

Louise Van Rensburg
Non-Domestic Retail Policy



By email to: NonDomesticRetailPolicy@ofgem.gov.uk

31st January 2024

Dear Louise,

Re: Non-Domestic Market Review: Statutory consultation on licence changes

The Utilities Intermediaries Association (UIA) is a not for profit trade body limited by guarantee for UK third party intermediaries (TPIs) operating in the business utilities sector. Our members are signed to the UIA (TPI) Code of Practice and ADR scheme. We are, to date, one of two scheme operators providing Alternative Dispute Resolution for business consumers with UIA's covering all size of business.

We have consistently maintained that TPI's should be directly regulated to allow for clear enforcement mechanisms and accountability and to prevent undue influence and manipulation by suppliers of a customer's representative. In the absence of direct regulation, Ofgem have by proxy appointed energy suppliers to assume this role.

Our responses to your consultation questions are detailed below, We have answered only those that we feel best equipped to answer. Our response is not confidential. If you do have any questions, then please let me know.

Yours sincerely

Rachael Gladwin

For and on Behalf of The Utilities Intermediaries Association



Consultation - Non-domestic market review: Statutory consultation on licence changes

Q1. Alongside this consultation document we have published a draft impact assessment.

Do you have any comments on the draft impact assessment published alongside this document, including the costs and benefits, competition impacts, and unintended consequences?

The data and costings used to assess the impact to TPI's is speculation due to insufficient data and not enough to assess whether the overall costs for TPI's to be signed to an ADR scheme is proportionate. See further our response in **Q2**. We believe TPI's should not be required to cover case fees unless they are found to be at fault and that the business customer if at fault, should be caused to cover such fees.

If it is Ofgem's and DESNZ intention to further extend supplier obligations for a TPI Code of Practice: which appears to be the direction they are moving in, then even more costs and administrative burdens will be placed on suppliers and TPI's alike. We argue that in the absence of formal regulation of TPI's, attempts to control TPI behaviours need to sit within the confines of Competition Law.

Following Ofgem's requirement that suppliers only work with brokers signed to a QDSS - suppliers have reduced the number of TPI's they are willing to service directly, and/or made direct engagement conditional on the amount of business the TPI places with them. More TPI's are having to utilise the services of an aggregator to access prices, and while aggregators have a valid role in the market, their use adds to the costs incurred by the business consumer, creates another layer of complexity, and means the TPI is not in full control of their client's customer journey. We anticipate that this situation will worsen because of these proposals.

We believe that a large proportion of the TPI sector have already been captured under the MBC ruling because most TPI's portfolios will contain a mixture of MBC, SB and I&C,. Even where you have TPI's who choose to operate in I&C sector only, they are likely to err on the side of caution and be signed to the scheme or feel compelled to join by suppliers.

We remain of the view that TPI fees should be disclosed, but in a standard market wide format to be easily understood by customers. While we acknowledge that we may see a reduction in number of TPI's operating because of these proposals, that is competition. It may drive up existing TPI service levels and offerings.

Q2. Is there anything that has not been included in the impact assessment that you believe should be included?

Yes. Full transparency of the Energy Ombudsman ADR scheme. Overall costs to run, including case fees, number of cases dealt with, findings (customer or TPI) and fines.



Q3. Do you agree with our proposal to expand the Standards of Conduct to all Non-Domestic Consumers? Please provide a reason for your view.

Yes. Our experience from handling complaints initiated by our TPI members and their clients has demonstrated a clear protection gap, with only recourse through the courts. Such action is beyond the expertise and resources of many, other than (perhaps) I&C - a fact which has been cynically exploited by some suppliers. Further, it takes considerably longer to pursue legal remedy than to follow the ADR route so it is arguable that even I&C should have access to such a scheme if they wish to use it.

Q4. Do you have any comments on our proposed draft licence text for SLC 0A?

No

Q5. Do you agree with our proposal to implement the SoC as soon as the updated licence condition takes effect? Please provide a reason for your view.

Yes, in principle but we do acknowledge it will be challenging for suppliers to ensure all their systems and processes comply, especially supply terms and conditions and contracts.

Q6. Do you have any views on the updated draft Standards of Conduct Guidance?

We note that Ofgem reference the hiding of clauses as an example of poor behaviour under **b) provision of information**. We would like to see this extended to cover any clauses '*buried deep within the contract*' that could have a material impact on the customer if invoked. We are referring to contract clauses which allow for changes in Definitions, Consumption Thresholds, or methodology such as those used for calculating Take or Pay or early termination charges.

Suppliers should not be able to use '*supersedes previous agreements clauses*' to apply charges retrospectively and any changes to existing terms must be conveyed in writing and with notice, enabling the customer to exit the agreement if the changes represent a material change - It may be more appropriate for this to be included in the SLC's rather than in guidance.

Q7. Do you agree with our proposal to align with government proposals and expand the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 (CHS) to apply to Small Business Consumers? Please provide a reason for your view.

Yes, a logical step that would avoid confusion and ensure uniformity. Understand the rationale for not extending to cover non-domestic, but Ofgem must continue to monitor supplier behaviours in this field (note customer survey research did not differentiate I&C segments)



Q8. Do you have any further comments on the proposed drafting of the CHS Statutory Instrument text?

No

Q9. Do you have any comments on the proposed implementation timeline of 3 months from the date of decision?

No

Q10. Do you agree with our proposal to require suppliers to inform their Micro and Small Business Consumers (if this is applied) that they can access, and how to contact, Citizens Advice and Citizens Advice Scotland? Please provide a reason for your view.

Yes. In our view, awareness of such organisations and the support they can offer is limited. There is a preconception that such organisations are only there to assist domestic consumers.

Q11. What measures would suppliers intend to take to meet the obligation to signpost Small Business Consumers to Citizens Advice, and how would this impact costs?

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Q12. Do you have any comments on our proposed draft licence text for SLC 20.5A and 20.4A in the gas and electricity supply licences respectively? This proposed definition of Small Business Consumer includes Micro Business Consumers. However, do you think it would be preferable to explicitly set out in the licence condition that suppliers should signpost Micro Business Consumers and Small Business Consumers to Citizens Advice for the avoidance of doubt?

We have no further comments on proposed draft licence text for SLC 20.5A and 20.4
Signposting should be explicit in licence conditions

Q13. Do you agree with our proposed implementation timeframe of 3 months from the date of our final decision?

Yes

Q14. Do you agree with our proposed change? Please provide comments to support your answer.

Yes, for the reasons already stated in this consultation, and because we believe small businesses should be afforded the same protections as microbusiness. We believe that a lot of TPI's have already been captured under ADR for microbusinesses. The main



concern will be whether existing ADR providers will be able to cope. The Energy Ombudsman scheme is open to all active TPI's and as such could struggle with the potential increase in workloads, the UIA's ADR scheme, covers all business sizes but is only open to TPI's who are members of the UIA.

Q15. Do you agree with the wording of the proposed licence condition changes outlined in Appendix 1?

Yes

Q16. Do you have any comments on the suggested implementation timescale of 8 months?

No

Q17. Do you agree with our proposed expansion of Third Party Cost transparency to all Non-Domestic customers? Please explain your answer.

Yes, to level the playing field.

Q18. Do you agree with our proposed methodology of displaying Third Party Costs? Please explain your answer.

See Q20

Q19. Do you agree that our proposed timescale for implementation is achievable? Please explain your answer.

Yes, a lot of suppliers are already doing this.

Q20. Do you have any views on whether to retain the presentation of a lump sum for Micro Business Consumers and to have only a cost per unit for all Non-Domestic Consumers

The same rules should apply to all businesses, otherwise the messaging becomes confusing and more costly to implement.

We support the idea that fees should be shown both as a cost per unit and/or cost per day/month **and** as a lump sum in pounds and pence **but** per annum rather than for the contract duration. Disclosure of fees in monetary terms for the full term of the contract can prove misleading if the consumption data used to determine the costs are inaccurate or if a customer's usage alters. It has also been open to abuse.



Q21. Do you have any views on the proposed wording of the supply licence conditions, in relation to this policy? Note that is SLC20.6 in the electricity supply licence and SLC20.7 in the gas supply licence.

No

Q22. Do you have any other comments on our proposals not asked specifically elsewhere in this document?

See covering letter

