

UTILITY BIDDER POLICY CONSULTATION RESPONSE

Dear Ofgem,

Utility Bidder provides its response to your Non Domestic Market review

Ofgem continue to fail end users by focussing on low impact areas involving brokers, and not being forceful enough in areas affecting supplier. The activity focussed on brokers is not economically quantified, will not save end customers money and may even add cost to them. Ofgem need to urgency change focus on areas that they can help customers switch more easily, improve data access to help contract submission accuracy, force suppliers to focus more on fraud and exchanging information and dealing with poor behaviour around COT's

DEEMED RATES

Ofgem remain far too lax on clear action on deemed rates. Ofgem's own report suggests 10% of non-domestic are on deemed rates. Assuming a typical deemed rate of 100% more expensive than a normal one, that's adding typically over £8,000 PA for a typical non domestic SME customer for power.

Assuming there to be 100,000 customers impacted this equates to £850m a year in excessive cost. Yet Ofgem chooses to focus more on smaller direct impacts on brokers that are unquantified and poorly defined as having economic value. We accept that deemed rates carry excessive risk for suppliers which they need to price into their fees – but some suppliers seem to breach licence conditions by having punitive deemed rates.

Furthermore suppliers are slow to change deemed rates – notification windows need shortening to allow for speedier changes to market conditions.

ABUSE BY BROKERS

Abuse by brokers (3,21) – we ask that Ofgem substantiates its allegations and provides the number of reported instances. Ofgem need 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?

Ofgem's statistics on the number of contracts facilitated by brokers is at odds with those provided by Cornwall Insight – who show significantly higher penetration both in SME and I&C for brokers. This requires clarification as the proportionality issue here may be clouded if Ofgem are underestimating the volume of contracts facilitated versus the number of complaints received (which haven't been disclosed).

Ofgem need to provide evidence to support the level of alleged abuse.

ADR

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

then. The whole small claims track was specifically set up to create a simple mechanism for lower value disputes and contract breaches to be resolved without lawyers – something Ofgem are keen to replicate for extra cost via ADR.

ADR does not replace customer's existing legal entitlement to pursue parties or brokers for poor service, miss selling or any other allegation of poor behaviour. ADR simply adds cost to a legal framework already in place. Lets review the costs...

3.36 – Ofgem state that AER is a “free service to customers”. It is not. The costs of ADR and any compensation awards are passed directly back to ends customers via suppliers and brokers increasing their fees to cover the costs.

3.53 – Ofgem state that ADR is “helping customers achieve good outcomes”. How can Ofgem support such a statement? The correct way would be to review the scheme after maturity (we would suggest that 285 cases and 7 months running is not mature data). Almost one in three cases are proven incorrect. This to date would indicate that there has been wasted cost of £500 per claim (fees plus broker time and cost) – over £40,000 cost. What has been the awards from the remaining 202 cases?

Ofgem need to calculate the wasted costs or 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 cost and red tape to manage a handful of customers who may not seek redress otherwise.

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

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

How is the Ombudsman held accountable – as an example there is no appeal process for decisions (unless new evidence comes to light). This is perverse. We see tactical behaviour from other brokers and suppliers deliberately withholding evidence to allow an appeal option.

Ofgem want to scale ADR to larger use customers – suggesting even large multi million pound companies are reluctant or nervous to use a court process – this seems illogical.

We welcome any opportunity to help provide redress for those that would miss out – but a balance has to be made to avoid over bearing solutions not to be introduced to remedy a handful of problems. Ofgem should focus more on trying to reduce the number of domestic customers on non domestic rates (900,000) rather than a run rate ADR of 500 a year (many of which would seek redress another way anyway, and a third of who are seeking redress incorrectly).

FEE TRANSPARENCY

Ofgem introduced fee transparency for Micro business in October 2022. Ofgem states at 4.46 that this “has been beneficial to customers”. Can Ofgem substantiate this opinion with facts?

Internal Only

A brokers responsibility when acting as an agent and/or with a fiduciary relationship to disclose fees is already covered within Agency law 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 seek to create an environment that sets the bar above legal responsibility. Ofgem need to set out the economic harm that is caused by the lack of widening existing rules – not simply say (again) that its beneficial – or that its “received reports”.

Forcing brokers to disclose fees could create unintended consequences – such as creating 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 that Ofgem’s fee disclosure risks creating distortion in favour of its members. Ofgem could be forcing brokers into agency relationships or fiduciary ones – and thereby creating market distortion / anti competitive behaviour.

What does fee disclosure actually do? Ofgem have 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) then go direct. This in turn creates a short term bubble of benefit to customers. But as brokers dwindle so does switching rates which see deemed rate levels and overall cost rise.

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

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

The report is lacking on hard evidence with which to make the changes proposed. The CMA would be unwilling to press ahead with changes without properly calculating theories of harm – Ofgem need to step up to the same required bar and do the work – as opposed to simply bending to the rhetoric of other parties interests.

Internal Only