

Emailed to: [NonDomesticRetailPolicy@ofgem.gov.uk](mailto:NonDomesticRetailPolicy@ofgem.gov.uk)

6 September 2023

## **Ofgem Non-Domestic Market Review: Policy Consultation**

Thank you for the opportunity to comment on the Ofgem Non-Domestic Market Review Policy Consultation and welcome this work to help ensure that non-domestic customers experience better outcomes.

### Pricing and contract behaviour:

With **deemed tariffs**, we think that using the measure of whether the cost is much higher and significantly exceeds an equivalent contract rate, without any clear justification, may still be open to interpretation. We think it could be more useful to define the fairness of deemed rates based on the real (so long as efficient) costs that suppliers actually face in serving these consumers.

We've previously had some concerns about the difference between some supplier's deemed rates and their contract rates, but it's then difficult to establish whether the difference in prices is reasonable as consideration of the deemed rate requires an assessment of a supplier's costs, which goes over and above the consideration of an individual dispute. We therefore welcome any clarification on expectations in this area.

We also think that **price increases on fixed term contracts** remain an issue in the non-domestic sector. We have seen some non-domestic suppliers increase prices due to changes in wholesale prices even though customers have signed up to a "fixed" contract. Such practice is not permitted in domestic contracts, and we question whether non-domestic customers should enjoy the same protection. Cost-of-living pressures, rising energy prices in general and increase in inflation have impacted some non-domestic customers.

We support the development of documentation and guidelines to ensure that the **Change of Tenancy (CoT)** process works smoothly. We have seen examples of cases where suppliers have made it difficult for a new customer to identify that they have taken over the responsibility for a property; which has meant they have been unable to switch to a preferred supplier and in some cases, they have been pursued for another customer's debt. Some suppliers have a list of documentation which they insist on a business providing but sometimes that documentation does not exist. We agree that it is reasonable for suppliers to establish a CoT has genuinely taken place and also think that suppliers need to be flexible to the circumstances. We would welcome the opportunity to be involved in those discussions on what that documentation looks like, and we will follow this up as requested by email to [recco\\_strategy@retailenergycode.co.uk](mailto:recco_strategy@retailenergycode.co.uk)

### Competition in the market and customer service:

We support the widening of the **Standards of Conduct**, and it makes sense to include a requirement for **signposting to Citizens Advice** as microbusinesses are entitled to the same support as domestic consumers.

### Complaints handling and resolution:

We support the proposals to improve complaint handling and resolution of complaints from non-domestic customers. However, we do not think expanding complaint handling requirements on suppliers will be sufficient on its own. This is likely to lead to a lot of variation and will be difficult and time consuming to measure.

We support expanding access to independent dispute resolution for non-domestic customers as well. This will not only improve dispute resolution but also help identify issues in the sector that the suppliers can work on to prevent complaints happening in the first place. This in turn should raise standards of complaint handling and increase the trust and confidence that non-domestic customers have in their energy supplier and the energy sector more generally.

Our experience of operating the Energy Ombudsman is that the current thresholds can make it difficult for non-domestic customers to determine if they are able to bring their dispute to our scheme. Some non-domestic customers will fall just outside the current threshold, for instance if they have eleven employees. These non-domestic customers are likely to have the same need for dispute resolution as a non-domestic customer that falls within the threshold. However, we do recognise that some, potentially larger non-domestic customers may be better equipped to pursue action through the courts and indeed they may prefer to use them due to:

- the complexity of the contract,
- large financial amounts,
- the dispute resolution process has been set out to make use of the courts in the contract.

We can see valid reasons for extending the remit of the Energy Ombudsman to non-domestic customers and our proposal would be to extend this to ALL non-domestic customers. We believe that any non-domestic customer should be able to use the Energy Ombudsman if they want to do so. Non-domestic customers would still be free to choose to pursue their complaint through the courts. Moreover, within our terms of reference we are already able to refer cases to the courts, if we feel it is more appropriate for a particular case and it is right for the parties involved. As the policy consultation highlights, however, in many cases the time it takes to go to court can be lengthy, and the costs involved can be considerable for all parties.

As also highlighted in the consultation, there are precedents for an extension in other sectors, and our discussions with small and medium sized business representatives have suggested that a remit extension would be welcomed.

As the Energy Ombudsman, we would recommend using our experience and capability to work with the energy sector, business groups and other stakeholders, to agree the principles of the scheme, to include financial limits for remedies and the type of contracts covered etc.

The policy consultation also explores extending the remit of dispute resolution in the energy broker market for non-domestic consumers. We operate the Energy Broker ADR scheme for microbusiness complaints. The scheme went live in December 2022 and is running well. We think it is sensible to have consistency in both redress schemes and would support providing access to both schemes to

non-domestic customers in a consistent way. Again, we would support providing access to all non-domestic customers.

We are confident in our ability to scale-up our service and have successfully introduced the energy broker scheme, working with Ofgem, energy suppliers and the energy broker sector. We know that the nature of disputes may be different for larger businesses so we would work closely with the Department for Energy Security and Net Zero, Ofgem, the non-domestic energy sector, and energy brokers to build our expertise.

We also support Ofgem's desire for better standards in the energy broker market. From our engagement in the energy broker market, we know that many operating in the sector also want to improve standards and want the sector to build a better reputation. We therefore support Ofgem's call for looking at regulation of Third Party Intermediaries (TPIs).

Please do not hesitate to contact us if you would like further information regarding our response. Our response is not confidential.

**For more information regarding this consultation please contact:**

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