

By email only: NonDomesticRetailPolicy@ofgem.gov.uk

6 September 2023

Dear Louise,

Non-domestic market review

We welcome the opportunity to respond to this consultation. Our non-confidential response, appended to this letter, represents the views of the Retail Energy Code Company Ltd (RECCo) and is based on our role as operator of the Retail Energy Code (REC).

RECCo is a not-for-profit, corporate vehicle ensuring the proper, effective, and efficient implementation and ongoing management of the REC arrangements. We seek to promote trust, innovation, and competition, whilst maintaining focus on positive consumer outcomes. We are committed to ensuring that RECCo is an “*intelligent customer*,” ensuring efficacy and the value-for-money of the services we procure and manage on behalf of REC Parties, including those which constitute the REC Code Manager. More recently, we have taken over responsibility for the oversight and funding of the Central Switching Service, which forms a key part of the end to end customer switching arrangements.

RECCo are supportive of the move to include a broader set of non-domestic consumers into the protections afforded by regulation. We also agree that more can and should be done to improve standards within the Third Party Intermediary community that will ultimately drive better consumer outcomes. This findings of the non-domestic review chime with the initiatives that RECCo is undertaking to help improve practices and procedures.¹

We welcome the opportunity to work with Ofgem and other stakeholders to address the issues around change of tenancy/occupation (as referenced in Chapter 3 of the consultation), including the establishment of clear guidelines and requirements for documentary evidence that may be taken as proof of a change of tenancy/occupation. We have undertaken some preliminary work and will hold a stakeholder workshop on 24 October 2023 to gather feedback prior to raising a change proposal to the REC. We will issue invitations to the event in due course, though in the meantime interested parties are invited to contact us at recco_strategy@retailenergycode.co.uk.

Yours sincerely

Jon Dixon

Director of Strategy and Development

¹ See latest update on this work here: <https://www.retailenergycode.co.uk/our-work-to-ensure-a-fairer-energy-broker-market/>

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?
We understand there may be merit in pursuing a voluntary approach to providing improved pricing for customers, rather than mandating requirements, due to the variations in factors that comprise the price of a given contract. However, note that Ofgem has seen examples of clear explanation about the contents of bills on some supplier websites and the suggestion that not all suppliers are providing the same level of information. Those good examples could be used to inform the development of guidance, with a clear expectation that suppliers will move towards recognised best practice.
Do you agree with our proposed definition of 'significantly exceeds'? Please provide your reasons.
<p>Providing definitions for terms such as 'significantly exceeds' is inherently difficult as they are not easily quantifiable. This is more challenging when the definition refers to another term that is not quantified, as in this case where Ofgem state that, <i>'determining if deemed rates are unduly onerous, means that the deemed rate is much higher than an equivalent contracted rate'</i>.</p> <p>We note that Ofgem will consider this on a case-by-case basis and have included some criteria that would form part of the consideration. Nevertheless, this approach leaves much to interpretation. Given the many complexities of defining such terms, perhaps more regulatory monitoring should be implemented to ensure suppliers have suitable policies and methodologies in place that prevent the use of unacceptable deemed rates.</p>
Do you agree with our proposal that suppliers should review deemed contract rates quarterly? Please provide your reasons.
We can see the argument for regular review of deemed rates, particularly during periods of wholesale price volatility just as Ofgem was prompted to change the setting of the domestic default tariff cap from a biannual to a quarterly basis. It would ordinarily be expected that a quarterly review would help ensure that rates are more accurately reflective of the suppliers' costs at a given time, and help to manage price shocks. A consistent approach across all suppliers would also mean that consumers are not potentially disadvantaged by being with a supplier who undertakes a review less regularly or substantively behind the rest of the market. However, there may also be a case for deemed contract rates to be maintained if input costs remain with certain tolerances, providing stability to all parties and avoiding unnecessary administrative costs which may not be justified by marginal changes.
Are there any potential implications for domestic customers that the proposed guidance on deemed contract rates may impact on?
No observations to note.
Do you have any further comments on our proposals for the deemed contract guidance?
No further comments.
Do you have any other comments on the other proposals in this Pricing and contract behaviour section?
No observations to note.
Which documents, or combination of documents do you believe would provide a robust evidence base to demonstrate a genuine CoT/CoO?
RECCo is currently considering the issue of evidencing a genuine CoT/CoO as part of the work we are undertaking in our TPI workstream. Earlier in the year, we held workshops with both non-domestic

suppliers and TPIs to better understand the challenges and issues in the non-domestic market and aimed to identify areas where we could help facilitate better outcomes for consumers. One of the key issues that emerged from our stakeholder workshops was the use, and potential mis-use, of the CoT/CoO flag by the incoming supplier and the use and potential mis-use of the objections process by the losing supplier. Many of the issues and challenges identified have been captured in this consultation.

We welcome the opportunity to work with Ofgem to establish clear guidelines and requirements for documentary evidence that will be taken as proof of a CoT/CoO. We have undertaken some preliminary work and will hold a stakeholder workshop on 24 October 2023 to gather feedback prior to raising a change proposal to the REC. We will issue invitations to the event in due course, though in the meantime interested parties are invited to contact us at recco_strategy@retailenergycode.co.uk.

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 do not have any data on whether Micro Business Consumers are aware they can contact Citizens Advice for support.

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

Efficient and timely complaints handling should be a matter of good practice. By implementing an obligation, consumers can be assured that this is a minimum requirement that they can expect from their engagement with all non-domestic energy suppliers. This can help to raise overall standards in the industry to the benefit of consumers. We would expect the costs of implementation to be minimal as non-domestic suppliers should already have complaints handling procedures in place, but do not at this time have any data to help inform the Ofgem impact assessment of this proposal.

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?

Again, we would expect to see this as a matter of good practice. Implementing requirements will ensure that standards are raised and consumers can have confidence that their concerns will be properly managed through diligent complaints handling processes. As above, we would expect costs of implementation should be minimal as non-domestic suppliers should already have complaints handling procedures in place, but do not at this time have any data to help inform the Ofgem impact assessment of this proposal.

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?

We recognise that it may be difficult to provide an evidentiary basis for any given threshold, and that the use of a threshold that is arbitrary or determined for some other purpose may unnecessarily restricting protections to the disadvantage of consumers who may otherwise have benefited from them. For instance, being marginally over the Micro Business threshold may renders a dispute resolution mechanism to be unavailable. The traditional rationale is that larger business consumers may be able to chose alternative redress, such as litigation, while these routes may not be financially viable for others. However, measures such as turnover or number of employees may be a poor indicator of a non-domestic customers relative sophistication and knowledge of the energy market, and need or otherwise for certain protections. Customer choice over what best meets their needs should not be limited by unnecessary regulatory restrictions, however well intended. Therefore, whilst we would in principle support the expansion of the Regulations to apply to all non-domestic customers, particularly SMEs who may otherwise be disadvantaged by being marginally larger than the current micro-business definition, we

would welcome further clarity on whether there may suitably be exemptions or an opt out of any standard approach for those customers who would prefer and may knowingly enter into alternative arrangements.
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?
For the reasons set out above, we agree with the proposal to increase access to the Energy Ombudsmen to more non-domestic consumers, particularly SMEs. We do not believe that setting an artificial threshold is helpful to consumers, particularly as a marginal difference between sizes of business does not necessarily better equip one category of customer than another to access alternative redress options. We also believe that providing avenues for redress should not be unnecessarily limited by regulatory restrictions.
If the Energy Ombudsmen redress scheme is open to all non-domestic consumers, but not on a mandatory basis, it would be for the individual businesses and indeed the Energy Ombudsmen itself to determine whether it is the appropriate option for them. The Energy Ombudsmen would be able to set its own criteria on matters that it would consider outside its remit. For instance, where a consumer brings or is likely to bring a case of complexity that falls outside the realms of the Energy Ombudsmen remit, they could recommend alternative approaches. This would leave open the option for specialist arbitration or other form of dispute resolution.
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?
We agree in principle that the rules should protect all non-domestic customers, not just Micro Business Consumers, though as noted access to dispute resolution and redress may need to take forms in order to best meet the needs of those customers. Expanding the requirement should not preclude non-domestic customers from being able to access redress schemes that best suit them. It does not seem disproportionate to expect that all TPIs should have complaints processes and procedures in place that would at least meet minimal standards, as may be required by the majority of customers. This would ensure consistency for consumers and should contribute to the improvement of standards across the TPI community.
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?
We believe that it may not be necessary to set up a wholly new ADR scheme. There is merit in exploring the expansion of current schemes that can readily accommodate the additional complaint investigations. They are more likely to have the ability to scale up and do so at greater speed than setting up new/separate schemes. In time, there is opportunity to allow new entrants or alternative schemes to evolve and meet potentially increased need or demand for such services. Given the volume of TPIs in the market, a reasonably long lead in time may be desirable to allow for registrations to be made without becoming a bottleneck and potentially interfering with normal market operations.
What are your views on our proposal to expand SLC OA (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.
We agree in principle that the provisions of SLC OA and the objective of treating consumers fairly should be expanded. The requirements and protections offered by this condition may be equally applicable to larger businesses and particularly SMEs, as they are to micro-businesses. All TPIs, or at least those operating at this end of the market should be following the principles of SLCOA as a matter of good practice; there

should therefore be little cost associated with extending the scope to SMEs. Where there are shortfalls in processes and procedures, it will force businesses to review and improve standards of conduct that can only be in the consumer interest. However, noting that the objective was drafted with a particular type of consumer in mind, it should not be assumed that the condition would necessarily be applicable in its entirety to the industrial and/or more sophisticated end of the market.
Do you have any further comments on the proposals in this section on Competition in the market and customer complaints?
No observations to note.
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?
N/A
What changes to the Maximum Resale Price direction would improve its effectiveness and what are the potential downsides to any changes?
We agree that creating a more accessible route for dispute resolution for consumers who sit behind a non-domestic contract is a positive step, particularly for those who are in the private rented sector. The suggestion of using the Private Rented Sector Ombudsmen Service to settle disputes for domestic customers who sit behind a non-domestic contract, rather than the First-tier Tribunal (Property Chamber), seems sensible. It is likely to be more accessible and affordable for consumers and provides them with similar redress to other domestic consumers.
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?
All consumers, regardless of their size and structure, should be able to see where they are paying commissions and the amounts involved. Transparency is key to engagement with consumers, it ensures they are able to make informed decisions which can ultimately avoid issues further down the line. This could suitably form a principles based obligation with some discretion left as to how such transparency is achieved. For instance it would be unnecessary and impracticable to prescribe standards on behalf of those consumers who would in any case expect to and are capable of performing due diligence, which may go any assessment that a lower volume consumer may undertake.
Are there views on how commissions disclosure is best presented to be understood by consumers?
We accept that it may be difficult to provide an over view of the full amount of commission upfront, but consumers should at the very least be provided with the means to estimate the value of any commission that is payable. For example, a simple presentation of the uplift on a pence per kwh would enable a consumer to work out the potential total commission by applying the figure to its expected energy consumption. This level of transparency would also better enable consumers to compare like for like products in a more informed manner. RECCo are also proposing this approach as part of the Code of Practice for TPIs. ²
Should we expand commissions disclosure to all non-domestic customers or a subset of customers, and if a sub-set do you have views on how to define this?

² See latest update on this work here: <https://www.retailenergycode.co.uk/our-work-to-ensure-a-fairer-energy-broker-market/>

With the potential exception of sophisticated energy buyers for whom non-standard arrangement may be appropriate as mention in response to other questions, we can see no reason why this protection should not be applicable to more, if not all non-domestic customers. All consumers should be aware of the price they are paying for their energy and this should include any additional costs or commissions so that they can make informed decisions. This would bring the energy sector more closely into line with the disclosure rules that are commonplace in other markets, such as financial services.

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

No observations to note.