

Response to Ofgem Discussion Paper; “Non-Traditional Business Models: Supporting Transformative Change in the Energy Market”

20 May 2015

“Non-Traditional Business Models: Supporting Transformative Change in the Energy Market”

Ombudsman Services’ consultation response

1 Summary - About Ombudsman Services

1.1 Established in 2002, the Ombudsman Service Ltd (Ombudsman Services) is a not for profit private limited company which runs national, multi sectorial private sector ombudsman schemes for the telecommunications, energy, property, copyright licensing, the glass and glazing sectors, the Green Deal, the Asset Based Finance Association (ABFA), reallymoving.com and Which? Trusted Traders.

1.2 We’re an entirely independent, service-oriented organisation. Through the different services we run, we help our members to provide independent dispute resolution to their customers and each scheme is entirely funded by its members. Our aim is to raise public trust and confidence in the sectors we work with by providing effective independent redress when problems arise.

1.3 We now have around 9,200 participating companies. During the year ending 31 December 2014, we resolved 53,614 complaints. The company currently employs more than 500 people in Warrington and has a turnover in excess of £27 million.

1.4 Ombudsman Services’ complaints resolution service operates once a company’s own complaints handling system has been exhausted, and we have the authority to determine a final resolution to each complaint. We have an enquiries department which handles primary contacts and where decisions on eligibility are taken. If a complaint is not for us, or has been brought to us too early, we signpost the consumer and offer assistance. Eligible complaints are then triaged. The simplest can be resolved quickly, usually by phone, taking a maximum of three hours. Around 10% are dealt with in this way. For the majority of complaints we collect and consider the evidence from both parties, reach a determination and seek

agreement; about 55% are settled like this. The most complex cases require a more intensive investigation, may require more information and lead to further discussion with the complainant and the company to achieve clarification. The outcome will be an Ombudsman Services Decision. Whatever process is followed there is always a right of appeal and escalation. An Ombudsman can issue a final decision in any one of the processes where it is clear that there is no evidence that would require changes to the initial determination.

1.5 Our service is free to consumers and, with the exception of an annual subscription from Department of Energy and Climate Change (DECC) for the Green Deal, operates at no expense to the public purse. It is paid for by the participating companies under our jurisdiction by a combination of subscription and case fee on a 'polluter pays principle'. Participating companies do not exercise any financial or other control over the company. Ombudsman Services' governance ensures that we are independent from the companies that fall under our jurisdiction.

2 Ombudsman Services' Response to the Discussion Paper

2.1 We are grateful, in our capacity as operators of the statutory redress scheme for domestic and micro-business consumers of gas and electricity, for the opportunity to offer comments in relation to your discussion paper.

2.2 Within the paper you describe Non-Traditional Business Models ("NTBMs") as models that offer; "*new products or services, or new ways of delivering these, that are different to traditionally provided in the existing energy market. Those offering such services have diverse motivations (technological, social and environmental as well as financial) and ownership arrangements, and operate at various scales. Over time NTBMs have the potential to transform the existing energy system*". You say that NTBMs may include;

- products and services relating to energy generation, supply and distribution; and
- other energy services (e.g. energy efficiency, demand-side response services, information services, etc).

- 2.3 You go on to suggest that NTBMs can be difficult to situate within the existing regulatory framework; they may not be provided for at all within the current regime, alternatively, existing means and methods of regulation may not be suitable for them. This is consistent with Ombudsman Services' analysis.
- 2.4 As you are aware, licensees who provide energy to domestic and micro-business customers are obliged to subscribe to our ADR scheme in relation to the provision of certain products and services. These are;
- (a) the services associated with the metering and billing of customers for the supply of energy;
 - (b) the transfer of customers between energy suppliers;
 - (c) the sale of energy products and services;
 - (d) the provision of regulated products and services by holders of a gas transportation licence or electricity distribution licence.
- 2.5 As the matter stands, then, any organisation that supplies energy, and is required to hold a licence, is also required to be a member of Ombudsman Services: Energy. However, energy suppliers are not required to provide ADR in relation to products or services that fall outside of the above criteria. Even "traditional" energy suppliers can increasingly be found to offer new products (for example, support packages in relation to products such as boilers, central heating systems and home electrics, etc). Some have diversified into entirely new areas of work that are distinct from their core businesses (such as drainage, plumbing, etc). ADR remains voluntary for such products.
- 2.6 Instead, the current arrangements limit mandatory ADR provision along lines consistent with traditionally narrow business models – this allows for significant gaps in coverage and may not reflect the new landscape. In turn, this has the potential to act to the detriment of customers who may wrongly assume *any* complaint about an energy supplier can potentially be considered by Ombudsman Services: Energy. Such gaps also look to be contrary to the spirit

of the EU Directive on ADR for consumer disputes, which seeks to make ADR more widely available to all types of consumer.

- 2.7 Ombudsman Services: Energy has sought to respond to these issues. We have been able to work with energy suppliers and some have now voluntarily placed products and services under our jurisdiction that would otherwise fall outside of the scope of our scheme. This is positive in that customers of these suppliers are afforded greater protection when buying goods and services from them. However, such a piecemeal approach remains far from ideal and, without compulsion to have ADR in place for all products and services, the availability of redress remains potentially fragmentary in the energy sector.
- 2.8 Relatedly, we note the provisions of the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015. We understand that, in its capacity as “competent authority” under the Regulations, the Gas and Electricity Markets Authority, and therefore Ofgem, will continue to administer the mandatory redress scheme for the energy sector. As it stands, however, it is unclear whether this “competent authority” function will be limited to products and services for which ADR is presently compulsory (i.e. that fall within the ambit of the Consumer, Estate Agents and Redress Act 2008) or whether Ofgem will also act as “competent authority” in relation to ADR for complaints about products and services that happen to be provided by energy licence holders but that are not regulated as part of their licence conditions. Further, as your discussion paper indicates, there will inevitably be organisations that function as NTBMs, applying the Ofgem definition, but that will not be mandatorily required to have redress in place (because the services they offer do not require them to hold licences). Assuming such organisations voluntarily submit to ADR, their chosen ADR provider should, in our view, be approved by Ofgem in its capacity as “competent authority”.
- 2.9 In our view there is a clear logic to suggest that Ofgem should act as “competent authority” in relation to all ADR schemes that relate to the consumer energy market. This approach would most likely foster consistency of standards across the industry. It would draw upon Ofgem’s sectorial expertise and would

better position it to bring to bear wider policy considerations and regulatory strategies in the NTBM market. Equally, we acknowledge such an approach could be potentially problematic, especially in circumstances where a company may offer products that would fall across a number of sectors.

2.10 Presently, we do not propose a solution to these issues but instead seek to draw your attention to them and to offer our insights based upon our experiences and knowledge of cross-sectorial ADR provision. In our view there is a real risk of an energy market emerging under which access to ADR will be unevenly provided, being mandatory in some circumstances but voluntary in others. Indeed, such a market is already developing. This can only act to the detriment of consumers and will likely cause them significant confusion.

2.11 In our view, whatever approach is adopted with regards to the regulation of NTBMs, it is incumbent upon all stakeholders to ensure clear information is made available to consumers about the scope of, and any gaps in, ADR coverage in relation to services they provide.

2.12 If Ombudsman Services can be of further assistance with regards to your consideration of the issues discussed herein, please do not hesitate to contact us.

Lewis Shand Smith
Chief Ombudsman

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