
Further Guidance for providers of the Third Party Intermediary (TPI) Qualifying Dispute Settlement Scheme for Microbusinesses

Publication date: 02/06/2023

Ofgem has required that gas and electricity suppliers must only work with Third Party Intermediary's (TPIs) that are valid members of a Qualifying Dispute Settlement Scheme (QDSS) when contracting with microbusiness customers. The relevant supply licence condition is Standard Supply Licence Condition (SLC) 20.5 in the electricity licence and 20.6 in the gas supply licence ¹, this came into effect on the 1 October 2022. The requirement aims to offer protection to microbusiness by allowing them to resolve disputes [with TPIs](#) via an independent body.

Ofgem does not have the authority to approve a QDSS. However, we wish to assist suppliers to meet their licence conditions by ensuring the dispute resolution scheme that the TPI they are working with for microbusiness customers is of sufficient quality to protect these customers from detriment. We are therefore issuing this guidance to set out the criteria that Ofgem recommends a TPI Dispute Settlement Scheme must contain, to be considered to be a qualifying QDSS.

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.

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 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.

1. Services offered by the provider

1.1. A QDSS should:

¹ As set out in Standard Licence condition 20.5D in the electricity supply licence and 20.6D in the gas supply licence, [Licences and licence conditions | Ofgem](#)

- a) offer services in relation to a dispute brought by a microbusiness consumer against a TPI;
- b) be able to resolve disputes by requiring that TPIs pay compensation, give an apology and/or explanation or take some form of [practical](#) action which is considered advantageous to the complainant. Their resolution should also include a recommendation for the company to prevent the issue from happening again.

2. Access to the dispute settlement scheme

2.1. It is essential that the scheme is, and is seen to be, easily accessible to microbusiness consumers. Several factors can impede 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 microbusiness consumers.

2.2. To ensure that the scheme is accessible and seen to be accessible, a QDSS must:

- a) be available free of charge to microbusiness consumers;
- b) maintain procedures and processes for raising a complaint that are easy to understand and use and are not overly bureaucratic or time consuming;
- c) maintain an up-to-date website, which provides the parties to a microbusiness TPI dispute with information regarding the QDSS procedure operated by the provider;
- d) provide the information referred to in sub-paragraph (c) to a party on an alternative durable medium such as paper, if a party requests it;
- e) enable the microbusiness consumer to file an initial complaint and progress it by receiving meaningful step-by-step resolution via a range of methods, including telephone, webform/email and post;
- f) enable the exchange of information between the parties via electronic means or, if a party wishes, by post;
- g) provide a wide range of translation services for those microbusiness 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;
- h) adopt processes that allow for additional help in accessing the scheme to be given to those consumers that need it. For example, this could include allowing persons to act on behalf of the relevant consumer; or supporting customers to complete forms.

3. Expertise, Independence and Impartiality

3.1. Independence for the purposes of this guidance means that the provider must be, and be seen to be, independent from those whose disputes it is resolving, i.e. microbusiness consumers, the TPIs and suppliers. This is essential to ensure that consumers and industry have confidence in the scheme, it is seen to be credible and that decisions are seen as taken without bias. There must be sufficient safeguards in place to demonstrate impartiality and the provider must be able to demonstrate that these safeguards are functional.

3.2. To ensure that these requirements are met, the provider should:

- a) ensure that representatives 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;
- b) remunerate scheme representatives in a way that is not linked to the outcome of the QDSS procedure;
- c) ensure that a representative of the provider, without undue delay, discloses any circumstance that may, or may be seen to—
 - (i) affect the representative independence or impartiality; or
 - (ii) give rise to a conflict of interest with a party to the dispute which the representative is asked to resolve;
- d) report to a body or person independent of those subject to 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;
- e) maintain a majority of independent members on any Body or Council which appoints the person responsible for the scheme;
- f) ensure 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;
- g) ensure that the governance arrangements and fee structure of the scheme shall not have a disproportionate effect on any particular group of members;
- h) ensure that they are able to effectively contact and engage with all parties involved in the disputes to enable an effective resolution.

4. Conflict of interest procedure

- 4.1. The provider must have in place the following procedure in the event that a representative declares or is discovered to have a conflict of interest in relation to a microbusiness TPI dispute —
- a) where possible, the case handler is replaced by another case handler to handle the particular dispute;
 - b) if the representative cannot be replaced by another representative—
 - (i) the representative must refrain from conducting the QDSS procedure, and
 - (ii) the provider must, where possible, propose to the parties that they submit the dispute to another QDSS entity which is competent to deal with it;
 - c) if the dispute cannot be transferred to another QDSS entity, the provider —
 - (i) must inform the parties to the dispute of the circumstances of the conflict of interest;
 - (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;
 - (iii) can only continue to deal with the dispute if no party to the dispute objects.

5. Transparency

5.1. 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 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, [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.

5.2. Reports and external documents must be easily understood by their target audience, 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.

5.3. In order to ensure that these requirements are met, the provider must ensure that the following information is 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 such as paper copies—

- a) its contact details, including postal address, telephone number and e-mail address;
- b) its representatives, jurisdiction, and powers;
- c) the type of microbusiness disputes which it is competent to deal with, including any financial thresholds which apply;
- d) a register listing all TPI members of the scheme
- e) the procedural rules of the QDSS procedure operated by it and the grounds on which it can refuse to deal with a given dispute in accordance with section 8 of this Guidance;
- f) the languages in which its QDSS procedure can be conducted;
- g) the principles the provider applies, and the main considerations the provider takes into account, when seeking to resolve a dispute;
- h) the preliminary requirements, if any, that a party to a dispute needs to communicate before the QDSS procedure can commence;
- i) a statement as to whether or not a party to the dispute can withdraw from the ADR procedure once it has commenced;
- j) the costs, if any, to be borne by a party, including the rules, if any, on compensation awarded by the provider at the end of the ADR procedure;
- k) the average length of each QDSS procedure handled by the provider;
- l) the 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.

6. Effectiveness

6.1. 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. All representations, whether general enquiries or cases, must be dealt with on a fair and equitable basis. The scheme's dispute procedures and processes must facilitate the achievement of this objective.

6.2. 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.

- 6.3. In order to ensure that these requirements are met, the provider —
- a) 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 provider to function impartially, efficiently and appropriately;
 - b) carries out periodic quality assurance monitoring and seeks to improve it's service where necessary;
 - c) establishes a set of procedures for enforcing its decisions and the scheme's rules;
 - d) ensures that its QDSS procedure is available and easily accessible to both parties irrespective of where they are located including by electronic means and non-electronic means;
 - e) 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;
 - f) 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;
 - g) effectively signposts a consumer to alternative organisations or sources of advice if a complaint is outside its remit;
 - h) 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 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;
 - i) requires TPIs to have proper and effective internal complaint handling procedures, and where issues are identified in such procedures recommends improvements;
 - j) requires TPIs on their scheme to have proper and effective call and document record management and handling;
 - k) recommends changes to TPIs on their scheme, processes and/or policies where systemic failures are identified in order to promote improved service;
 - l) regularly collects information regarding trends in complaints, company performance, scheme performance and consumer satisfaction with the scheme, and publishes this information on its website;

- m) notifies all interested parties, including suppliers and TPIs, about any significant changes to the scheme before the end of the period of 14 days beginning with the day on which the change is made;
- n) establishes procedures to consider and resolve complaints by microbusiness consumers or TPIs 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.

6.4. Providers must ensure they have clear processes and procedures in case of a conflict of laws. Actions conducted by the QDSS provider must be in line with existing laws and any outcomes from the QDSS procedure should not remove any existing consumer rights.

7. Fairness

7.1. The provider must demonstrate that they —

- a) ensure that any deadlines for bringing a complaint to the QDSS must be reasonable and allow for flexibility taking into account the circumstances of the case and the complainant, and do not unnecessarily limit access to the scheme;
- b) allows a TPI a reasonable period of time to attempt to resolve the complaint;
- c) 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;
- d) ensure that the parties may, within a reasonable period of time, comment on the information and documents provided under paragraph (c);
- e) make 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 provider. 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;

- f) make decisions which take account of the nature of the issue and the effect it has had on the complainant. Redress must take into account 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 are appropriate to the complaint;
- g) notifies the parties of the outcome of the QDSS procedure on a durable medium such as paper copies, and gives the parties a statement of the grounds on which the outcome is based.

7.2. In relation to an QDSS procedure which aims at resolving a dispute by proposing a solution, the provider ensures that the consumer —

- a) before the QDSS procedure commences, is informed of their right to withdraw from the QDSS procedure at any stage;
- b) 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 TPI but not on the complainant;
 - (ii) that their participation in the QDSS 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;
- c) before expressing their consent to a proposed solution or amicable agreement, are allowed a reasonable period of time to reflect.

8. Grounds to refuse to deal with a dispute

8.1. We would expect that the provider would only refuse to deal with a microbusiness dispute which it is competent to deal with on one of the following grounds—

- a) prior to submitting the complaint to the provider, the consumer has not already attempted to resolve the complaint with the TPI;
- b) the dispute is frivolous or vexatious;
- c) the same dispute based on the same cause and facts is being, or has been previously, considered by another QDSS entity or by a court;
- d) the consumer has not submitted the complaint to the provider within the time period specified by the provider. Provided that such time period is not less

than 12 months from the date upon which the TPI has given notice to the consumer that the TPI 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;

- e) dealing with such a type of dispute would seriously impair the effective operation of the provider;
- f) the provider does not have sufficient expertise in the area of dispute.

8.2. The provider ensures that its policy regarding when it will refuse to deal with a dispute does not significantly impair consumers' access to its QDSS procedures.

8.3. Subject to paragraph 8.2, where a provider 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.

8.4. Where following the expiry of the period referred to in paragraph 8.3, it appears to the provider that one of the parties has sought to mislead the provider as regards to the existence or non-existence of one of the grounds for it to decline to deal with a dispute, the provider may immediately decline to deal further with the dispute.