



BBPA Response to the Ofgem Non-Domestic Market Review Policy Consultation

4th September 2023

Introduction

The British Beer & Pub Association is the leading trade body for brewers and pubs, representing companies across the UK, which between them own around 20,000 pubs and brew over 90 percent of beer sold in the UK. Member companies have many different ownership structures, including UK PLCs, privately-owned companies, independent family-owned brewers and UK divisions of international brewers.

The brewing and pub industry in the UK makes a major contribution to the local and national economy. The sector generates £23 billion of economic value and supports 900,000 jobs. 85% of pubs in the UK are run as SMEs.

Executive Summary

BBPA is encouraged by the findings of the non-domestic review and Ofgem's recommendations and proposals which include improving the transparency of billing and pricing, strengthening of complaint handling and a broadening of expected standards of conduct for energy suppliers, including in relation to the change of tenancy process.

We are pleased to see recommendations to Government to extend protections that currently apply only to micro businesses to all non-domestic businesses. We are also fully supportive of those recommendations also made to improve transparency of broker commissions and new requirements for suppliers and TPI's to engage with an alternative dispute resolution scheme.

Energy costs continue to pose a serious threat to the viability and survival of many pub businesses. Whilst wholesale energy prices have fallen considerably since their highest rates during 2022, we remain concerned that for many pub businesses energy costs are still at excessive levels when compared with pre-pandemic energy costs. A recent joint industry survey¹ that we have undertaken with other hospitality sector representatives reported that 15% of hospitality businesses remain at risk of failure within the next 12 months. Of these businesses, 96% report that energy prices are a significant contributor to this failure risk.

We need Ofgem to work quickly, including holding those suppliers to account who have breached licencing conditions or failed in their expected standards of conduct, to ensure that the proposals and recommendations arising from the review translate to savings that will further alleviate the ongoing economic pressure on pub businesses as well as to support sectorial recovery.

Data from the Insolvency Service² shows that for the first half of 2023 pub insolvencies were at their highest level for over a decade. Whilst levels of insolvencies fell during Covid, due to Government support, there has been a steady increase since quarter 3 of 2022 due to increasing energy pricing and other cost inflation.

¹ CGA Insight Quarterly Report

² [Pub closures hit highest quarterly figure in a decade - Morning Advertiser](#)

We believe that it is vital that suppliers are held accountable for their part in the energy crisis and the impact that this has had on pub businesses and the wider hospitality sector. Whilst we recognise the advantages of working voluntarily on measures to address poor behaviour, Ofgem must ensure that where suppliers do not adequately engage with this process, that there are sufficient and more binding mechanisms that can be used to ensure standards of conduct and behavioural expectations are met.

It is our belief that many of the issues our members experienced during the pandemic and subsequent energy crisis have been exacerbated by the poor behaviours of non-domestic energy providers. This includes an artificial level of risk that has been unfairly assigned to hospitality businesses and which has been used to inflate energy costs and reduce competition in the market. We are fully supportive of measures which strengthen Ofgem's powers to regulate the non-domestic market and to address these behaviours and the imbalance that currently serves to protect the energy providers over the businesses they supply.

We hope that the answers provided to the consultation questions below will help to further support and refine policy development and proposals in relation to regulating non-domestic energy suppliers and creating a fairer market in which all businesses can thrive.

Consultation Questions:

The following are our full responses to questions posed within the Ofgem non-domestic review policy consultation:

Section 1 - Pricing & Contract Behaviour

- 1. 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?**

The BBPA fully supports comments in the non-domestic energy market review about the significant variability of contracts offered to non-domestic customers. This mirrors the experiences that have been reported to us by our members, however we would assume that there will also be elements that are standardised i.e. calculation of unit rates, across all suppliers and which should also be captured as a minimum as part of proposals to improve pricing transparency.

We fully support proposals to introduce greater transparency in relation to both contract pricing and billing and which should extend throughout the entire process of agreeing a new energy provider from the initial quote, contract, and as part of the customer invoice. Clear and transparent communication of pricing, including any charges passed on by third parties, is required in relation to both the commodity and non-commodity elements of customer bills, including details of how these elements of the bill are constructed and with clear reasoning for any changes or fluctuations. Our members have struggled with understanding those elements that are built into standing charges and as part of this proposal we would wish suppliers to be required to include more comprehensive information to explain the make-up of standing charges but also reasoning for any price fluctuations and variation and which has also been reported regularly by our members.

We would expect that increased transparency must extend equally to supplier websites as well as to customer bills. In this case, whereas the bill would include all information relevant to the customer, the website may be used to convey more comprehensive information in relation to

pricing i.e. for standing charges the website may feature all elements that could be used to generate standing charges whereas the bill would feature and itemise only those that are relevant to the customer.

Whilst we understand the reason for Ofgem's proposals to address pricing transparency through voluntary agreements, it will also be necessary to ensure that suppliers are clear of Ofgem's expectations in this regard, and which should be comprehensive and clearly identify minimum standards as well as areas where Ofgem would expect consistency across all energy suppliers in relation to pricing. However, we would also be keen to understand how Ofgem propose to encourage suppliers to voluntarily agree to such measures and whether there will be recourse to a mandatory requirement should suppliers fail to embrace a voluntary approach or to comply with such a voluntary agreement going forward.

Information in relation to contract pricing should be communicated clearly and in plain, non-technical language to ensure that customers are fully aware of all elements of a bill and in order that they can quickly challenge elements where necessary using the appropriate mechanism for their supplier. Where such challenges are lodged, we would expect suppliers to be held to rigorous, minimum standards in terms of response times to avoid situations where customers are waiting for weeks to hear from their supplier once submitting a complaint.

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

We support the need to find a way to ensure that deemed rates are set fairly and the definition that has been included in the review goes some way to achieving this. However, in our view the difference between a 'deemed rate' and an 'equivalent contracted rate' remains somewhat subjective and open to interpretation. To drive best practice, we would suggest Ofgem agree a more specific minimum threshold to help clarify the difference between the two rates. As for unit rates, we would assume that there will be a standard formula for calculating deemed rates. We would suggest that this basic formula should be published as a minimum and which would then help clarify a baseline from which 'significantly exceeds' but also 'unduly onerous' can then be considered more clearly.

In previous submissions to Ofgem we have challenged the way that deemed rates are applied, we remain concerned over the use of this mechanism in relation to the experiences of our members throughout the pandemic and the subsequent energy crisis. We have seen that deemed rates have been the cause of significant additional, financial pressure on non-domestic customers due to both the lack of suppliers willing to provide contracts and the length of time taken for CoTs to take effect.

We would like to see Ofgem implement more stringent conditions on the use of deemed rates in relation to customer contracts and particularly to ensure that this does not serve to artificially inflate supplier perceptions of risk in relation to any given non-domestic sector. In addition to this, we believe that there is a need to include clear definitions in relation to 'deemed' and 'out of contract' rates including where these would be used in relation to non-domestic energy contracts.

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

We consider it vital that deemed rates are set fairly in relation to the wholesale cost of energy. On this basis and during periods of ongoing fluctuation and volatility, suppliers will need to review these rates to ensure they are applied proportionately.

The non-domestic review notes that suppliers have different approaches to the frequency of review of deemed rates and therefore recommends introducing more consistency to this process via specified periods of review. Our preference in this regard would be the quarterly review of deemed rates under 'normal' circumstances and then monthly review during periods of volatility.

As above, we believe that it is the irresponsible application of deemed rate contracts that has placed a significant and unnecessary additional pressure on pub businesses. This, in addition to other poor behaviours by energy suppliers, has culminated in significant increases in operational costs impacting on business viability as well as artificially inflating perceptions of risk that have been unfairly applied by suppliers to the hospitality sector. The implementation of recommendations following the non-domestic review should also seek to establish a more equitable balance of power between the energy providers and businesses and which currently heavily favours the energy suppliers.

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

The principal implication is in relation to domestic customers who receive their energy via a non-domestic contract. In instances where a licensee lives on-site, energy for domestic accommodation is supplied via the energy contracted to the pub business. In this instance domestic customers are broadly not subject to the same protections that are extended to energy contracted through a domestic energy supplier.

We would wish Ofgem to ensure that going forward there is some mechanism to address this so that where there is domestic energy use on a pub site, that customers can rely on equivalent protections available to other, domestic customers.

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

We would like to see Ofgem implement more stringent conditions on the use of deemed rates in relation to customer contracts and particularly to ensure that this does not serve to artificially inflate supplier perceptions of risk in relation to any given non-domestic sector. In addition to this, we believe that there is a need to include clear definitions and guidance in relation to 'deemed' and 'out of contract' rates, including where these are applied in relation to non-domestic energy contracts.

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

The BBPA believes strongly that many of the issues experienced by our members during the pandemic and subsequent energy crisis, which we have previously, comprehensively reported

on to Ofgem and Government, have been exacerbated by the poor behaviours of non-domestic energy providers.

The perception of risk that non-domestic energy suppliers have arbitrarily applied to the hospitality sector, including pub businesses, we believe has been worsened by supplier behaviours in relation to contracts and pricing. This has resulted most recently in hospitality businesses not being offered the same mitigations as other non-domestic businesses in relation to contracts signed where wholesale prices were at their highest.

We believe that this is inherently unfair and anti-competitive behaviour which unfairly penalises businesses, and which energy suppliers have used to translate what might be considered normal levels of risk expected of individual, non-domestic businesses to an entire sector. We would urge Ofgem to include within this review and its associated recommendations, protections to ensure that suppliers are not able to single out specific sectors in this way in the future, particularly where supplier behaviour is a contributing factor.

Section 2 - Competition in the Market and Customer Service

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

Based on feedback from our members we believe that requests for documentation in relation to CoT/CoO from suppliers should be restricted to those that are available on or around the date of the change. Some suppliers ask for documents that will not be available at the time of change or which appear to be unrelated to the relevant change i.e. business rates / public liability insurance / food hygiene certificates etc and which ultimately causes further unnecessary delays.

Documents that we believe would provide a robust evidence base to demonstrate a genuine CoT/CoO are:

Ingoing licensee

- *Copy of New Lease Agreement – countersigned by all parties.*
- *Landlord Details (although this will also be included on lease).*
- *Meter Pictures*
- *2 forms of Identification, one from Section A and one from Section B:*

Section A	Section B (Residence)
<i>Driving License</i>	<i>Water bill</i>
<i>Passport</i>	<i>Utility bill</i>
	<i>Council letter</i>
	<i>Bank statement</i>

Landlord / closed site

- *Proof of ownership*
- *Letter on headed paper from the landlord detailing the change (this will also provide all relevant contact information for the landlord).*
- *Surrender of lease*
- *Meter pictures*

8. 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?

We are concerned that there is not sufficient knowledge or awareness of this option for support and as it is our understanding that the existing complaints procedure does not serve those businesses not considered to be micro business and which includes many pub businesses. In our members experiences, energy suppliers do not treat non micro business complaints fairly. As for domestic complaints, micro business complaints are taken far more seriously as there are more robust controls & penalties in place and which are entirely absent for non-micro businesses.

Our belief is that the Ombudsman service should be the default route to challenge supplier behaviour, however we would also support proposals that require non-domestic energy suppliers to ensure that all businesses who have the right to an independent service for advice and support, understand how and where this can be found. In the same way that suppliers should provide information to enable customers to understand where they can submit a complaint about the service they have received, we believe that customers should also be made aware of their right to contact Citizens Advice.

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

BBPA supports the need for an efficient and timely process for handling of complaints. Suppliers should be held to a minimum standard of expectation in relation to customer complaints, including a defined period by which customers should expect a response. Evidence from members that we have already shared with Ofgem indicates that there is inconsistency experienced by customers both within and across suppliers in relation to complaint submission and handling as well as response. Particularly in instances where there are a reduced number of suppliers willing to support the hospitality sector there is an even greater emphasis on the need to resolve issues with an existing supplier where this may be possible.

10. 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?

Yes. As noted above, the experiences of our members that we have shared with Ofgem in relation to supplier complaints processes include inconsistency within and across energy suppliers in relation to complaint submission and handling as well as response. BBPA is supportive of proposals to introduce supplier obligations that establish a more consistent approach to the complaints process, including a defined period by which customers should expect a response from their supplier and which also enables Ofgem to monitor supplier performance and to take any required compliance action where this may be necessary.

11. 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?

As we have noted above, complaints from micro business are taken far more seriously than for other businesses as there are more robust controls & penalties in place and which are entirely absent for non-micro businesses.

We are therefore supportive of proposals to expand complaints handling for non-domestic customers beyond the current scope for only micro-businesses. We would also support the view expressed within the non-domestic review that this should apply comprehensively to all businesses, particularly as there is difficulty in capturing a universal definition of ‘large customers’.

In the case of pub operations, the role of a multi-site operator is diverse and influenced as much by the pub model that they will operate i.e., managed, vs leased vs tenanted and which all carry different levels of responsibility for both the licensee and operator. In addition, whilst it may be true that larger companies are more likely to experience complex issues of scale that are served better through other legal routes i.e., courts. Similarly, larger pub operators can also find themselves having to raise large numbers of similar or related issues on behalf of individual sites within their operation. Raising such issues collectively may also be a more efficient approach with regards to the Ombudsman as opposed to these same issues being raised directly by many individual businesses.

Therefore, and to ensure that non-domestic businesses of any size and structure are captured by an Alternative Dispute Resolution scheme, we would support the proposal that this is open to all business rather than establish a threshold that would exclude some larger non-domestic customers.

12. 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?

We do not believe that there should be a threshold set for access to the Energy Ombudsman. Setting such a threshold will be complex and risks leaving some businesses unable to access protections that would be relevant to their operation. Access to the Ombudsman should be open to all non-domestic customers irrespective of business size. The Ombudsman will also need to have sufficient resource to deal with this wider remit.

13. 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?

BBPA would strongly support a proposal to require new obligations on suppliers to work only with TPIs who are part of a formal redress scheme. Issues with contracts signed through TPIs are one of those concerns that our members have raised with us both with respect of the examples included in the non-domestic review i.e., mis-selling and high pressure sales tactics, as well as a general lack of transparency over commission fees and how these are reflected on customer bills.

We believe that a redress scheme will be of significant benefit to non-domestic businesses. As for the above question related to complaint handling and access to the Ombudsman service, due to the complexity of defining a ‘large business’ we believe that these proposals should also apply to all non-domestic customers, irrespective of size.

14. 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?

BBPA does not have sufficient information to answer this question. However, we would emphasise the need for swift action in relation to such proposals. Whilst we acknowledge the fall in wholesale prices and the impact of this on contemporary contract rates, we are conscious that many of our members are still paying excessive rates for energy with little or no protection because of ongoing, poor supplier behaviour.

15. 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.

As Ofgem has noted in the non-domestic review, poor supplier behaviour impacts on non-domestic customers regardless of size. We support the proposal to extend the Ofgem Standard Licence Condition on expected supplier behaviour beyond microbusinesses.

We believe that standards of conduct should be consistently applied across the non-domestic market with equal provision for businesses of all size to report on and seek recourse where such standards are not being met.

As noted above, poor behaviours by energy suppliers, has directly impact on our members by directly driving up operational costs that further impact on business viability. Such behaviour has further artificially inflated perceptions of risk that have then been unfairly applied by suppliers to the hospitality sector and we are keen to see Ofgem take action that ensures that energy suppliers cannot penalise individual sectors in the same way in the future.

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

None

Section 3 - Some Customer Groups Need Focused Support

17. 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?

We do not believe that this question is relevant to the BBPA

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

We do not believe that this question is relevant to the BBPA

19. 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?

A lack of transparency in the case of TPI commissions applied to customer bills has been raised with us by our members. Both in terms of inflating the cost of customer bills but also with respect of understanding what costs individual contracts are based on and how this relates to comparing quotes across different suppliers.

BBPA would strongly support proposals to extend TPI commission disclosures to all non-domestic businesses. Particularly in the case of hospitality businesses, the lack of suppliers willing to service the sector means that understanding the basis on which contracts are drawn up is vital to ensure they are competitive and that customers are not being overcharged.

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

The method of disclosure of commissions to ensure customer clarity is complex and may be dictated by the level of service the TPI provides. If a TPI is used purely to source a supply contract, then the disclosure will likely be as a formula which includes the base commission added to a unit rate. This can be easily shown as a formula and as a total cost. However, potential impacts arising from linking a commission to energy usage should also be considered i.e., reduced broker incentive to support energy reduction initiatives that will form part of the environmental and/or net-zero ambitions for a given business. Where the TPI provides additional services, this is then likely to result in a higher commission and which can then be harder to communicate to the customer in a consistent way. In this instance it may be clearer to establish a set fee per site which does not deviate based on usage.

21. 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 would support Ofgem's preference that commission disclosures should be expanded to all non-domestic customers rather than a sub-set.

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

None