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20 March 2023

Ofgem consultation on Guidance for Third party Intermediary Dispute Resolution scheme criteria.

Thank you for the opportunity to comment on Ofgem's consultation on Guidance for Third Party Intermediary Alternative Dispute Resolution (ADR) scheme criteria.

We think there is an opportunity for Ofgem to shape and build a trusted market that works for microbusiness consumers, suppliers and brokers. We welcome the guidance and think that it is well structured and clear. We also welcome the fact that there is a clear focus on maintaining high standards in the provision of ADR services in effective dispute resolution services.(Q1)

In working to establish the current ADR scheme that microbusinesses can access to bring unresolved complaints about energy brokers, we have been surprised and delighted by the engagement we have had with energy brokers and third party intermediaries (TPIs). It is clear that many in the sector are keen to improve standards and the professionalism of energy brokers and TPIs, indeed many want to see regulation introduced. This fits well with Ofgem's drive to remove harms faced by microbusinesses in its microbusiness strategic review, with the establishment of an ADR provider being a key element.

We have a view that the current setup is not ideal because redress and regulation are not joined up for the business sector. Specifically, there are aspects of protection, such as those in place for consumers who use brokers, that fall outside of the regulatory remit. We would like to see a more joined up approach that, rather than focusing on the disjointed bits, actually focus on how to provide the best protections for SMEs as a whole. A joined up solution would look at how redress can best support regulation and vice versa to help build trust between suppliers, intermediaries and their customers

Building the current ADR scheme – link to Q2.

We have been working closely with Ofgem since Autumn 2019 on providing a solution to realise the policy intent of placing the requirement on energy suppliers to only work with energy brokers and TPIs that belong to a qualifying dispute settlement scheme (QDSS).

From the consultation responses in Ofgem's microbusiness strategic review it was clear that the majority of respondents wanted a QDSS and that it was sensible to have a single provider. Indeed Ofgem made certain requirements on what they wanted form a QDSS. This included things like:

- Full transparency of processes and costs;
- An engagement strategy with the sector and other stakeholders to ensure 'buy in' of the QDSS;

- Clear support to energy brokers and TPIs in terms of on-boarding with appropriate timescales to do that;
- On-going training and support to energy brokers and TPIs in terms of QDSS requirements and training on on-line systems;
- The establishment of a register with business names for energy brokers and TPIs on the scheme;
- Regular e-mail updates to interested parties on additions etc. so that energy suppliers can check that the energy brokers and TPIs they are working with are members of a QDSS;
- Data collection and sharing of data with Ofgem;
- Value for money and appropriate investment in order to keep the QDSS fit for the future;
- On-going engagement with the sector and stakeholders to help raise standards;
- Ensuring that the link between energy suppliers and energy brokers is clear in resolving complaints and there is joined up working
- Clear information and guidance on our website; and
- Relationship management to work with the sector.

We agree with this level of scrutiny and due diligence by Ofgem, it is right and proper that they should have the confidence and comfort that their policy intention is being fully met. There has been a considerable lead-in time to accommodate Ofgem's workplan bearing in mind external factors such as Covid-19. There have been regular weekly meetings with Ofgem, during the build of the scheme and this continues to be the case.

This is a considerable undertaking on our behalf but we think it is right that Ofgem has done its due diligence in ensuring the ADR scheme fully meets Ofgem's policy intention. Whilst we appreciate that Ofgem can't approve or not approve an ADR provider in relation to the energy broker, TPI market, we do think that there is a significant role for Ofgem to do the same due diligence and use the same timescales as they did with the current ADR scheme with any other or future scheme in the energy broker market. This will ensure high standards are maintained, and a fair approach is taken to each ADR provider. We do not think it is fair on energy suppliers to quality assure ADR schemes in terms of the QDSS status. The question is what happens when this approach goes wrong, not only will there be detriment to microbusiness consumers but energy suppliers will be in breach of their licence conditions.

Policy thinking around a single ADR scheme in a sector

We agree with Ofgem's policy position in energy supply that a single ADR/ombudsman scheme is best practice. This helps keep things clear, straightforward and simple for consumers, enable greater use of data to identify risk areas and insights to work with energy suppliers, Ofgem, Citizens Advice and other stakeholders.

Reports like Citizens Advice's *Confusion, gaps and overlaps* in 2017 and MoneySavingExpert's *Sharper teeth* report, 2017 suggest that it is in the interests of consumers for access to redress to be simple and straightforward and that confusion is caused by having multiple providers, without any clear evidence of the benefits.

Other sectors where there are a proliferation of ADR providers are fully aware of the risk of this situation and the dive to the bottom in terms of standards in order to cut costs. For example, the Gambling Commission (a fellow ADR Competent Authority) also reported in 2017 that the multiple redress schemes operating in their sector caused confusion for the public and did not result in additional benefits.

Potential harms to microbusinesses from multiple ADR provision

Many of the criticisms of having multiple redress providers within a sector is that the company chooses which one to work with. The choice often comes down to which ADR provider is the cheapest and, potentially which ADR provider has the least ease of access for consumers to make a complaint. This in effect means very different microbusiness complaint journeys and, as such is a very real harm. Also, it means no single Ombudsman scheme / redress provider has a holistic overview of the issues in the sector and the regulator / competent authority does not have a single partner to work with to drive improvements. The lack of clarity often puts consumers off complaining and, as identified above makes it confusing when they try to. All of which would go to undermine the policy intent of Ofgem and its microbusiness strategic review of removing harms to microbusinesses, having in place ADR that meets high standards and raising standards across the sector.

Specific points on additions to the requirements set out in the draft guidance – link to Q2

Much of the criteria set out has been derived from the ADR Regulations 2015. Ofgem has responsibility, as Competent Authority to approve ADR schemes that operate in the energy sector and, as such, do have a role to play in terms of ensuring the criteria applies. We think the ADR Regulations set out what's considered to be a good baseline for what's expected of ADR schemes. As such, if Ofgem includes a requirement for QDSSs to be approved under the ADR Regulations, Ofgem will then be in a position to review the quality of provision of those QDSSs against the Regulations.

With consistency in mind, we noted that the guidance mentions 'reasonable time period' for parties to be notified of outcomes and it would be beneficial to be more specific, by bringing this in line with current Key Performance Indicators (KPIs) expected by ADR legislation and Ofgem in the energy sector. The scheme should have a flexible operating model which flexes to meet demand and we think that microbusinesses should have the same experience and expectations of a timely decision regardless of the QDSS. The processes and procedures should be easy and accessible and allow for microbusinesses who need additional support to use the service.

We think consideration should be given to how QDSS's work together. If more than one QDSS operates in the market it would be beneficial for microbusiness, that the systems work effectively together. For example, we want to ensure that microbusinesses are not adversely affected if a broker is expelled from one of the schemes due to a refusal to implement remedies or decides to change their QDSS provider. We therefore would welcome an expectation placed on the QDSS's to collaborate as necessary.

We also think that, in some complaints, the QDSS will need to work with energy suppliers, and therefore we think there should be an expectation placed on any QDSS to establish effective working relationships with energy suppliers.

We agree it is important for the QDSS to be publicly accountable and therefore should be transparent around operations, membership and decisions – plus other statistical data should be available. We publish KPIs, dispute data, the Independent Assessor’s report (for complaints about our service), annual reports, as well as other data that is required as part of our ADR approval. We consider all QDSS’s should be required to publish such information.

Impartiality is of the highest importance for any QDSS to ensure that it can make fair decisions when considering disputes between microbusinesses and brokers. We think it is important that the Guidance makes clear that organisations who have a role to play in representing the interests of energy brokers cannot be considered to be impartial.

Likewise we think that any QDSS should be consistently seeking to improve its service. We have a programme of customer experience which aims to enhance the experience for all those who use our service – whether that is a consumer, microbusiness, supplier or energy broker. This includes surveys at touchpoints throughout the consumer journey and regularly seeking feedback from suppliers and brokers on our case management system, website, communication with internal teams and on interaction with our service overall.

There are some areas where we think the guidance could be more consistent. For example, on page 13 of the guidance it states that a QDSS must “provide a wide range of translation services for those microbusiness consumers that do not speak English as their first language”. However, on page 15, the QDSS is required to confirm “the languages in which its QDSS procedure can be conducted, which must include English and Welsh as a minimum”. We question whether offering to conduct the QDSS procedure in English and Welsh only would constitute a “wide range of translation services.” Similarly, on page 13 there is a requirement to ensure it is free for microbusinesses to use the service, but on page 16 there is a requirement to confirm the costs of the service to the parties. It would be helpful to have clarity over the expectations in these areas.

One final point relates to the requirement for a QDSS to operate “a register listing all TPI members of the scheme, and any that have been removed.” The register of TPIs we have created does not show TPIs that have been removed from the scheme and such a requirement would need further development. Before we carry out such development, we would like Ofgem to confirm why such a requirement is necessary.

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