

**Care England consultation response to the non-domestic market review: Findings and Policy consultation. Sept 2023.**

Care England, a registered charity, is the largest and most diverse representative body for independent adult social care providers in England. Our members run and manage over 3,000 care services, amongst them single care homes, small local groups, national providers, and not-for-profit voluntary organisations, as well as private associations. They provide over 120,000 beds and a variety of services for older people, and working-age adults with long term conditions, learning disabilities and mental health needs.

**Consultation Questions Response**

**2. Pricing and contract Behaviour**

Questions
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?
Q2. Do you agree with our proposed definition of 'significantly exceeds'? Please provide your reasons.
Q3. Do you agree with our proposal that suppliers should review deemed contract rates quarterly? Please provide your reasons.
Q4. Are there any potential implications for domestic customers that the proposed guidance on deemed contract rates may impact on?
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?

Q1. Care England encourages transparency in respect of pricing. It is not just micro business that do not have a detailed understanding of the energy market. Care Providers of all sizes procure energy typically every 2 to 3 years and thus do not have a detailed knowledge of the energy market or sector. They often use the advice and guidance of brokers and consultants (TPIs) who offer varying information. As these are largely unregulated, the advice and guidance we have seen offered can be inaccurate and costly to care providers. Transparency is therefore critical; however a voluntary aspect will see a dilution and masking of data and information given the lack of a specified approach or methodology and will not solve many of the issues we see and face today with TPI behaviour or address the conflict of interest that different commissions paid have on TPI behaviour.

Q2. Care England believes agrees with the definition of 'significantly exceeds'. The key point being that it cannot be reasonably justified. There may be guidance required on what can and cannot be justified. The Officious bi-stander rule is a helpful principle that a person without detailed knowledge of the subject, should be able to understand and rationalise any justification.

Q3. The principle of reviewing the rate quarterly as opposed to the methodology is sensible. The key point is that deemed rates should be reviewed regularly enough to ensure that prices are appropriate and that the revenue suppliers are receiving from their deemed contract customers is not unduly onerous as stated in clause A1.41. A quarterly review would appear to therefore be a

sensible, and the most rational approach although we would want to see deemed rates as a last resort where a contracted rate is considered more appropriate financially.

Q4. Care England represent care providers who may provide energy to customers who also may live in a shared facility and whose landlord may charge them directly for energy consumed. We would want to see transparency which enables landlords etc. to be able to clearly explain how any charges billed to their residents/customers has been calculated.

Q4. No further comments

Q5. No further comments

### 3. Competition in the market and customer service

#### Questions

- Q7. Which documents, or combination of documents do you believe would provide a robust evidence base to demonstrate a genuine CoT/CoO?
- 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?
- Q9. Is an obligation requiring efficient and timely complaints handling needed? If so what are the costs and benefits associated with introducing this?
- 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?
- 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?
- 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?
- 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?
- 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.
- Q16. Do you have any further comments on the proposals in this section on Competition in the market and customer complaints?

Q7. Care England do not have the technical knowledge to answer this question.

Q8. Care England members are largely unaware that the CAB is available to them for support and agrees that they should be signposted accordingly and would be challenged to ascertain if they qualified for this support.

Q9. Care England absolutely believes that a timely complaints handling process is required. The care sector operates on exactly that process, as do local authorities, the NHS, and the Ombudsman. It seems fair that this should flow through to suppliers and TPIs to reduce the impact of business interruption and excessive charges being incurred due to

delays, and to ensure that situations like excessive deemed rates, and/or delays to contract processing do not cause excessive and unnecessary costs to customers.

Q10. As per Q9. If themes and processing times are recorded, common issues, occurrences or principles can be established, measured, and improved. It removes the issue of anecdotal comments trying to drive change.

Q11. We have not reviewed the Consumer Complaint Handling Standards but do not agree on different rules for different size businesses. Care homes are not experts in energy procurement generally, bar a very small exception, they should be treated fairly by all TPis and energy suppliers on the assumption that they are not energy experts. The size of a business should not dictate how a complaint is handled.

Q12. Care England believes that all care businesses should have access to the Energy Ombudsman and that there should be no threshold on which organisations can or cannot access their support.

Q13. Care England believe that the same privileges for micro businesses regarding redress are expanded to all business sizes in respect of ADR. ADR is a cost-efficient process for managing disputes and should be available as a first step for all customers regardless of size. A robust, measured and reported complaints process with escalation to redress via ADR prior to legal action is the fairest way to resolve disputes without incurring excessive legal court costs.

Q14. Care England do not have the technical knowledge to answer this question.

Q15. Care England would support expanding the Standards of Conduct for micro businesses to all sizes of business.

Q16. No further comments

#### **4. Some customer groups need focused support**

##### **Questions**

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?

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

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?

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

Q17. Care England believe that care providers or vulnerable organisations should be able to easily access PSRs and register their organisations as vulnerable. This is currently very challenging and needs to be managed on a regional basis which can be complicated if a care business spans multiple regions. A national register would be far easier to access and can be promoted consistently. Some care services differ and can be either large multi sites or very small properties in a domestic location and even a converted property with a domestic meter. It is currently not possible to differentiate businesses who carer for different types

of residents in different locations or who reside in their local communities in a converted domestic property which may be owned by a large group or a small independent provider. A central database for all businesses which can identify the type of business i.e., a care services, should be implemented.

Q18. Care England do not have the technical knowledge to answer this question.

Q19. Care England believe it is critical that TPI commission disclosures are expanded for all business sizes. Undisclosed or unclear commissions are a significant issue for non-domestic customers. We have seen evidence of very significant amounts charged, disguised, and misrepresented by some TPIs. A set standard for how commissions are evidenced would help the sector significantly, as would a cap on commissions which can be earned to avoid unscrupulous TPIs taking advantage of organisations who are not experts in energy contracting or procurement.

Q20. Care England would ask for a clear and consistent methodology on how commissions of TPIs are presented to ensure a non-domestic customer can compare TPI costs with another TPI accordingly and understand the commission levels when changing between TPIs. TPIs should be forced to disclose upfront who they will be approaching for energy renewals or quotes and be forced to disclose all responses to customers to avoid a commission conflict of interest which may see some TPIs not put forward certain quotes for consideration. Despite the commission being the same level, how and when it is paid can cause a conflict of interest as it will impact cashflow or how and TPI employee may be incentivised.

Q21 Care England believe that any care provider non-domestic customer should be able to see the commission charged regardless of size. We do not feel it appropriate to discriminate between organisation size or type of business. The same rules should apply to all businesses regardless of their sector, size, or type. TPIs need to act consistently regardless in respect of the commissions earned. Once we start to see consistency, we should start to see the eradication of the more unscrupulous TPIs unable to take advantage of vulnerable or less informed customers.

Q22. No further comments

**Consultation response submitted by:**  
**Richard Ayres – Social Care Advisor**  
**Care England**

**05 September 2023**

**General Comments to explain why certain protections are necessary for care providers of all sizes:**

- Commission should be stated in rate per kWh and the total expected to be earned over the length of contracts, on all quotes and offers from energy suppliers.
- TPI's should be regulated, and individuals registered/licensed to act as a broker, after passing an examination of the brokers knowledge and ability.
- All quotes should have the annual cost as well as the standing charge, rate per kWh and any other costs.

- [REDACTED] for example will quote rates and standing charges, but omit the annual cost, it isn't possible for a provider to calculate the cost with a half hour meter without the breakdown in consumption.
- Many brokers emphasise the per kWh rate or standing charge, stating the annual cost should be compulsory. Some suppliers/brokers/consultants like to concentrate on the standing charge or price per kWh only whereas with accurate consumption figures, the relevant figure is the cost per annum, regardless of the standing charge/rate per kWh.
- Brokers/energy suppliers should be forced to give the reason why a particular contract duration is being recommended. During the height of the energy crisis many brokers were "selling" 3-year contracts leaving care providers locked into excessively high contract prices without financial support from the government scheme. The only winner is the broker given this will increase the level of commission made in many cases.

**Case Study Feedback directly from a Care Provider: (example of misselling)**

A care home with a high credit rating of 72 was offered a contract with an energy supplier '[REDACTED]'. '[REDACTED]' is a last supplier resort and only used when no one else will offer a contract and therefore charge higher rates. One of the largest energy suppliers for example will accept credit scores of 35 to 40. '[REDACTED]' the broker placed this agreement with an income to them was 1.5p per kWh. We suggest this is between 3 to 4 times higher than is deemed reasonable or should be permitted. '[REDACTED]' tied the care provider into a 3-year contract in August 22 with '[REDACTED]' who charge higher rates per kWh than they could have achieved elsewhere.

The care provider has worked with '[REDACTED]' for over 10 years and have price tested them in that time. They care provider had no reason to feel they had changed their advice to not be in the care provider's best interest. They recently tested '[REDACTED]' with a Care England approved energy broker and after which, evidence suggests that '[REDACTED]' was overselling contracts and has been proven to be up to one third more expensive. '[REDACTED]' offered '[REDACTED]' as the only option despite even at the peak of gas prices in August 2022 other cheaper suppliers would have been available to the care provider.

## Supplementary response

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