

31 January 2024

By email only: NonDomesticRetailPolicy@ofgem.gov.uk

Dear Louise,

RECCo response to Ofgem's non-domestic market review

We welcome the opportunity to respond to this consultation on the review of the non-domestic market. Our non-confidential response 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 in the energy market whilst keeping positive consumer outcomes at its heart. Through the REC, the services we manage and the programmes we run, we're dedicated to building a more effective and efficient energy market for the future. We are committed to ensuring that RECCo is an "intelligent customer", ensuring efficacy and value-for-money of the services we procure and manage on behalf of REC Parties, including those which constitute the REC Code Manager.

Ofgem's continued focus on improving behaviours and standards in the non-domestic market is welcome. RECCo's programme of work to improve standards within the Third-Party Intermediary community will complement the work Ofgem has in train and the resulting synergies will contribute to the better consumer outcomes. We are supportive of the move to include a broader set of non-domestic consumers into the protections offered by regulation. Last autumn we introduced the Third-Party Intermediary Code of Practice (TPI CoP)¹, setting out a range of principles including transparency, particularly of pricing and commissions. We are continuing to develop an accreditation and assurance framework that will support our proposal to mandate that non-Domestic suppliers only use a TPI who has been accredited as adhering to the TPI CoP principles. We expect to submit that Change Proposal by Spring 2024, and that it will require Ofgem approval to be implemented. The current TPI CoP is (and subject to development and consultation, the future accreditation framework will be) applicable to the whole of the non-Domestic sector.

We are happy to discuss further any of the points raised in this response.

Yours sincerely,

Jon Dixon

Director of Development and Strategy

¹ See: <https://www.retailenergycode.co.uk/fs/wp-content/uploads/2023/10/CoP-Final-Oct-2023.pdf>

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?

No observations to note here.

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

No observations to note here.

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.

We agree with the proposal to expand the Standards of Conduct to all Non-Domestic Consumers as we can see no reason why all consumers should not be afforded the provision of the same high standard of conduct. Whilst we appreciate that non-Domestic consumers are in many cases more sophisticated than domestic consumers or Micro Businesses, this should not prevent them from being provided with a base standard, which their contractual arrangements can build upon and likely go beyond. If this consultation gathers any evidence that the proposed Standards of Conduct in any restrict consumer choice, there could be an opt out and/or confirmation that they understand the risks, in much the same way as financial service distinguish between sophisticated and retail consumers.

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

No observations to note here.

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.

We would generally agree with the proposal to implement the Standard of Conduct as soon as the updated licence condition takes effect, as this would bring greater consumer protections at the earliest opportunity. However, we are aware of anecdotal concerns that the existing ADR provider may not currently possess in-depth knowledge of the industrial and commercial sector of the market. We also note that Ofgem references the Digital Markets, Competition and Consumers Bill that is currently going through parliament; that bill would result in all Alternative Dispute Resolution (ADR) providers needing to be accredited by persons specified by the Secretary of State. In the extreme, it seems at least possible that licensees focused on the I&C sector of the market may struggle to identify an ADR provider that possesses the requisite specialised knowledge and/or accreditation. It may therefore be appropriate for the implementation of the updated licence condition is pre-conditioned upon, or the text is future-proofed such that its effect is subject to, there being a recognised ADR provider that would enable the licensee to discharge its obligations.

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

No observations to note here.

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 broadly agree with the proposal to expand the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 to Small Business Consumers. All consumers should have protections and the right to expect a good service when they raise a complaint. While normal market forces should ensure that larger consumers with significant buyer-power receive such service, it is unlikely that those categorised as small businesses would be in a significantly better position than a microbusiness consumer. Extending these prescribed standards will better ensure that those consumers who need to raise a complaint, can expect appropriate policies and procedures to be implemented and applied. However, a “one size fits all” approach may also be inappropriate given the typically larger consumption of a Small Business as compared to a

microbusiness or domestic consumer. For instance, ADR adjudication decisions are not binding for disputes of more than £10,000, which may be an appropriate ceiling for smaller consumers, but could restrict the efficacy of the ADR arrangements if applied to energy intensive small businesses.

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

No observations to note here.

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

No observations to note here.

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.

We agree with the proposal to require suppliers to inform their Micro and Small Business Consumers that they can access and how to contact Citizens Advice and Citizens Advice Scotland. The availability of information should be consistent across the different consumer groups, enabling them to seek further help or advice which could help them make more informed decisions. We do not consider that this would impose a significant regulatory burden upon suppliers (particularly as mixed-portfolio suppliers already have such obligations in relation to their Domestic consumers), whereas the relevant Micro and Small Business Consumers may not otherwise be, or become, aware that this option is available to them.

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?

No observations to note here.

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? The 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 do not have any substantive comments on the draft licence text for SLC 20.5A and SLC 20.6. We also do not see any reason why it would be preferable to explicitly set out signposting for Micro Business Consumers and Small Business Consumers when the definition of Small Business Consumer expressly covers both.

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

No observations to note here.

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

We agree, as detailed above (response to question 10) and have no further comment.

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

No observations to note here.

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

No observations to note here.

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

We agree with the proposal to expand the requirement for Third Party Cost transparency to all non-Domestic consumers. All customers should be able to understand how they are being charged for their energy, including clear and unambiguous information regarding any third-party costs for which they are liable. Consumers, including non-Domestic, should be afforded transparency.

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

RECCo strongly support the disclosure of any uplift or fees paid to Third Party Intermediaries. In developing the Third-Party Intermediary Code of Practice, we have ensured that the consumer is provided with the means to be able to calculate the value of any commission payable. For example, a simple presentation of the uplift on a pence per kwh, coupled with the calculation methodology used to calculate commission (consumption x uplift x contract length) would enable a consumer to work out the potential total commission cost. This level of transparency would also better enable consumers to compare like for like products in a more informed manner. The approach set out in this consultation also accords with the Third-Party Intermediary Code of Practice that RECCo have implemented.

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

No observations to note here.

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?

No observations to note here.

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 observations to note here.

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

No further observations to note here.