

4<sup>th</sup> September 2023

Dear Ofgem,

We provide the following responses to your review:

Ofgem continues to fail end users by focusing on low-impact areas involving brokers, and not being forceful enough in areas affecting suppliers.

### **DEEMED RATES**

Ofgem remains far too lax regarding clear action on deemed rates. Ofgem's own report suggests that 10% of non-domestic customers are on deemed rates. Assuming a typical deemed rate is 100% more expensive than a normal one, this could add over £8,000 per annum for a typical non-domestic SME customer for power.

With an estimated 100,000 impacted customers, this equates to £850 million in excessive costs annually. Yet, Ofgem chooses to focus more on smaller direct impacts on brokers that are unquantified and poorly defined in terms of economic value.

### **ABUSE BY BROKERS**

Regarding abuse by brokers (3.21), we ask that Ofgem substantiate its allegations and provide the number of reported instances. Ofgem needs to consider the proportionality of issues/complaints against the total number of positive outcomes brokers facilitate. How many instances have been reported and over what timescale?

### **ADR**

ADR – the scheme is unproven, costly, and Ofgem has not properly calculated either a theory of harm to introduce it, nor any economic case for its ongoing activity. Ofgem infers that one reason to introduce ADR was due to the time and cost it takes to seek redress in court (3.28). The UK government publishes statistics on the number of cases going to trial, and it is around 6%. It is misleading to infer that it takes 51.2 weeks to resolve matters through a court – 94% settle before then.

ADR does not replace customers' existing legal entitlement to pursue parties or brokers for poor service, mis-selling, or any other allegation of poor behaviour. ADR simply adds cost to an already established legal framework. Let's review the costs.

At 3.36, Ofgem states that AER is a "free service to customers." It is not. The costs of ADR and any compensation awards are passed directly back to end customers via suppliers and brokers, increasing their fees to cover the costs.

At 3.53, Ofgem states that ADR is "helping customers achieve good outcomes." How can Ofgem support such a statement? The correct approach would be to review the scheme after it matures (we would suggest that 285 cases and 7 months of running are not mature data). Almost one in three cases is proven incorrect. To date, this would indicate a wasted cost of £500 per claim (fees plus broker time and cost) – over £40,000 in total. What have been the awards from the remaining 202 cases?

Ofgem needs to calculate the wasted costs of running the scheme (£40,000) plus the baseline fees for the remaining 71% that were successful and compare this against a likely outcome without ADR.

This would determine whether the scheme is economically sound or simply costly red tape to manage a handful of customers who may not seek redress otherwise.

Ofgem created a solution for a problem that wasn't and still isn't properly quantified. Now Ofgem wants to add a scheme where almost a third of cases fail, and it has been running for 6 months, into a wider environment!

Finally, how does Ofgem know that the 71% of decisions in customer favour are correct decisions? Surely Ofgem should seek to have the Ombudsman's decisions independently verified for accuracy first? We believe that many of the ADR decisions being made are incorrect.

## **FEE TRANSPARENCY**

Ofgem introduced fee transparency for micro businesses in October 2022. Ofgem states at 4.46 that this "has been beneficial to customers." Can Ofgem substantiate this opinion with facts?

A broker's responsibility when acting as an agent to disclose fees is already covered within the legislation. The Ofgem requirement to disclose adds nothing new to this existing legislation.

There are many instances where a broker may choose not to act as an agent or with fiduciary duties. In such circumstances, fee disclosure is not required by law. Yet Ofgem seeks to create an environment that sets the bar above legal responsibility. Ofgem needs to outline the economic harm caused by the lack of widening existing rules – not simply say (again) that it's beneficial or that it's "received reports."

Forcing brokers to disclose fees could create unintended consequences – such as an environment where suppliers have an improved commercial opportunity to win customers (by not having to disclose their own profit margins on a contract). We believe such an environment could be anti-competitive, and Ofgem's fee disclosure risks creating distortion in favour of its members.

What does fee disclosure actually achieve? Ofgem has failed to explain why fee disclosure will benefit customers. If it's to drive switching rates or seeking the cheapest broker, customers could seek quotes from a broker (who does the work) and then go direct. This creates a short-term bubble of benefit to customers. But as brokers dwindle, so do switching rates, which leads to higher deemed rate levels and overall costs.

In other markets (telecoms), wholesale prices (base) cannot be cheaper than the price (base) offered by TPIs/brokers. This creates stability.

In summary, Ofgem needs to quantify the harm, quantify the cost of the proposed change, and respond on whether there could be any unintended consequences.

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