

Louise Van Rensburg
Non-Domestic Retail Policy



By email to: NonDomesticRetailPolicy@ofgem.gov.uk

6th September 2023

Dear Louise,

Re: Non-Domestic Market Review: Findings and Policy Consultation

As a trade association representing Third-Party Intermediaries (TPIs) in the business utilities sector, we have been closely following the ongoing developments in the energy retail area regarding the treatment of non-domestic consumers by energy suppliers and TPIs.

While we fully support Ofgem's commitment to taking a more proactive stance in monitoring suppliers' compliance with existing licence conditions and seeking to extend existing consumer protection laws to encompass a broader spectrum of the business community, we do not support what effectively amounts to delegation of duty to protect consumers. It is not the role of suppliers (the vendor) to regulate TPI's (the buyer by proxy). TPI's should be directly regulated to allow for clear enforcement mechanisms and accountability, with the regulator more able to monitor and penalise those who engage in unethical or harmful practices. This current *half-way house* just confuses and fudges the issue for customers and TPIs alike whilst allowing suppliers to interfere and usurp their position.

Since Ofgem's publication of their proposals, we have observed a growing trend among certain suppliers to exert control over various aspects of a TPI's operations over and above what is necessary to meet their licence obligations. This does the customer no favours. In competitive markets, it is essential to ensure that vendors, such as energy suppliers, do not have undue influence over buyers as this could lead to anti-competitive practices and is a complete conflict of interests.

Ofgem in its current guise, does not have the resources to regulate TPI's and even where they have some powers to *take direct action against 'rogue' brokers that mislead energy to businesses*" (<https://www.ofgem.gov.uk/publications/ofgem-gains-new-powers-protect-businesses-misleading-marketing>), have failed to do so. (A FOI request in August 2023 confirmed that no action has been taken by Ofgem to address rogue TPI behaviour since powers were granted in 2013).

We believe that DESNZ and Ofgem need to give serious consideration to the direct regulation of TPI's instead of regulating through the back door – one wonders what a customer would think if they realised that the organisation selling the product was governing their elected representative!

Our responses to your consultation questions are detailed below, We have answered only those that we feel best equipped to answer. Our response is not confidential. If you do have any questions, then please let me know.

Yours sincerely

Rachael Gladwin

For and on Behalf of The Utilities Intermediaries Association



Consultation - Non-domestic market review: Findings and policy consultation

Q1. Do you agree with our proposal to agree voluntary improved pricing transparency and if so, please include comments on the particular areas you would like to see made more transparent?

Where there are significant changes to charges and/or methodology, or the introduction of new charges, then targeted messaging tailored to business type/sector and contract that explains why and the implications for the consumer are required. Suppliers should also provide on their websites, supporting information e.g. via FAQ's, webinars, blogs, guides etc. Ofgem as a trusted source, could also step forward in this area.

Suppliers should be able to unbundle pass through charges such as MOP and DC/DA from their standing charges where the customer is paying those agents directly.

Q2. Do you agree with our proposed definition of 'significantly exceeds'? Please provide your reasons.

Yes, because a deemed contract is not for the purposes of generating a high profit margin, but to cover a supplier's cost to supply and any inherent risks involved. Suppliers have a legal obligation to shareholders to create profits so they are entitled to do so, but it should not venture into the realms of extortion.

Q3. Do you agree with our proposal that suppliers should review deemed contract rates quarterly? Please provide your reasons.

We support the view that a quarterly review strikes a balance between ensuring deemed rates are reflective of charging cost elements while providing sufficient certainty of costs for businesses

Q4. Are there any potential implications for domestic customers that the proposed guidance on deemed contract rates may impact on?

Additional costs incurred by suppliers in implementing these proposals are more likely to be smeared across a supplier's domestic portfolio.

Q5. Do you have any further comments on our proposals for the deemed contract guidance?

Q6. Do you have any other comments on the other proposals in this Pricing and contract behaviour section?

Q7. Which documents, or combination of documents do you believe would provide a robust evidence base to demonstrate a genuine CoT/CoO?

A business should provide the supplier with confirmation from the landlord, solicitor or estate agent handling the move (such as a copy of the lease agreement or mortgage completion document), and include where possible, a copy of their business rates statement, and if applicable any licence agreement. However, where an official document is provided; as stated above, no other proof should be required that delays a CoT.

Q8. Are Micro Business Consumers aware they can contact Citizens Advice for support? Do we need to introduce a rule requiring suppliers to signpost them more specifically?

Cannot say whether MBC are aware of support available elsewhere, but we would support this requirement, nevertheless.

Q9. Is an obligation requiring efficient and timely complaints handling needed? If so what are the costs and benefits associated with introducing this?

Costs: We cannot speak on behalf of suppliers with regards to their costs but feedback from our members has been that clients have been financially impacted due to inefficient and tardy response times from suppliers. Under current procedures, suppliers have eight weeks or less if they choose to issue a letter of deadlock to resolve an MBC complaint. That is simply too long for many businesses where the nature of the complaint elicits financial stress or prevents their business from operating. Any future obligation for complaints handling must review this timeframe, and in the case of CoT complaint handling we feel that specific timelines should be enshrined in the SLC's.

Benefits: Placing a supply licence obligation requiring efficient and timely complaints handling would ensure consistency across all suppliers. The number of complaints escalated to the Energy Ombudsman are likely to be reduced (which if Ofgem are successful in extending protections to all non-domestic customers, would be necessary). It could also reduce the level of detriment experienced by the consumer and help foster good supplier/customer relations (crucial if Ofgem and DESNZ are to realise their ambition for greater consumer engagement in the retail energy market).

Q10. Is an obligation requiring recording, handling and processing of complaints in accordance with consistent rules needed? If so, what are the costs and benefits associated with introducing this?

The existing Standards of Conduct if effectively monitored by Ofgem would negate the need for further obligations on suppliers but our view would be conditional upon Ofgem extending existing MBC protections to cover non-domestic.

Q11. Do you have any views on what (if any) threshold should apply on business size for complaints handling requirements, or views on which requirements set out in the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 should not be expanded to apply to all non-domestic customers?

We have long argued that current protections do not go far enough and feel that Ofgem's attempts to segment the market, particularly around protections for MBC and SME has caused a lot of confusion. We feel that it would be simpler and fairer to adopt the principle that consumer protection is for everyone and all those who deal with consumers in whatever capacity should be adhering to the same overarching standards. Too often in trying to determine a threshold (as is certainly the case for MBC) to determine who requires help and who doesn't, means that some businesses fall through the gaps. If you must draw a line in the sand in terms of sectoral support then don't set it at the MBC threshold but apply at top end of SME. I & C business generally have the resources, expertise and influence to address any issues for themselves.

Q12. We are seeking stakeholder views on our suggested proposals to government around increasing access to the Energy Ombudsman. Should there be a threshold on who can access the Energy Ombudsman? If so, where should this be set?

See our response to Q11.

Q13. We are seeking stakeholder views on the proposed changes to the rules requiring suppliers work with TPIs who are members of a redress scheme. Additionally, what are your views on the costs and benefits associated with the different proposals?

This is regulation through the backdoor and is a poor substitute for direct regulation of TPI's which Industry, has been calling for for years.

The decision to accept or reject ADR schemes should not be in the gift of the energy supplier. ADR schemes should be accredited by an independent source and should be appropriate to the target

market. In what other industry would a vendor have undue influence or control over a buyer or their representative, especially where there is a very apparent conflict of interest?

Q14. What are views from stakeholders on how long it would take to set up and register for a wider TPI ADR scheme, one that goes beyond Micro Business Consumers?

Q15. What are your views on our proposal to expand SLC 0A (non-domestic Standards of Conduct)? Do you have any views on which consumers they should or should not apply to? Please provide any views on costs and benefits of making this change.

See response to Q11

Q16. Do you have any further comments on the proposals in this section on Competition in the market and customer complaints?

Q17. What are the views of Distribution Network Operators (DNOs), Independent Distribution Network Operators (IDNOs), Gas Distribution Networks (GDNs), and Independent Gas Transporters (IGTs) on the potential issues of targeting support to vulnerable end users supplied through non-domestic contracts?

Q18. What changes to the Maximum Resale Price direction would improve its effectiveness and what are the potential downsides to any changes?

Q19. What are the costs and benefits associated with the proposal to expand TPI commissions disclosures to all non-domestic customers? How long would it take suppliers to implement this policy?

To a certain extent this is already happening, and suppliers have been further incentivised by the emergence of the PPI model for energy claims companies to disclose TPI commissions.

The downside is the fact that commission disclosure can also be used by the supplier as a means to undermine the efficacy of the TPI.

Q20. Are there views on how commissions disclosure is best presented to be understood by consumers?

Current requirements in our view are adequate. Suppliers can exercise their right to decide if they wish to present consumers with more information, but that shouldn't be mandated.

Q21. Should we expand commissions disclosure to all non-domestic customers or a sub-set of customers, and if a sub-set do you have views on how to define this?

We are not in favour of creating subsets because this causes confusion, creates complexity and incurs additional costs.

Q22. Do you have any further comments on the proposals in this section on focussed consumer support