

Energy UK response to Ofgem's Statutory Consultation on the Non-domestic Market Review

Dear Louise,

Energy UK has engaged closely with the Non-Domestic Market Review, which generally represents a proportionate, principle-based and customer-focussed set of proposals to further enhance what has been found to be a competitive and well-functioning non-domestic market. We welcome this statutory consultation and look forward to working with Ofgem towards implementation of improvements to the market and regulatory landscape.

We strongly agree with the importance of all customers receiving fair treatment, and our members aim to treat every customer in a fair, honest, transparent and professional manner that is consistent with the principle of Standards of Conduct.

We also agree with the proposed expansion of complaint handling standards and alternative dispute resolution is extended to a wider range of customers and the importance of signposting to relevant customer support.

We support the objectives of transparency and clarity where this is proportionate, commercially non-sensitive and in customer interests, including in relation to commissions paid to Third-Party Intermediaries. To these ends we also very much support the extension of proportionate regulatory powers to Ofgem to ensure the Third-Party Intermediaries market operates consistently in customers best interests.

As Ofgem has acknowledged in this consultation, the non-domestic retail market is diverse, and as such, energy suppliers engage with a range of customers from sole traders, to large multinational companies. Large non-domestic customers have significant resources at their disposal, and are adept at representing their interests in contract negotiations and other commercial engagements. This creates a very different dynamic between energy supplier and customer than for a micro, small or medium sized business. It is important therefore that Ofgem considers carefully any "whole of market" regulatory changes in terms of their appropriateness for this end of the market.

Further, we wish to raise a few key points in response to details around the implementation of proposals.

- **Small Business Thresholds:** While we are supportive of the introduction of a 'Small Business Consumer' threshold, we are concerned that elements of the proposed threshold criteria are unnecessarily complex, inconsistent and likely to result in practical challenges. We have responded to DESNZ's consultation setting out these considerations (which is annexed to this response).

It is not clear to us that Ofgem is seeking to create a new category of customer which suppliers will be obliged to identify, record or report on. If this is Ofgem's intention then this should be made clear and consulted on further. Such an intention would raise the potential for read-across to other regulatory requirements and/or obligations. It is therefore important that Ofgem clarifies the status of Small Business Consumers and Micro Businesses going forward and consider carefully the complexity of the definition under consideration, the plausibility of suppliers assessing and verifying them, and where the onus for identification and/or verification of customers within a category should therefore lie.

On top of the clarification above, clarity is required on the data protection rules which would apply under the small businesses definition and whether these would be in line with current requirements for micro-businesses.

- **14 day-cooling off period:** We are concerned that Ofgem have signalled they will again raise the prospect of a 14 day cooling-off period for non-domestic customers. We do not see a rationale for reopening this question, which was rejected previously. Energy UK remains concerned that the significant differences between domestic and non-domestic contracts will mean a cool-off period would be costly to implement, confusing for customers and could ultimately negatively impact consumer trust in the industry.

Further, in the absence of direct regulation of Third-Party Intermediaries we consider that a cooling-off period would be open to abuse which could disbenefit both suppliers and customers.

- **TPI Commission format:** We are supportive of proposals to improve transparency of commission fees for TPIs and applying this to all customers. However, our members are split on the relative usefulness to customers of existing and proposed formats with some in favour of unit rates and others in favour of lump sums. Given a lack of clear evidence in favour of either solution, it therefore seems inappropriate to obligate suppliers to use one metric to another. As such, we would suggest that Ofgem includes both measures as appropriate and requires suppliers to decide which is most appropriate for their customers.
- **Third Party Intermediaries:** We remain very supportive of Ofgem being given formal powers to properly regulate TPIs, and particularly Brokers in the non-domestic market. We want to underline that proposals to implement a TPI Alternative Dispute Resolution scheme alongside TPI commissions transparency are necessary but insufficient to drive meaningful cross-market improvement. We continue to see long-term customer detriment in existing arrangements and remain of the view that a regulatory body (not energy suppliers via industry codes) must be ultimately responsible for direct regulation of this element of the market. We continue to make representations to Government to progress this matter with urgency.

As above, subject to these points of detail we agree with the broad proposals of this review and support moving to implementation. Given the multitude of proposals there is a risk that implementation is fragmented, creating unnecessary and inefficient levels of change. This is particularly the case given the ongoing scale of transformation the industry is going through as we digitalise and decarbonise the energy system. Some of the changes consulted on here are significant in their breadth and will require system and process changes that need to be developed and worked through (including resource and training). We consider it to be in customer's best interests for Ofgem to ensure implementation timelines align across interventions (perhaps into two packages) and build in time for necessary system changes.

In this vein we thank Ofgem for providing an adequate window for consideration of this consultation. As ever, we would be very happy to discuss this further. We are happy for Ofgem to publish our response.

Yours Faithfully,
Daniel Portis

ANNEX – Energy UK response to DESNZ on Ombudsman expansion thresholds

As we set out in our response to Ofgem's Policy Consultation on the Non-Domestic Market Review, Energy UK is supportive of enabling more non-domestic customers to access the redress scheme as part of Ofgem's broader Non-Domestic Market Review. There are cases and customers which will benefit from this expanded support, and we are committed to working with stakeholders to implement it as effectively as possible.

It is important and in customer's best interests, that as part of any expansion that costs are proportionate, criteria are clear and applicable, and service standards are high and consistent. While we are supportive of the introduction of a 'Small Business Consumer' threshold, we are concerned that elements of the proposed threshold criteria are unnecessarily complex, inconsistent and likely to result in practical challenges. Specifically:

- **Complexity of definition.** We are particularly concerned that more consideration needs to be made of the significant challenges and risks associated with expansion to a larger and more complex set of customers. We are concerned that such a mixed set of criteria will materially impact the ability of suppliers, customers and the Ombudsman to determine the standing of customers in respect to the Small Business classification. We believe it would be far simpler, and likely as effective, to implement criteria based on energy use only. While we appreciate other proposed elements of the proposed threshold may be easier for consumers to understand as they look at their own businesses, these are typically obscure to suppliers who can only identify qualifying consumers through consumption. We suggest that in the interest of universal understanding of a qualifying customer, it may be more practicable and useful to help consumers understand what the consumption element means for their ombudsman access rather than have supplier and consumer work with diverse metrics.
- **Visibility of threshold data.** Thresholds based on financial or headcount data are likely to present challenges in terms of energy suppliers' ability to accurately assess or verify them. While we understand that this has been suggested for consistency with FCA thresholds, the read-across is limited. Employee numbers, balance sheet, and turnover are external datapoints which are not naturally visible to energy suppliers in the same way they are for financial services providers. A consistent and efficient application of such criteria would therefore require the development of a systematic record of these data, which we do not consider realistic or proportionate. Further headcount and financial criteria are likely to be both volatile and more complex for larger businesses than for existing micro-business criteria. If these criteria were to be included then the clear emphasis should be on the customer to identify and verify that they apply to them, for example, enabling suppliers to rely on a declaration of status by the customer at point of sale.
- **Consistency of energy thresholds.** Further, we consider that the proposed threshold for electricity consumption is set too high. Consumption based thresholds should be set consistently with regard to micro-business thresholds which currently have a ratio of 2.93 : 1 (gas : electricity) which roughly accounts for the differences in typical usage/value for a given scale of customer. While we do not hold data required to assess the optimal level of threshold, we think there is a strong case for maintaining variable thresholds across fuel types.

Exempting criteria. Some of our members have raised the potential for consideration to be given to exclusionary criteria the offset any risk that thresholds result in inappropriate application of alternative dispute resolution. For example, businesses listed in the FTSE 100 or FTSE 250 Indexes or businesses that have contracted via a purchasing organisation or public sector procurement organisation may not be best served through additional regulatory protections. Consideration of this could be helpful in context of the 12-18 month review.

In our response to Ofgem's Policy Consultation on the Non-Domestic Market Review, we suggested that ahead of expanding the remit of the Ombudsman, a study should be performed covering how the current Ombudsman scheme operates as well as what that organisation believes would be required were their reach to be expanded. While the consultation contains scenario analysis and costings for increased case numbers, there is little evidence provided that either the Department or the Ombudsman have developed a full understanding of the likely challenges expansion will create. Complaints encountered are likely to be significantly more complex. Contracts are more varied – flexible contracts of contracts undertaken at Group level rather than individual entity, are likely to create difficult judgements and edge cases. As will the prevalence of intermediaries and agents.

With this in mind, it is not clear that the Ombudsman yet has the technical skills to consider more complex B2B energy complaints. In principle, we believe there is a case for consideration to be given to the potential role for another, specialised, entity in providing dispute resolution to businesses. Given that expansion of the Ombudsman is likely seen as the fastest route to implementation and is likely to be preferred at this stage, we would urge a rigorous stress-testing of its capability including examination of case studies before the expansion is implemented. A similar consideration is required for Citizen's Advice before an expanded service is implemented.

We are committed to working with stakeholders towards a successful implementation, and to that end urge DESNZ and Ofgem to consider alignment and efficiency across implementation timelines of both the Small Business Consumer definition and Ombudsman expansion. Specifically before opening new services to customers we would expect the above feedback to have been duly considered and tested. This is a significant change to the industry, and is likely to have a variety of knock-on effects including contractual, legislative, customer service and IT system changes which come at an already challenging time for industry transitions.