



BBPA Response to the Ofgem Statutory Consultation on Licence Changes

31st January 2024

Introduction

The British Beer & Pub Association is the leading trade body for brewers and pubs, representing companies across the UK, which between them own around 20,000 pubs and brew over 90 percent of beer sold in the UK.

Member companies have many different ownership structures, including UK PLCs, privately-owned companies, independent family-owned brewers and UK divisions of international brewers.

The brewing and pub industry in the UK makes a major contribution to the local and national economy. The sector generates £23 billion of economic value and supports 900,000 jobs. 85% of pubs in the UK are run as SMEs.

Executive Summary

BBPA welcomes this consultation on Ofgem's statutory recommendations which follow the review of the non-domestic energy market and the behaviours of non-domestic energy suppliers. We are grateful for this work and are pleased to have the opportunity to respond to this consultation.

We are supportive of the intention to introduce new licensing conditions which will hold non-domestic energy suppliers to a greater degree of accountability in terms of overall behaviours with regards to their customers. We are also supportive of measures that seek to increase and improve transparency and consistency in relation to contract costs and billing, including where Third-Party Intermediaries have been involved in securing the final contract rate.

To date, one of our significant concerns has been the limited levers available to Ofgem to effectively regulate the non-domestic market as well as the avenues available to non-domestic customers to challenge behaviours or decisions made by energy suppliers. Although this consultation recommends extending protections to a broader range of businesses than to micro-businesses, we remain concerned that for some recommendations, extending only to small businesses does not go far enough to ensure a broader level of protection to non-domestic energy users.

Whilst we support a unified definition of a small business for the purposes of this consultation, and in relation to Government proposals to extent access to the Energy Ombudsman service, we believe that Ofgem should consider applying the recommendations within this statutory consultation more broadly. Difficulties in capturing a universal definition of 'large businesses' should not result in parts of the non-domestic sector being denied access to those protections afforded to smaller businesses and domestic customers.

Finally, and in relation to the consultation impact assessment, BBPA believes that it is fundamentally wrong that suppliers should seek to recover costs for the implementation of measures that should already have been in place to protect non-domestic consumers. Where statutory measures are proposed to address poor supplier behaviours and introduce greater

fairness and transparency to the non-domestic energy market, we do not believe that pub businesses should bear any further cost.

We hope that the information provided in our responses will be helpful to Ofgem as part of this consultation and stand ready to provide further information or support as needed.

Consultation Questions:

The following are our full responses to questions posed within the Ofgem statutory consultation on license 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 BBPA has been reporting on the poor behaviours of non-domestic energy suppliers and the impacts of this behaviour on the pub and hospitality sector since early 2021. Concerns that we raised at the time mirror those that were later reported to Ofgem to support the non-domestic review and most recently, evidence that we have provided continues to demonstrate ongoing poor behaviours on the part of at least several individual suppliers. The ongoing financial impacts of these behaviours have been shown in the hundreds of thousands of pounds and, despite falling wholesale energy prices, the majority of pub and hospitality businesses continue to cite energy costs as the most likely reason for business failure in the coming months.

Where statutory measures are being proposed to address poor supplier behaviours and introduce greater fairness and transparency to the non-domestic energy market, we do not believe that pub and hospitality businesses should bear any further cost.

Much of the impact that we have seen on the pub and hospitality sector has been a direct result of the conduct of energy suppliers claiming excessive risk in relation to pub and hospitality businesses. Such conduct has exacerbated any true levels of risk to create a self-fulfilling outcome that has placed undue and unnecessary financial strain on businesses that have suffered greatly over the course of the pandemic and subsequent post-pandemic cost of living and energy crisis.

BBPA believes that it is fundamentally wrong that suppliers should seek to recover costs for the implementation of measures that should already have been in place to protect non-domestic consumers in the same way that domestic consumers are protected. In particular in the context of ongoing announcements of record profits from energy companies whilst suppliers continue to demonstrate poor behaviours, including use of trojan horse tactics in relation to recovery of non-commodity costs and in the face of further increases in energy bills as a result of the implementation of TCR.

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

No.

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.

BBPA fully supports proposals to require expected standards of conduct (SoC) of energy suppliers to apply to all non-domestic customers. Our experience of the non-domestic energy market has consistently been that there appears little to hold non-domestic energy suppliers to account with respect of their behaviour towards non-domestic customers and who do not typically benefit from the same protections afforded to domestic customers. We continue to hold that many of the issues that non-domestic energy suppliers claim are evidence of risks associated with the hospitality sector have at a minimum been exacerbated and, in many cases, caused directly by the behaviours of energy suppliers.

Within the consultation document Ofgem has identified that poor customer service, poor communication and billing issues were common reasons for customer dissatisfaction and which all fall within the Designated Activities in scope of the SoC. Taking this alongside the “*significant time and resource resolving issues with their supplier*” that Ofgem has also noted from customer complaint records, we would reinforce our comment above that the impacts of applying SoC to all non-domestic customers should be cost-neutral to non-domestic customers.

Separately to this, given the discussions we have had with our members and anecdotally from roundtable calls with Ofgem as well as the comment under section 2.13:

“Responses to our consultation and September RFI indicate that customers of all sizes, from smaller businesses up to large users, are experiencing issues with their suppliers”

We are surprised that consumer research undertaken by Ofgem suggests that 60% of non-domestic customers appear satisfied with the overall service they receive from their supplier.

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

None

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.

Given that we continue to see examples of poor behaviours from non-domestic energy providers, we would wish to see the SoC implemented at the very earliest opportunity.

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

The updated SoC guidance appears comprehensive, and we welcome the addition of examples of poor supplier behaviour. Under the section ‘What are the broad principles suppliers must follow?’ there is no mention of suppliers acting in a timely manner and which is an issue that we have raised with Ofgem in the past. It would seem sensible to reference this point, particularly when providing customers with information and for customer service processes. There is no reference made in this document to non-domestic businesses where the landlord is also resident on the business premises and is therefore also a domestic energy consumer. Until this is resolved we believe that some mention should be made to vulnerable non-domestic customers.

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.

We are highly supportive of proposals to extend the Consumer Complaints Handling Standards (CHS) beyond micro-businesses and alignment on this basis between Government and Ofgem. Those concerns we have raised in relation to the non-domestic energy market review has shown how little protection exists for non-domestic consumers when compared with domestic energy customers.

We do however note within the consultation pack the reticence of non-domestic energy suppliers to extend such protections to the wider non-domestic sector and in particular to those larger companies who may have specific and/or bespoke processes in place to facilitate and manage complaints. Whilst we welcome the proposal to extend the CHS to small businesses and we recognise that some very large companies may have the ability to agree bespoke arrangements, this will not be the case for all. Due to the difficulties in developing a universal definition of a large business we would urge Ofgem to ensure that where such bespoke arrangements are not in place that such businesses are not excluded from the protections offered to other non-domestic consumers.

Similarly, extending access to the Ombudsman service we believe is a necessary mechanism to enable individual, non-domestic consumers an independent route to challenge outcomes of complaints or disagreements. However again, difficulties in capturing a universal definition of 'large businesses' should not result in parts of the non-domestic sector being denied access to those protections afforded to smaller businesses and domestic customers.

In the case of pub operations, larger companies will include multi-site operators whose role is diverse and influenced as much by the pub model that they will operate i.e., managed, vs leased vs tenanted and which all carry different levels of responsibility for both the licensee and operator. Whilst it may be true that very large companies are more likely to experience complex issues of scale that are served better through other legal routes i.e., courts. Similarly, pub operators can also find themselves having to raise large numbers of similar or related issues on behalf of individual sites within their operation. Raising such issues collectively may also be a more efficient approach with regards to the Ombudsman as opposed to these same issues being raised directly by multiple individual businesses.

Where such large companies do not have individual account managers or bespoke arrangements in place to support a mechanism to raise complaints, we believe that it is vital to ensure that the full extent of non-domestic businesses are covered by standards in relation to complaint handling.

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

As above, whilst we are grateful for the extension of CHS beyond microbusinesses, given that the scope of this mechanism includes the basic requirement for a complaints handling procedure and the expectations of consumers in relation to this process and any outputs, we believe that it is vital that Ofgem ensure that this is available to all non-domestic businesses, with the exception of those very large companies where a more bespoke or individual processes is better suited to their individual circumstances.

The CHS facilitates a fundamental level of protection for energy consumers and access to consumer rights and therefore should extend equally across the non-domestic sector.

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

Given that we continue to see examples of poor behaviours from non-domestic energy providers, we would wish to see the CHS proposals implemented at the very earliest opportunity.

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. We believe that it is important to align protections for non-domestic businesses with those that already exist for domestic customers. We also support that this information should be provided by suppliers regularly and likely via multiple routes, including on bills, to ensure that non-domestic customers are aware of their rights with respect of access to an independent advice services.

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?

BBPA has not data to answer this question.

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?

The BBPA has no further comment on the draft license text however we do support the need to ensure that non-domestic consumers are clear on their options and that access to independent advice applies to both micro-businesses and small businesses.

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

Given that we continue to see examples of poor behaviours from non-domestic energy providers, we would wish to see the proposed license conditions in relation to business access to independent advice implemented at the very earliest opportunity.

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

BBPA strongly supports the proposal to require new obligations on suppliers to work only with TPIs who are part of a Qualifying Dispute Settlement Scheme (QDSS). Issues with contracts signed through TPIs are one of those concerns that our members have raised with us both with respect of the examples included in the non-domestic review i.e. via mis-selling and high-

pressure sales tactics, as well as a general lack of transparency over commission fees and how these are reflected on customer bills.

We believe that a redress scheme will be of significant benefit to non-domestic businesses. However, as we have said above in response to questions related to complaint handling and access to the Ombudsman service, due to the complexity of defining a 'large business' we believe that these proposals should apply to all non-domestic customers, irrespective of size.

We also note within this section the new definition of a small business as proposed by Government in relation to expanding access to the Energy Ombudsman scheme and which has been aligned with the thresholds used for access to the Financial Ombudsman Service.

Whilst we can understand the rationale for alignment with this threshold, we note that other definitions exist such as that used by [Companies House](#). For turnover and balance these definitions are very similar but not the same. We would consider it more helpful to settle on a common definition for the purposes of clarity and to avoid confusion.

We note that the threshold used for access to the Financial Ombudsman service refers to 'small or medium sized enterprises'. However, according to the [FCDO](#) '*Small to medium sized enterprise (SME) action plan*' an SME is defined as any organisation that has fewer than 250 employees and a turnover of less than €50 million or a balance sheet total of less than €43 million.

Rather than the definition proposed as part of this consultation, or the definition currently used for access to the Financial Ombudsman service, we believe that the FCDO definition would be the better threshold for the purpose of this consultation and would ensure that a wider range of non-domestic consumers would then be eligible for access to the Ombudsman service and the protections this affords.

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

Aside from our view that obligations on suppliers to work with TPI's who are part of a QDSS should apply to all non-domestic businesses, we have no further comment on the wording of the relevant, proposed license condition changes.

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

We understand that this proposal would be expected to take longer to implement than the other licence conditions proposed within this consultation. However, given that we continue to see examples of poor behaviours from non-domestic energy providers, we would wish to see license conditions in relation to TPI's implemented at the very earliest opportunity.

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

We are supportive of the proposal to expand TPI cost transparency to all non-domestic customers and believe that this is a vital element to address concerns raised by our members

in relation to the full transparency of energy costs. We also believe that this requirement presents further justification for our concerns above that requirements for TPI's to be part of a QDSS is not similarly extended to all non-domestic businesses.

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

We have no concerns with the proposal to require that Third Party costs be disclosed as a cost per unit either as per unit of energy or per day/month standing charge as relevant. However, the mechanism that is used by the supplier should be clearly identified and communicated to the customer as an element of their bill and should be separate from other declared costs.

We support the view expressed by Ofgem that to ensure consistency and comparability, establishing a defined method of disclosure is the most appropriate policy. Where quotes are made from supplier 'rate cards' i.e. not bespoke, we believe that there should be a standardised method for presenting quotes across all suppliers so that it is as simple as possible to compare offers and to allow transparent cost comparisons.

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

Given that we continue to see examples of poor behaviours from non-domestic energy providers, we would wish to see the license conditions in relation to Third Party costs implemented at the very earliest opportunity and question whether this could be undertaken sooner than 6 months.

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?

We have no objections to retaining the existing presentation of a lump sum but would wish this and the new per unit method of display to be suitably distinct to avoid confusion. We also note that this decision is being made by Ofgem as a test and therefore would expect that there would be no cost to business customers as a result of this change.

As noted above, and in relation to the broader cost impacts of the proposed changes, where statutory measures are being proposed to address ongoing, poor supplier behaviours and introduce greater fairness and transparency to the non-domestic energy market, we do not believe that pub and hospitality businesses should bear any further cost.

It is fundamentally wrong that suppliers should seek to recover costs for the implementation of measures that should already have been in place to protect non-domestic consumers in the same way that domestic consumers are protected. In particular in the context of ongoing announcements of record profits from energy companies whilst suppliers continue to demonstrate poor behaviours, including use of trojan horse tactics in relation to recovery of non-commodity costs and in the face of further increases in energy bills as a result of the implementation of TCR.

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.

We support the proposed wording.

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

No.