

Background

Tritility is a Third-Party Intermediary operating in the business/commercial energy sector.

This paper is Tritility's response to Ofgem's Non-domestic market review: Statutory consultation on licence changes, published 7 December 2023 and is supplemental to Tritility's response to Ofgem's Non-domestic market review: Findings and policy consultation, published 26 July 2023.

We again welcome the opportunity to respond to the consultation. We have set out our response under the same headings and question numbers contained in the Consultation. We have not responded to every question. As a Third-Party Intermediary, we have not generally commented on matters that more directly relate to energy suppliers.

As far as it is possible to do so, we have attempted to provide a disinterested view on the proposals likely to impact TPIs and the TPI sector.

Data and confidentiality

We do not ask for any part of our response to be kept confidential and we therefore understand that it is likely to be published in due course.

General Feedback

We do not have any comments about the overall process of this consultation or any general feedback on the consultation.

1. Introduction

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?

References for our responses below correspond to the numbering in the Impact Assessment and references appearing in parentheses correspond to the relevant paragraph number of the consultation document.

Impacts on Third Party Intermediaries (TPIs)

(4.1) We note the absence of data on the numbers of TPIs operating in the market and the size of customers they serve and the inability, flowing from that absence of that data, to present a fixed value for the costs that would be incurred by TPIs as a result of the proposals contained in the consultation/impact assessment. It is implicitly and explicitly acknowledged in the consultation and associated impact assessment that the proposals will have a significant impact on TPIs and the TPI sector. In that context, our strong view is that the proposals should not be implemented without having data to support a proper understanding of the impacts the proposals would have on TPIs and the TPI sector.

It is recognised in the impact assessment that TPIs will face costs associated with the proposals (*"As a result, we cannot currently present a fixed value for the costs that would be incurred by TPIs as a result of our proposals. However, we do recognise that there will be costs for TPIs and we will take this into*

consideration.”) It is not, in our view, possible properly to take into consideration costs which are unable to be quantified. The weight to be given to these costs must depend on a quantification of them. This is implicitly acknowledged in the costs tables elsewhere in the impact assessment which quantify the market and per-consumer costs of the proposals, but presumably excluding any cost elements that will fall onto TPIs and the TPI sector.

For the above reasons, we consider that it would be premature to proceed with the proposals without first taking steps to obtain robust data about the impact they will have on TPIs and the TPI sector, including a proper quantification of the number of TPIs likely to be affected and the cost implications (market and per-consumer) likely to be incurred by the sector.

(4.2) We note the acknowledged lack of data regarding the numbers of TPIs to be impacted by the proposed expansion of the scope of the de facto requirement for QDSS membership. In this specific context, we are already a member of a QDSS and have therefore already incurred or are already incurring the bulk of the associated cost. We therefore comment free of any significant commercial interest in the implementation or otherwise of this proposal.

For the same reasons as set out above, we consider that it would be premature to implement QDSS membership requirements in relation to the proposed new category of small businesses on the basis of an impact assessment that has not quantified the number of TPIs affected or the cost associated with the proposed measure.

(4.3) We note the acknowledgement that it is not possible to quantify the financial impact on TPIs and the TPI sector in relation to the cost impact of scheme fees. We think it important to say that fees are not the only cost of this proposal. Given the relatively modest number of complaints so far made by micro-businesses (which we estimated in our earlier submission to be approximately one complaint per scheme member) we would strongly anticipate that the fees related cost would be significantly outweighed by the preparatory, process, and process maintenance costs of QDSS membership. We acknowledge that the burden of those costs will be tempered by the ancillary benefit TPIs will derive from having improved processes in place. Even so, we consider that it would be premature to implement this proposal without first procuring robust data enabling the actual costs to the sector to be calculated and taken into consideration.

(4.4) We note the acknowledgement that the cost burden of QDSS membership falls entirely on TPIs. This is the case both in respect of the direct membership and case fees and in respect of the indirect costs of membership. We consider that asymmetry in relation to costs burden to be entirely appropriate in relation to micro-business consumers, but to be much less appropriate in relation to the proposed new category of “small business consumers”.

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

For the reasons set out above, robust data informing a proper assessment of the cost implications (market and per-consumer) of the proposal to expand the requirement for QDSS membership to the new category of “small business consumers”.

2. Standards of Conduct

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, we agree that a single set of standards of conduct applicable to all consumers is desirable. Having a single set of standards applicable to all consumers is a welcome simplification and should support greater trust and confidence in the market generally, support competition and simplify processes for stakeholders.

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. There is no reason to expect that a phasing-in should be required, particularly having regard to the timetable expectations already set out in the consultation.

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

No.

3. Complaints Handling Standards

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, subject to our strong view that the proposed increase to the energy consumption threshold for qualification as a Small Business Consumer is without justification, unnecessary and likely to lead to adverse outcomes in relation to complaints handling if implemented.

The principle of alignment is a very sensible one, in our view. However, no rationale is advanced for there to be a higher consumption threshold for qualification as a Small Business Consumer than as a Micro-Business. Our strong view would be that the consumption threshold in relation to Small Business Consumers, if included at all, should be the same as for Micro-Businesses.

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.

4. Signposting to relevant customer support services

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.

No. Our general experience is that consumers are already aware of the support that is available to them from Citizens Advice, and we therefore think that additional signposting requirements are unlikely to be beneficial.

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?

We have no feedback on 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? 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?

No. No comment on the proposed drafting.

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

We have no feedback on this question.

5. Third Party Intermediary redress scheme

Q10. Do you agree with our proposed change? Please provide comments to support your answer.

We cautiously agree with the principle of expansion to an appropriately defined new category of Small Business Consumers. We very strongly disagree with the implementation of the proposed change as it would currently take effect, connected with the definition of Small Business Consumer. The proposed definition of Small Business Consumer would include any business with electricity or gas consumption less than 500,000 kWh per annum, compared to 100,000 kWh (electricity) or 293,000 kWh (gas) in the corresponding definition for micro businesses. No rationale is given in the consultation why these increased consumption thresholds

are appropriate when determining eligibility to access QDSS redress. We appreciate that they are connected with the government's proposed changes to the Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 presently also subject to consultation, and we will be responding to that consultation expressing our view that the consumption threshold element of the proposed definition is unnecessary, or at least that there is no good reason for the consumption thresholds to be higher than those for micro-businesses.

Q11. Do you agree with the wording of the proposed licence condition changes outlined in Appendix 1?

Yes, subject to the above regarding the consumption threshold element of the definition of a Small Business Consumer.

Q12. Do you have any comments on the suggested implementation timescale of 8 months?

No.

6. Third Party Intermediary service fee transparency

Q13. Do you agree with our proposed expansion of Third Party Cost transparency to all Non-Domestic customers? Please explain your answer.

Yes. Transparency for all consumers is highly desirable in our view and we consider unit rate/standing charge disclosure to be more appropriate to non-micro-business consumers.

Q14. Do you agree with our proposed methodology of displaying Third Party Costs? Please explain your answer.

Yes. In our view, disclosure by reference to the unit rate or standing charge would be more accurate and informative for larger and more sophisticated consumers than "lump sum" disclosure which would almost always be an estimate.

Q15. Do you agree that our proposed timescale for implementation is achievable? Please explain your answer.

We have no feedback on this question.

Q16. 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?

Such an approach would have the significant benefit of allowing for standard documents and approaches on transparency across all consumers and would therefore be less costly to achieve.

Q17. 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.

31 January 2024