

Decision – Decision on Guidance for Third Party Intermediary Alternative Dispute Resolution scheme criteria

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Introduction

In December 2022 new licence conditions took effect requiring energy suppliers agreeing microbusiness contracts through Third Party Intermediaries (TPIs), or brokers, to only work with TPIs that were signed up to a dispute resolution Scheme that is fair, transparent, effective and independent – we refer to this as a suitable Qualifying Dispute Settlement Scheme (QDSS). The relevant supply licence condition is Standard Supply Licence Condition 20.5 in the electricity licence and 20.6 in the gas supply licence¹. We do not have formal powers to certify QDSS. However, to clarify what we believe to be a suitable scheme, we consulted on 13th February 2023 on the production of clarification guidance. We received 7 responses which we have published alongside this decision document. We set out in this document the key comments suggested by those responding and clarify the changes made. We publish the updated guidance criteria.

Related publications

[Consultation on Guidance for Third Party Intermediary Alternative Dispute Resolution scheme criteria | Ofgem](#)

[Microbusiness Strategic Review: Decision to modify the SLCs of all gas and electricity supply licences | Ofgem](#)

Our decision-making process

After receiving the consultation responses, we have taken on board feedback and made amendments to the guidance criteria where appropriate. The guidance is now published on our website for any potential QDSS scheme provider to reference, for TPIs to refer to when they are signing up to a scheme, and for a supplier to use if approached by a TPI or QDSS organisation to confirm whether they are suitable.

¹ [Licences and licence conditions | Ofgem](#)

Summary of responses

We received 7 responses to our consultation from a range of stakeholder groups including 4 suppliers, Ombudsman Services, Citizens Advice Bureau and Love Energy Savings. Thank you to all of those who responded.

Overall, the responses indicated a general satisfaction with the guidance criteria proposed. There were some suggestions of changes to the criteria which we have taken on board and updated the criteria where we agreed they supported the aims of the guidance, see section 1 for changes. It was observed overall that if the guidance criteria were implemented effectively it could lead to Qualifying Dispute Settlement Scheme (QDSS) providers offering a fair, independent, transparent and effective scheme.

There were some points raised which go beyond the consultation on the guidance and relate to the implementation of the scheme. These included concerns raised about multiple scheme providers of the scheme and Ofgem's inability to approve any proposed provider and questions around the monitoring of QDSSs. We summarise and comment on these queries in section 1.

1. Finalised Guidance criteria

The updated guidance criteria is published alongside this document. Acknowledging the feedback we received from the consultation, we made a number of amendments. These are displayed below with an explanation in Table 1. The changes we have made to the text are underlined.

Table 1: Table to show where changes were made to the guidance and an explanation for the changes

Guidance Reference Number	Change that was made	Explanation for change
Introduction Paragraph 1	We added further details regarding the relevant supply licence conditions, including a link in the footnotes linking to the relevant supply licence conditions.	To make it easier to find the supply licence conditions the guidance related to
Introduction Paragraph 2	We have amended the following sentence to read as "must" instead of "should" and added the term "qualifying" before QDSS. "We are therefore issuing this guidance to set out the criteria that Ofgem recommends a TPI Dispute Settlement Scheme <u>must</u> contain, to be considered to be a <u>qualifying</u> QDSS."	This is to highlight that those claiming to be a qualifying QDSS must have fulfilled the following criteria rather than should which implies this is a recommendation opposed to a requirement.
Introduction Paragraph 3 and 4	We added the below: <u>"The Microbusiness Strategic Review also led to the creation of SLC 7A.10C, which introduced a new requirement for licensees to provide information on Third Party Costs paid to a Third Party in relation to respective microbusiness consumer contracts. This includes commissions paid to energy brokers as well as fees or benefit of any kind. This SLC came into effect on 1 October 2022.</u> <u>We stated in our Decision dated 28 March 2022 that in principle we see no reason why suppliers should not wish to provide information covering historic contracts. Whilst this remains true, in accordance with the SLC 7A there is an obligation for a supplier to declare commissions paid after 1 October 2022</u>	We added this to clarify the scope of SLC7A.10C

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	<u>when the licence condition took effect. However, there is no requirement for a supplier under the SLC to provide the relevant Third Party Costs such as commissions paid to energy brokers prior to 1 October 2022.”</u>	
Section 1.1b	Text amended to read “be able to resolve disputes by requiring that TPIs pay compensation, give an apology and/or explanation or take some form of <u>practical</u> action which is considered advantageous to the complainant. <u>Their resolution should also include a recommendation for the company to prevent the issue from happening again.”</u>	This added in the word practical before action, and added the sentence stating a QDSS should offer a recommendation to the TPI to prevent the issue happening again. In order to be an effective scheme the QDSS must be able to require action on behalf of the TPI in case of wrongdoing. By recommending changes to the TPI this can improve the service the TPI offers and lead to better outcomes for consumers.
Section 2.2	Replacing “should with must” resulting in the final sentence being “To ensure that the scheme is accessible and seen to be accessible, a QDSS <u>must</u> .”	This is to highlight that those claiming to be a qualifying QDSS must have fulfilled the following criteria rather than should which implies this is a recommendation opposed to a requirement.
Section 3.2h	We made the addition of point h which is “ <u>ensure that they are able to effectively contact and engage with all parties involved in the disputes to enable an effective resolution.</u> ”	This will allow a provider to be more effective at resolving complaints.
Section 4.1a	We replaced the term representative with case handler so the sentence now is “where possible, the <u>case handler</u> is replaced by another <u>case handler</u> to handle the particular dispute;”	We have replaced the term representative with case handler to make it clearer what is meant by a representative.
Section 5.1	We made a number of additions so the text now reads as “Demonstrating that a dispute settlement scheme is publicly accountable is an important step in ensuring that consumers have confidence in the decision-making processes of the scheme. To achieve	The addition of the time frames for resolutions and evaluation reports helps transparency of the effectiveness of the scheme.

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	<p>this, it is important that the provider is transparent about all aspects of its operations, including its membership and expulsion policies, decisions and any statistical information that informs the public about the performance of the scheme, <u>including the time for resolutions and any formal evaluation reports. The provider should also inform appropriate organisations of the generic and systemic issues that it has identified.</u>"</p>	<p>Concerns were raised in the consultation about the lack of requirement for QDSS providers to inform organisations of systematic and generic issues raised. This has been added to ensure visibility of such issues are brought to the relevant organisations.</p>
Section 5.2	<p>We added further detail on the documents required, the text now reads as "Reports and external documents must be easily understood by their target audience, <u>including TPIS, regulated providers, consumers, regulators and the general public. Including its membership and expulsion policies, decisions and any statistical information that informs the public about the performance of the scheme. For example, the time for resolutions, Key Performance Indicators (KPIs), dispute data, an Independent Assessor's report and annual reports.</u>"</p>	<p>We added this to provide further clarity on the reports and documents required. Having these documents available which are easily accessible and understood will lead to greater transparency of the QDSS.</p>
Section 5.3	<p>We removed the requirement for the QDSS to include any TPIS removed from the scheme to be listed.</p>	<p>As the QDSS is not regulated and there may be multiple QDSS, there could be a number of reasons a TPI may leave a QDSS, and not all of them negative.</p>
Section 5.3j	<p>We have replaced the word cost with compensation, so the text now reads as "the costs, if any, to be borne by a party, including the rules, if any, on <u>compensation</u> awarded by the provider at the end of the ADR procedure;"</p>	<p>We made this amendment to offer clarity on what the costs were, in this instance they are compensation costs.</p>
Section 6.3b	<p>We made additions of stating the QDSS must seek to improve its service where necessary, so the text now reads as "carries out periodic quality assurance monitoring <u>and seeks to improve it's service where necessary;</u>"</p>	<p>To ensure the QDSS is remaining effective, monitoring and improving it's service is necessary.</p>

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Section 6.3h	We have added further clarity on what is considered a reasonable time period, the text now reads as “notifies the parties of the outcome of the QDSS procedure within a reasonable time period, and notifies parties of any delays due to complex cases. A <u>reasonable time period would be considered 90 days from the date on which the QDSS has received the complaint, except in the case of a highly complex case where all parties must be informed of the extension of the 90 day time period</u> ”	This addition adds clarity to what is considered a reasonable time period. This is in line with other Alternative Dispute Resolution (ADR) Schemes.
Section 7.1a	We replaced the term “Qualifying Dispute Settlement Scheme” with “QDSS”	
Section 8.1f	We added point f which is “ <u>the provider does not have sufficient expertise in the area of dispute.</u> ”	This provides another reason why a provider may refuse to deal with a dispute.

Response to other comments received in the consultation

We received a number of comments and queries in the responses to the consultation that were not directly related to our consultation on the guidance itself. We comment on these below.

Multiple providers

One of the major concerns raised by respondents was the possibility of having multiple schemes. Respondents said that research suggests that having multiple schemes, lead to poorer outcomes for consumers. All respondents to the consultation raised concerns about this, with only one response stating having multiple providers could have positive outcomes, in the form of greater choice for TPIs/Brokers.

Information was provided about research that showed that one of the major barriers to effective ADR is that consumers do not know how to complain, are not aware of ADR schemes or their role is not understood by consumers.² The researched also showed that having multiple schemes can increase the risk of this occurring.

² [Response to open letter on Utilities ADR’s application for certification as an ADR provider - Citizens Advice](#)

Our response

We recognise that there could be a risk that multiple ADR providers with no regulatory oversight could drive down standards of service for consumers in a “race to the bottom”, and therefore dilute the positive benefit for customers. This lies within the Government’s power³ and Ofgem are unable to progress this beyond taking the issues to Government. We are recommending to Government that they consider this and consider whether they wish to use their powers to address this.

The supplier’s role in determining the QDSS

As highlighted in the consultation document and in a number of the responses, the licence condition requires suppliers to only work with TPIs who are registered to a dispute resolution scheme that is fair, transparent, effective and independent. Suppliers were concerned about the practical application of determining what a fair, transparent, effective and independent QDSS would look like.

Our response

We recognise this concern. The guidance criteria we consulted on therefore expand on these terms and provide a detailed framework on what we deem a satisfactory QDSS should cover in order to meet these licence condition requirements.

TPI code of conduct

Corona raised in their response the benefits of having a Third Party Intermediary Code of Practice (TPICoP).

Our response

We also consider this would be beneficial. We have highlighted this to Government, as they consider the TPI market more generally. We also understand that there is work underway in the industry to look into and develop a TPICoP.

³ The Energy Ombudsman are approved by Ofgem to independently handle disputes between consumers and energy suppliers. They are appointed in line with The Consumers, Estate Agents and Redress Act 2007. Ofgem are designated the relevant regulator for Energy under this act and as such have appointed the Energy Ombudsman and continue to monitor their performance as defined under the act.

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Next Steps

This Guidance document will take effect from today, the 2 June. We welcome engagement with QDSS providers.

We will continue to monitor the usefulness of the Guidance contents through engaging with QDSS providers, TPIs and suppliers. Where possible, we wish to understand themes of issues dealt with by QDSS providers and where Ofgem or government need to consider rule changes. We will also work with government as they review the TPI market, to consider whether and where further regulations may be required.

If you have any questions, please contact NonDomesticRetailPolicy@Ofgem.gov.uk.