessment	Outcome
4.1a	where possible, the official is replaced by another official to handle the particular dispute	<p>The OS:E’s response confirms that, although OS operates with only one ADR official, its Chief Ombudsman, the governance structure in place ensure activities can be continued should any conflict of interest arise.</p> <p>Additionally, the OS:E confirmed that, if an ADR official declares a conflict of interest, they are required to alert their manager to this and confirm the reference for the case. This case will then be routed to another case handler sufficiently distanced from the conflicted case handler.⁴³</p>	

⁴² OS:E – Terms of reference post 2015, accessed 01/02/2022: <https://www.ombudsman-services.org/scheme-rules/terms-of-reference-post-2015>

⁴³ OS:E Schedule 3 Criteria 2021 v1

		As per the feedback included in the previous assessment, the OS:E’s Code of Conduct submission now includes the organisation’s conflict of interest policy.	
4.1b	<p>if the official cannot be replaced by another official—</p> <p>(i) the official must refrain from conducting the alternative dispute resolution procedure, and</p> <p>(ii) the body must, where possible, propose to the parties that they submit the dispute to another ADR entity which is competent to deal with it</p>	<p>The OS:E has confirmed that 168 members of staff are currently skilled to deal with energy disputes, therefore it is unlikely that at any point an official could not be replaced by another as a result of a conflict of interest.⁴⁴</p> <p>As per the feedback included in the previous assessment, the OS:E’s Code of Conduct submission now includes the organisation’s conflict of interest policy.</p>	
4.1c	<p>if the dispute cannot be transferred to another ADR entity, the body—</p> <p>(i) must inform the parties to the dispute of the circumstances of the conflict of interest,</p> <p>(ii) must inform the parties to the dispute that they have the right to object to the conflicted person continuing to handle the dispute, and</p> <p>(iii) can only continue to deal with the dispute if no party to the dispute objects</p>	<p>OS:E has confirmed that advised that 168 investigation officers are skilled to deal with energy disputes in addition to a team of eight Ombudsman and a Deputy Chief Ombudsman. Therefore, it is unlikely that at any point an OS:E official could not be replaced by another as a result of a conflict of interest.</p> <p>In the event that an ADR official declares a conflict of interest, they are required to alert their manager to this and confirm the reference for the</p>	

⁴⁴ OS:E data confirmation email 11/02/2022:
http://sharepoint2013/ma/drmp/Account_Management_Lib/Ombudsman/Ombudsman%20Assessmen%202022/Data%20confirmation%20110222.msg

		<p>case. This case will then be routed to another case handler sufficiently distanced from the conflicted case handler.</p> <p>As per the feedback included in the previous assessment, the OS:E’s Code of Conduct submission now includes the organisation’s conflict of interest policy.</p>	
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Transparency

3.5. In order to ensure that these requirements are met, the Authority must be satisfied that the body makes the following information publicly available on its website in a clear and easily understandable manner, and provides, on request, this information to any person on a durable medium:

	Criterion	Assessment	Outcome
5.3a	its contact details, including postal address, telephone number and e-mail address	Information is available on the ‘Contact Us’ page ⁴⁵	
5.3b	a statement that it has been approved as an ADR entity by the Authority once this approval has been granted	Information available on ‘How we’re regulated’ page states that Ofgem is the regulator and has approved the Ombudsman Service to operate under the	

⁴⁵ OS:E – Contact Us, accessed 03/02/2022: <https://www.ombudsman-services.org/about-us/contact-us>

		Alternative Dispute Resolution Regulations 2015. ⁴⁶	
5.3c	its officials, jurisdiction, powers, the method of their appointment and the duration of their appointment	Jurisdiction and powers were able to be found in the website’s Terms of Reference. ⁴⁷ We were unable to locate information concerning the duration of the OS:E’s appointment.	Feedback provided to improve information provision.
5.3d	the name of any network of bodies which facilitates cross-border alternative dispute resolution of which it is a member	The OS is a member of the Ombudsman Association, ⁴⁸ and the National Energy Ombudsman Network. ⁴⁹ Information regarding this is included on the website. ⁵⁰	
5.3e	the type of domestic disputes and cross-border disputes which it is competent to deal with, including any financial thresholds which apply	The website features a page detailing the type of disputes that OS:E can deal with. ⁵¹ The front page of the website advertises that it is free to use. ⁵² Additional information on the type of complaints dealt with can be found in the annual activity report. ⁵³	

⁴⁶ OS:E – How we’re regulated, accessed 03/02/2022: <https://www.ombudsman-services.org/about-us/regulation>

⁴⁷ OS:E – Terms of reference post 2015, accessed 03/02/2022: <https://www.ombudsman-services.org/scheme-rules/terms-of-reference-post-2015>

⁴⁸ Ombudsman Association – Find an Ombudsman, accessed 03/02/2022:

<https://www.ombudsmanassociation.org/association-members.php?navletter=O>

⁴⁹ National Energy Ombudsman Network – Members, accessed 03/02/2022: <http://www.neon-ombudsman.org/about-2/members/>

⁵⁰ OS:E – How we’re regulated, accessed 03/02/2022: <https://www.ombudsman-services.org/about-us/regulation>

⁵¹ OS:E – What type of problems can Ombudsman Services help with?, accessed 03/02/2022: <https://www.ombudsman-services.org/problems>

⁵² OS:E, accessed 03/02/2022: <https://www.ombudsman-services.org/>

⁵³ OS:E – Annual activity report for Ombudsman Services, accessed 08/02/2022:

<https://assets.ctfassets.net/46t2drav2f3e/2qgiFkwIDjaa0zQl7hCmG/02ff0612a2e8d00d488364f63f385081/ENERGY Annual Activity Report Final.pdf>

5.3f	the procedural rules of the alternative dispute resolution procedure operated by it and the grounds on which it can refuse to deal with a given dispute in accordance with paragraph 9	Section 7 of the Terms of Reference set out the conditions under which the Ombudsman shall not accept a complaint. ⁵⁴ Steps on how to raise a complaint are detailed on the website. ⁵⁵	
5.3g	the languages in which it is prepared to receive an initial complaint submission, which must include English and Welsh as a minimum	English language with a translation service available for Welsh speaking consumers ⁵⁶	
5.3h	the languages in which its alternative dispute resolution procedure can be conducted, which must include English and Welsh as a minimum	English language with a translation service available for Welsh speaking consumers. ⁵⁷	
5.3i	the principles the body applies, and the main considerations the body takes into account, when seeking to resolve a dispute	The 'How We Work' page sets out the five areas considered when making decisions. ⁵⁸	
5.3j	the preliminary requirements, if any, that a party to a dispute needs to have met before the alternative	'The Complaints Process' page sets out the steps which need to have been completed before	

⁵⁴ OS:E – Terms of Reference post 2015, accessed 08/02/2022: <https://www.ombudsman-services.org/scheme-rules/terms-of-reference-post-2015>

⁵⁵ OS:E – The Complaints Process, accessed 08/02/2022: <https://www.ombudsman-services.org/how-it-works/process>

⁵⁶ OS:E – Accessibility, accessed 08/02/2022: <https://www.ombudsman-services.org/statements/accessibility>

⁵⁷ OS:E – Accessibility, accessed 08/02/2022: <https://www.ombudsman-services.org/statements/accessibility>

⁵⁸ OS:E – How we work, accessed 08/02/2022: <https://www.ombudsman-services.org/about-us/how-we-work>

	dispute resolution procedure can commence	a dispute is brought to the Ombudsman Services. ⁵⁹	
5.3k	a statement as to whether or not a party to the dispute can withdraw from the alternative dispute resolution procedure once it has commenced	As per website FAQs, complainants can withdraw their complaint at any time. ⁶⁰ OS:E confirmed that information is also provided on correspondence issued. ⁶¹	
5.3l	the costs, if any, to be borne by a party, including the rules, if any, on costs awarded by the body at the end of the alternative dispute resolution procedure	The service is free to consumers. The website advises that the service is funded by the company a dispute is raised about paying a fee to have a complaint reviewed. The details of this amount is not shared. ⁶² The energy sector Terms of Reference stipulates that compensation awarded will not exceed £10,000 inclusive of VAT. ⁶³	
5.3m	the average length of each alternative dispute resolution procedure handled by the body	The 2020-2021 annual report states that the average dispute is resolved within 41 days. ⁶⁴	

⁵⁹ OS:E – The Complaints Process, accessed 08/02/2022: <https://www.ombudsman-services.org/how-it-works/process>

⁶⁰ OS:E – The complaints process FAQs, accessed 08/02/2022: <https://www.ombudsman-services.org/faqs/the-complaints-process#am-i-allowed-to-withdraw-my-complaint>

⁶¹ OS:E Schedule 3 Criteria 2021 v1

⁶² OS:E – How we work, accessed 08/02/2022: <https://www.ombudsman-services.org/about-us/how-we-work>

⁶³ OS:E – Terms of reference – energy sector, accessed 08/02/2022: <https://www.ombudsman-services.org/scheme-rules/terms-of-reference-energy-sector>

⁶⁴ OS:E – Annual activity report for Ombudsman Services, accessed 08/02/2022: <https://assets.ctfassets.net/46t2drav2f3e/2qgiFkwIDjaa0zQl7hCmG/02ff0612a2e8d00d488364f63f385081/ENERGY Annual Activity Report Final.pdf>

5.3n	the legal effect of the outcome of the dispute resolution process, including whether the outcome is enforceable and the penalties for non-compliance with the outcome, if any	The Terms of Reference set out the requirements of members in undertaking the OS:E’s remedy, including that failure to implement the remedy within 28 days may result in further action. ⁶⁵ In the event a remedy is not followed, the website stipulates that consumers are able to enforce the resolution in court. ⁶⁶	
5.3o	a statement as to whether or not alternative dispute resolution procedures operated by it can be conducted by oral or written means (or both)	Contacts to the Ombudsman can be made via post, email, online or telephone. ⁶⁷	
5.3p	the annual activity report required to be prepared under regulation 11(2) of the ADR Regulations, which should also include information about- (i) the scheme’s decisions, including the nature of the complaint and the outcome; and (ii) consumers’ satisfaction with the scheme	The Annual Report page sets out high level statistics, including consumer satisfaction and decisions made. ⁶⁸	

⁶⁵ OS:E – Terms of Reference post 2015, accessed 08/02/2022: <https://www.ombudsman-services.org/scheme-rules/terms-of-reference-post-2015>

⁶⁶ OS:E – The Complaints Process, accessed 08/02/2022: <https://www.ombudsman-services.org/how-it-works/process>

⁶⁷ OS:E – Contact Us, accessed 08/02/2022: <https://www.ombudsman-services.org/about-us/contact-us>

⁶⁸ OS:E – Annual Reports, accessed 08/02/2022: <https://www.ombudsman-services.org/about-us/annual-reports>

5.3q	the activity report required to be prepared every two years under clause 11(3) of the ADR Regulations.	The latest activity report covers the period July 2020 – June 2021. ⁶⁹	
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Effectiveness

3.6. In order for a dispute procedure to be effective, it has to be prompt, cost effective, fair, impartial and allow both parties to present their views. Effectiveness also relies on the scheme having sufficient scope in terms of the type of complaint it can consider, the range of remedies it can require and its ability to enforce those remedies. In order to ensure that these requirements are met, the Authority must be satisfied that the body:

	Criterion	Assessment	Outcome
6.3a	ensures that the scheme is adequately staffed and funded in such a way that complaints can be effectively and expeditiously investigated and resolved and to allow the Ombudsman to function impartially, efficiently, and appropriately. In ensuring this, amongst other actions, policies, and processes as appropriate, best-practice forecasting methodologies and processes must be used to achieve, so far as reasonably practicable, accurate estimates of staffing and funding requirements	Biennial Activity Report shows that 216,262 disputes were received between July 2019 and June 2021, with 134,068 falling within the scope of the OS:E. The average time taken to resolve disputes was 47 days. 94.51% of disputed were resolved within 28 days. ⁷⁰	

⁶⁹ OS:E – Annual activity report for Ombudsman Services, accessed 08/02/2022: https://assets.ctfassets.net/46t2drav2f3e/2qgiFkwIDjaa0zQl7hCmG/02ff0612a2e8d00d488364f63f385081/ENERGY_Annual_Activity_Report_Final.pdf

⁷⁰ OS:E Biennial report 2019-2021

6.3b	establishes objective targets for reaching decisions and dealing with enquiries against which it and others can assess its performance and put in place arrangements for assessing its performance against these targets	OS:E’s ADR Application Reasoned Statement sets out five KPI’s for the measuring performance. ⁷¹ The January to December 2020 annual report states that, although the pandemic led to shortfall in KPIs, all KPIs were fully recovered by July 2021. ⁷²	
6.3c	carries out periodic quality assurance monitoring	The OS:E’s response confirms that coaches carry out periodic, risk-based quality assurance checks. The QA process forms part of their new Target Operating Model and will be incorporated to ensure standards are met. ⁷³	
6.3d	establishes a set of procedures for enforcing its decisions and the scheme's rules	Companies must sign up to the scheme rules when they become members. All suppliers who supply to domestic or microbusiness consumers are obliged to become Participating Companies in the Ombudsman Services. ⁷⁴ Resolutions issued by the OS:E are legally binding and, in the event a supplier does not comply, the	

⁷¹ OS:E ADR application – form and reasoned statement: http://sharepoint2013/ma/drmp/Account_Management_Lib/Ombudsman/Legacy%20Files/Ombudsman%20ADR%20application/1.%20OSE%20ADR%20application%20-%20form%20and%20reasoned%20statement.msg

⁷² OS:E – Annual Report 2020, accessed 08/02/2022: https://downloads.contentful.com/46t2drav2f3e/55yfZF2o4YqWCHUN8TeJfq/1014b1591c6d325ebeb200829128a96/Annual_Report_2020.pdf

⁷³ OS:E Schedule 3 Criteria 2021 v1

⁷⁴ OS:E – Terms of reference – energy sector, accessed 08/02/2022: <https://www.ombudsman-services.org/scheme-rules/terms-of-reference-energy-sector>

		complainant can enforce the resolution in court. ⁷⁵	
6.3e	ensures that its alternative dispute resolution procedure is available and easily accessible to both parties irrespective of where they are located including by electronic means and non-electronic means	OS:E website sets out procedures and processes within both written and video format and explains the process step by step. Documents can be provided by non-electronic means upon request. ⁷⁶	
6.3f	ensures that the parties to a dispute are not obliged to obtain independent advice or be represented or assisted by a third party although they may choose to do so	Consumers can log a dispute without the requirement of independent advice or being represented. A third party is able to assist/represent if wanted. ⁷⁷	
6.3g	notifies the parties to a dispute as soon as it has received all the documents containing the relevant information relating to the dispute constituting the complete complaint file	As set out in Section 8 of the Terms of Reference, relevant parties will be informed upon the OS:E accepting a complaint. ⁷⁸	
6.3h	effectively signposts a consumer to alternative organisations or sources of advice if a complaint is outside its remit	The 'Know Your Rights' page flags the rights that a consumer has under the Consumer Rights Act 2015. It also signposts to other organisations that could be	

⁷⁵ OS:E – The Complaints Process, accessed 08/02/2022: <https://www.ombudsman-services.org/how-it-works/process>

⁷⁶ OS:E – Accessibility, accessed 08/02/2022: <https://www.ombudsman-services.org/statements/accessibility>

⁷⁷ OS:E – The complaints process FAQs, accessed 08/02/2022: <https://www.ombudsman-services.org/faqs/the-complaints-process#can-i-ask-a-solicitor-or-other-advisor-to-help-with-my-complaint>

⁷⁸ OS:E – Terms of reference post-2015, accessed 08/02/2022: <https://www.ombudsman-services.org/scheme-rules/terms-of-reference-post-2015>

		contacted in the event the OS:E is unable to look in a complaint. ⁷⁹	
6.3i	notifies the parties of the outcome of the alternative dispute resolution procedure within a period of 90 days from the date on which the body has received the complete complaint file except that, in the case of a highly complex dispute, the body may extend this period but must inform the parties of this extension and the expected length of time that it will need to conclude the alternative dispute resolution procedure	As set out in section 9 of the Terms of Reference, the Ombudsman will provide details of the conclusion within 90 days of receiving a complaint file. If a complaint is deemed to be highly complex, an extended period of time may be granted. In such circumstances, all parties will be informed along with the expected length of time the Ombudsman will need. ⁸⁰	
6.3j	requires regulated providers to have proper and effective internal complaint handling procedures	Under Rule E of the Membership Rules for Participating Companies, ⁸¹ members must maintain and operate an adequate internal complaints procedure.	
6.3k	identifies issues in individual regulated providers and makes recommendations to improve complaints handling, reporting these recommendations to Ofgem where appropriate	As per the Memorandum of Understanding between Ofgem and the OS:E, ⁸² issues or trends are reported to Ofgem. This is shared between the OS:E, Ofgem, and Citizens Advice during Tripartite meetings. As per the OS:E's response, they undertake	

⁷⁹ OS:E – Know Your Rights, accessed 08/02/2022: <https://www.ombudsman-services.org/how-it-works/your-rights>

⁸⁰ OS:E – Terms of reference post-2015, accessed 08/02/2022: <https://www.ombudsman-services.org/scheme-rules/terms-of-reference-post-2015>

⁸¹ OS:E – Membership Rules for Participating Companies, accessed 08/02/2022: <https://www.ombudsman-services.org/scheme-rules/membership-rules-for-participating-companies>

⁸² Memorandum of Understanding between Ofgem and the Ombudsman Service: http://sharepoint2013/ma/drmp/Account_Management_Lib/Ombudsman/Ofgem%20-%20OSE%20MoU.pdf

		detailed data analysis of individual supplier performances and feed this insight back to the supplier with recommendations for improvements. ⁸³	
6.3l	recommends changes to regulated providers' processes and/or policies where systemic failures are identified in order to promote improved service. This must include a dedicated referral process for informing the Authority and Citizens Advice that recommendations have been made	As per the Memorandum of Understanding between Ofgem and the OS:E, ⁸⁴ issues or trends are reported to Ofgem. This is shared between the OS:E, Ofgem, and Citizens Advice during Tripartite meetings.	
6.3m	maintains procedures to identify a potential breach of regulatory requirements and systemic problems within the industry and refer these to Ofgem (to determine whether or not there has been a breach)	As per the Memorandum of Understanding between Ofgem and the OS:E, ⁸⁵ issues or trends are reported to Ofgem. This is shared between the OS:E, Ofgem, and Citizens Advice during Tripartite meetings. The OS:E advised that internal mechanisms are in place for identifying complaint areas from investigations. ⁸⁶	
6.3n	regularly collects information regarding trends in complaints,	Complaints data is shared on OS:E's website via the News page, ⁸⁷ and through the published Annual Reports. ⁸⁸	

⁸³ OS:E Schedule 3 Criteria 2021 v1

⁸⁴ Memorandum of Understanding between Ofgem and the Ombudsman Service: http://sharepoint2013/ma/drmp/Account_Management_Lib/Ombudsman/Ofgem%20-%20OSE%20MoU.pdf

⁸⁵ Memorandum of Understanding between Ofgem and the Ombudsman Service: http://sharepoint2013/ma/drmp/Account_Management_Lib/Ombudsman/Ofgem%20-%20OSE%20MoU.pdf

⁸⁶ OS:E Schedule 3 Criteria 2021 v1

⁸⁷ OS:E – News, accessed 08/02/2022: <https://www.ombudsman-services.org/news>

⁸⁸ OS:E – Annual reports, accessed 08/02/2022: <https://www.ombudsman-services.org/about->

	company performance and scheme performance, and reports this information to the Authority and publishes this information on its website		
6.3o	publishes information about consumers’ satisfaction with the scheme	The 2020 annual report sets out high level statistics including consumer satisfaction and decisions made. ⁸⁹	
6.3p	notifies the Authority about any changes to the scheme (including changes to its rules or procedures, terms of reference or governance arrangements) before the end of the period of 14 days beginning with the day on which the change is made. Citizens Advice must also be informed of the changes	The OS:E’s application Reasoned Statement confirmed that both the Authority and Citizens Advice will be informed of any changes to the scheme. ⁹⁰	
6.3q	provides information requested by the Authority or Citizens Advice where the information is required to assess the performance of the redress scheme, its ongoing compliance with the criteria it has been approved against or the performance of regulated providers	As per section 8.5 of the Memorandum of Understanding between Ofgem and the OS:E, the authority can request information. ⁹¹	

[us/annual-reports](#)

⁸⁹ OS:E – Annual report 2020, accessed 08/02/2022:

https://downloads.ctfassets.net/46t2drav2f3e/55yfZF2o4YgWCHUN8TeJfq/1014b1591c6d325ebebe200829128a96/Annual_Report_2020.pdf

⁹⁰ OS:E ADR application – form and reasoned statement:

http://sharepoint2013/ma/drmp/Account_Management_Lib/Ombudsman/Legacy%20Files/Ombudsman%20ADR%20application/1.%20OSE%20ADR%20application%20-%20form%20and%20reasoned%20statement.msg

⁹¹ Memorandum of Understanding between Ofgem and the Ombudsman Service:

http://sharepoint2013/ma/drmp/Account_Management_Lib/Ombudsman/Ofgem%20-%20OSE%20MoU.pdf

6.3r	enters into agreements such as a Memorandum of Understanding or similar with other organisations as appropriate	Ofgem and the OS:E have entered into a Memorandum of Understanding. This is saved in SharePoint. ⁹²	
6.3s	establishes procedures to consider and resolve complaints by consumers or regulated providers about the service provided by the scheme, and the final decision on the complaint must be made by a person not previously involved in the determination of the complaint and with sufficient authority to direct how the issue may be resolved	OS:E website sets out steps a person can take if they wish to make a complaint regarding the service. Complaints initially follow an internal complaints/investigation process. Complaints that cannot be resolved can be escalated to the Independent Assessor. ⁹³	

Fairness

3.7. The Authority must be satisfied that the body:

	Criterion	Assessment	Outcome
7.1a	ensures that any deadlines for bringing a complaint to the redress scheme must be reasonable and allow for flexibility taking into account the circumstances of the case and the complainant, and do	As set out in the Terms of Reference Section 7, complaints can be submitted within 12 months of the deadlock letter being issued. ⁹⁴	

⁹² Ombudsman ADR application folder -

http://sharepoint2013/ma/drmp/Account_Management_Lib/Forms/AllItems.aspx?RootFolder=%2Fma%2Fdrmp%2FAccount%5FManagement%5FLib%2FOmbudsman%2FLegacy%20Files%2FOmbudsman%20ADR%20application&FolderCTID=0x012000830A0E82F8A9B74AAAF1C4353EF81E6&View=%7BFD77381A-D17B-418A-B12F-912FD15D1ACD%7d&InitialTabId=Ribbon%2EDocument&VisibilityContext=WSSTabPersistence

⁹³ OS:E – The Complaints Process, accessed 08/02/2022: <https://www.ombudsman-services.org/how-it-works/process>

⁹⁴ OS:E – Terms of reference post-2015, accessed 08/02/2022: <https://www.ombudsman->

	not unnecessarily limit access to the scheme		
7.1b	allows a regulated provider a reasonable period of time to attempt to resolve the complaint. We consider that 8 weeks is an appropriate maximum for regulated providers to resolve complaints	The OS:E will not allow a complaint to be submitted unless a deadlock letter has been received, or 8 weeks have concluded. ⁹⁵	
7.1c	ensures that during the alternative dispute resolution procedure the parties may, within a reasonable period of time, express their points of view	As set out in the Terms of Reference Section 8.1, participating companies and the complainant have up to 14 calendar days from when a complaint has been accepted to provide information. A longer period may apply if the Ombudsman deems it appropriate. ⁹⁶	
7.1d	provides a party to a dispute within a reasonable period of time, upon request, with the arguments, evidence, documents, and facts put forward by the other party to the dispute, including a statement made, or opinion given, by an expert	As set out in the Terms of Reference Section 8.6, any information passed to the OS:E will be taken into account and may be disclosed in full or in part to the parties involved. ⁹⁷	
7.1e	ensures that the parties may, within a reasonable period of time, comment on the information and	As set out in the Terms of Reference Section 8.7, parties are provided at least seven days to consider and provide	

[services.org/scheme-rules/terms-of-reference-post-2015](https://www.ombudsman-services.org/scheme-rules/terms-of-reference-post-2015)

⁹⁵ OS:E, accessed 08/02/2022: <https://www.ombudsman-services.org/>

⁹⁶ OS:E – Terms of reference post-2015, accessed 08/02/2022: <https://www.ombudsman-services.org/scheme-rules/terms-of-reference-post-2015>

⁹⁷ OS:E – Terms of reference post-2015, accessed 08/02/2022: <https://www.ombudsman-services.org/scheme-rules/terms-of-reference-post-2015>

	documents provided under paragraph (d)	comments about any information or documentation that has been disclosed to them. ⁹⁸	
7.1f	makes decisions that are based on what is fair in all the circumstances, having regard to principles of law, good practice and any inequitable conduct or maladministration. This must also include having regard to any regulatory requirements and codes of practice. All evidence must be clearly documented and analysed by the body. Natural justice and fair procedure must be observed, including appropriate opportunity to comment on facts, conclusions, or outcomes. Conclusions must be evidence based and decisions and recommendations must flow clearly from the analysis	As per the Terms of Reference Section 9.9, the OS:E sets out the conditions in which it will operate fairly and in accordance with the principles of natural justice. This includes having regard to regulatory provisions. ⁹⁹	
7.1g	makes decisions which take account of the nature of the issue and the effect it has had on the complainant. Redress must take into account of any maladministration that has occurred and take account of the hardship or injustice suffered as a result. Proportionality is key, whereby the process and resolution is appropriate to the complaint	The OS:E’s response confirms the complaints are handled in accordance with their Terms of Reference ³ . They also advised that <i>‘cases are handled on a case-by-case basis with due consideration given to the impact of supplier actions or inaction. We make decisions based on what is fair and reasonable taking into account both sides of the story, relevant regulation, law and good industry practice’</i> . ¹⁰⁰	

⁹⁸ OS:E – Terms of reference post-2015, accessed 08/02/2022: <https://www.ombudsman-services.org/scheme-rules/terms-of-reference-post-2015>

⁹⁹ OS:E – Terms of reference post-2015, accessed 08/02/2022: <https://www.ombudsman-services.org/scheme-rules/terms-of-reference-post-2015>

¹⁰⁰ OS:E Schedule 3 Criteria 2021 v1

7.1h	informs the parties that they are not obliged to retain a legal advisor, but that they may seek independent advice or be represented or assisted by a third party at any stage of the alternative dispute resolution procedure	<p>As per the OS:E’s FAQs page, consumers are advised that the service is free and does not need to involve a lawyer or legal advisor, but that a consumer can be assisted/represented by one if they wish.¹⁰¹</p> <p>In the OS:E response it was confirmed that the changes to email and script templates which were referenced in the previous Ombudsman performance review have now been completed.¹⁰²</p>	
7.1i	notifies the parties of the outcome of the alternative dispute resolution procedure on a durable medium and gives the parties a statement of the grounds on which the outcome is based.	As per the Terms of Reference Section 9.6, the OS:E will provide the proposed conclusion and suggested remedies in a durable medium. ¹⁰³	
7.2a	has the possibility of withdrawing from the alternative dispute resolution procedure at any stage if they are dissatisfied with the performance or operation of the alternative dispute resolution procedure	<p>As per the OS:E’s FAQs page, consumers are advised that they can withdraw from the procedure at any time.¹⁰⁴</p> <p>In the OS:E response it was confirmed that the changes to email and script templates which were referenced in the previous Ombudsman</p>	

¹⁰¹ OS:E – The complaints process FAQs, accessed 08/02/2022: <https://www.ombudsman-services.org/faqs/the-complaints-process#can-i-ask-a-solicitor-or-other-advisor-to-help-with-my-complaint>

¹⁰² OS:E Schedule 3 Criteria 2021 v1

¹⁰³ OS:E – Terms of reference post-2015, accessed 08/02/2022: <https://www.ombudsman-services.org/scheme-rules/terms-of-reference-post-2015>

¹⁰⁴ OS:E – The complaints process FAQs, accessed 08/02/2022: <https://www.ombudsman-services.org/faqs/the-complaints-process#am-i-allowed-to-withdraw-my-complaint>

		performance review have now been completed. ¹⁰⁵	
7.2b	before the alternative dispute resolution procedure commences, is informed of their right to withdraw from the alternative dispute resolution procedure at any stage	As per the OS:E's FAQs page, consumers are advised that they can withdraw from the procedure at any time. ¹⁰⁶ In the OS:E response it was confirmed that the changes to email and script templates which were referenced in the previous Ombudsman performance review have now been completed. ¹⁰⁷	
7.2c	is informed, before agreeing to or following the proposed solution— (i) that they have a choice as to whether or not to agree to, or follow, the proposed solution, making it clear to the consumer that the scheme's decisions are binding on the regulated provider but not on the complainant; (ii) that their participation in the alternative dispute resolution procedure does not preclude the possibility of them seeking redress through court proceedings; (iii) that the proposed solution may be different from an outcome determined by a court applying legal rules; and (iv) of the legal effect of agreeing to, or following the proposed solution	When a decision is reached, consumers have the choice of either accepting, rejecting, or appealing the judgement. Prior to entering through the complaint procedure, consumers are advised that participation does not prevent the possibility of seeking redress through the court and the outcome may be different. When a decision has been reached, the customer receives a notification message to log in to the portal. When reviewing the decision, they can make a choice to accept, reject or appeal the decision. If they reject, it tells them that the case will be closed. If they accept, it is confirmed that they are agreeing to the decision and resolution set out	

¹⁰⁵ OS:E Schedule 3 Criteria 2021 v1

¹⁰⁶ OS:E – The complaints process FAQs, accessed 08/02/2022: <https://www.ombudsman-services.org/faqs/the-complaints-process#am-i-allowed-to-withdraw-my-complaint>

¹⁰⁷ OS:E Schedule 3 Criteria 2021 v1

		by Ombudsman Services and are happy for the company to carry out the resolution actions, this is in full and the final settlement of the complaint. ¹⁰⁸	
7.2d	before expressing their consent to a proposed solution or amicable agreement, are allowed a reasonable period of time to reflect.	Section 10.1 of the Terms of Reference stipulates that the parties are afforded up to seven days to reflect. ¹⁰⁹	

Legality

3.8. In relation to an alternative dispute resolution procedure which aims at resolving a dispute by imposing a solution on the consumer, the body ensures that:

	Criterion	Assessment	Outcome
8.1a	in a situation where there is no conflict of laws, the solution imposed by the body does not result in the consumer being deprived of the protection afforded to the consumer by the provisions that cannot be derogated from by agreement by virtue of any enactment	As per the Ombudsman Service’s description of its complaints process, a customer can reject the OS:E’s final decision if they are unhappy. They are then free to resolve the complaint through other methods, such as through the civil courts. ¹¹⁰	
8.1b	in a situation involving a conflict of laws— (i) where the law applicable to the sales contract or service contract is	As per the Ombudsman Service’s description of its complaints process, a customer	

¹⁰⁸ OS:E Schedule 3 Criteria 2021 v1

¹⁰⁹ OS:E – Terms of reference post-2015, accessed 08/02/2022: <https://www.ombudsman-services.org/scheme-rules/terms-of-reference-post-2015>

¹¹⁰ OS:E – The Complaints Process, accessed 22/02/2022: <https://www.ombudsman-services.org/how-it-works/process>

	<p>determined in accordance with Article 6(1) and (2) of Regulation (EC) No 593/2008 on the law applicable to contractual obligations the solution imposed by the body does not result in the consumer being deprived of the protection afforded to the consumer by the provisions that cannot be derogated from by virtue of the law of the member State in which the consumer is habitually resident;</p> <p>(ii) where the law applicable to the sales contract or service contract is determined in accordance with Article 5(1) to (3) of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations the solution imposed by the body does not result in the consumer being deprived of the protection afforded to the consumer by the provisions that cannot be derogated from by virtue of the mandatory rules of the law of the member State in which the consumer is habitually resident.</p>	<p>can reject the OS:E’s final decision if they are unhappy. They are then free to resolve the complaint through other methods, such as through the civil courts.¹¹¹</p>	
8.2	<p>For the purposes of paragraph 11 “habitual residence” is be determined in accordance with Regulation (EC) No 593/2008</p>	<p>As per the Ombudsman Service’s description of its complaints process, a customer can reject the OS:E’s final decision if they are unhappy. They are then free to resolve the complaint through other methods, such as through the civil courts.¹¹²</p>	

¹¹¹ OS:E – The Complaints Process, accessed 22/02/2022: <https://www.ombudsman-services.org/how-it-works/process>

¹¹² OS:E – The Complaints Process, accessed 22/02/2022: <https://www.ombudsman-services.org/how-it-works/process>

Grounds to refuse to deal with a dispute

3.9. The body may only refuse to deal with a domestic dispute or a cross-border dispute which it is competent to deal with on one of the following grounds:

	Criterion	Assessment	Outcome
9.1a	prior to submitting the complaint to the body, the consumer has not attempted to contact the trader concerned in order to discuss the consumer’s complaint and sought, as a first step, to resolve the matter directly with the trader	Terms of Reference Section 6.2 sets out the conditions that need to be met for a complaint to be accepted. ¹¹³	
9.1b	the dispute is frivolous or vexatious	Section 7.1(e) of the Terms of Reference stipulates that this a reason for the non-acceptance of a complaint. ¹¹⁴	
9.1c	the dispute is being, or has been previously, considered by another ADR entity or by a court	Section 7.1(e) of the Terms of Reference stipulates that this a reason for the non-acceptance of a complaint. ¹¹⁵	
9.1d	the consumer has not submitted the complaint to the body within the time period specified by the body, provided that such time period is not less than 12 months from the	Section 7.1(a) of the Terms of Reference stipulates that this a	

¹¹³ OS:E – Terms of reference post-2015, accessed 08/02/2022: <https://www.ombudsman-services.org/scheme-rules/terms-of-reference-post-2015>

¹¹⁴ OS:E – Terms of reference post-2015, accessed 08/02/2022: <https://www.ombudsman-services.org/scheme-rules/terms-of-reference-post-2015>

¹¹⁵ OS:E – Terms of reference post-2015, accessed 08/02/2022: <https://www.ombudsman-services.org/scheme-rules/terms-of-reference-post-2015>

	<p>date upon which the trader has given notice to the consumer that the trader is unable to resolve the complaint with the consumer. It may be appropriate to extend this time period taking into account the circumstances of the case and the consumer and not unreasonably limiting access to the scheme</p>	<p>reason for the non-acceptance of a complaint.¹¹⁶</p>	
9.1e	<p>dealing with such a type of dispute would seriously impair the effective operation of the body.</p>	<p>Section 7.1(f) of the Terms of Reference stipulates that this is a reason for the non-acceptance of a complaint.¹¹⁷</p>	
9.2	<p>The body ensures that its policy regarding when it will refuse to deal with a dispute does not significantly impair consumers’ access to its alternative dispute resolution procedures.</p>	<p>The ‘Know Your Rights’ page flags the rights that a consumer has under the Consumer Rights Act 2015. It also signposts to other organisations that could be contacted in the event the OS:E is unable to look in a complaint.¹¹⁸</p>	
9.3	<p>Subject to paragraph 9.4, where a body refuses to deal with a dispute, it must, within three weeks of the date upon which it received the complaint file, inform both parties and provide a reasoned explanation of the grounds for not considering the dispute.</p>	<p>The OS:E’s response sets out the refusal process. Complaints are accepted in line with the OS:E’s Terms of Reference. Complaints outside of the Terms of Reference are closed and the complainant informed of the reasons.¹¹⁹</p>	

¹¹⁶ OS:E – Terms of reference post-2015, accessed 08/02/2022: <https://www.ombudsman-services.org/scheme-rules/terms-of-reference-post-2015>

¹¹⁷ OS:E – Terms of reference post-2015, accessed 08/02/2022: <https://www.ombudsman-services.org/scheme-rules/terms-of-reference-post-2015>

¹¹⁸ OS:E – Know Your Rights, accessed 08/02/2022: <https://www.ombudsman-services.org/how-it-works/your-rights>

¹¹⁹ OS:E Schedule 3 Criteria 2021 v1

9.4	Where following the expiry of the period referred to in paragraph 9.3, it appears to the body that one of the parties has sought to mislead the body as regards the existence or non-existence of one of the grounds for it to decline to deal with a dispute, the body may immediately decline to deal further with the dispute.	The OS:E’s response sets out the refusal process. Complaints are accepted in line with the OS:E’s Terms of Reference. Complaints outside of the Terms of Reference are closed and the complainant informed of the reasons. ¹²⁰	
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¹²⁰ OS:E Schedule 3 Criteria 2021 v1

4. Recommendations for the Ombudsman

- 4.1. The Ombudsman Service could implement the following changes to enable consumers to access information in a clearer manner and to assist Ofgem in its role of assessing whether the Schedule 3 criterion have been met.

	Criterion	Ofgem’s observations on areas for improvement
2.2i	permits the consumer to file an initial complaint submission by post, if the consumer wishes	Postal address information is available on the ‘Contact Us’ page. However, the ‘Complain Now’ and ‘FAQ’ pages should indicate that consumers can complain through other methods. The ‘When can I complain to the Ombudsman Services?’ video only indicates ability to submit and progress complaints online. The website should feature information about how a consumer can file a complaint via post/telephone/email in a prominent location.
2.2j	enables the consumer to progress their complaint via a range of methods, including telephone, email and post	Postal address information is available on the ‘Contact Us’ page. However, the ‘Complain Now’ and ‘FAQ’ pages should indicate that consumers can complain through other methods. The ‘When can I complain to the Ombudsman Services?’ video only indicates ability to submit and progress complaints online. The website should feature information about how a consumer progress their complaint via post/telephone/email in a prominent location.
2.2m	provides a wide range of translation services for those consumers that do not speak English as their first language, including a Welsh Language Service and additional services for	The ‘How do I create and submit a complaint via the website?’ and ‘When can I complain to the Ombudsman Services?’ videos both include English subtitles. We would advise that they also include subtitles in other languages.

	those that are hearing or visually impaired	Translation services are provided for Welsh speakers, however, there is no information available to consumers on which additional languages are supported under the translation service. Further information should be provided on the range of services available, and the languages supported.
2.2o	offers to complete any forms that are necessary in order for the scheme to investigate the complaint (excluding any signatures that are required to give staff the authority to proceed with the investigation)	As per the OS:E Schedule 3 Criteria 2021 v1, support is available if requested via telephone. A team member will then fill in the details on the system. The availability of this service should be displayed in a prominent location on the Accessibility page to promote customer engagement.
3.3a	ensures that officials possess a general understanding of the law and energy regulation, and the necessary knowledge and skills relating to the out-of-court or judicial resolution of energy disputes, to be able to carry out his or her functions competently	The Ombudsman Services, on request of the previous biennial report, has now included additional details about the training its employees undertake. The Ombudsman Services should continue to provide details of new training undertaken in future submissions.
5.3c	its officials, jurisdiction, powers, the method of their appointment and the duration of their appointment	We were unable to locate information regarding the duration of the Ombudsman Services' appointment. The 5.3c information should be available in full on the website in a clear and easily understandable manner.