

# Consultation

## Microbusiness Strategic Review: Policy Consultation

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We want to see a retail energy market that works in the interests of all consumers, including microbusinesses. In our Forward Work Programme 2019-2021, we noted that these businesses face many of the same issues as domestic consumers. We said we would take steps to better understand the issues faced by microbusinesses and take action where necessary so that they are able to access a competitive retail market and secure appropriate levels of protection.

Last year we launched a review of the microbusiness retail market, the Microbusiness Strategic Review to meet our Forward Work Programme commitment.

Based on the views and evidence collected through the review process, we have identified and prioritised several key areas of consumer harm, and developed a package of proposed policy measures to address these harms. **Through this document, we are consulting on this package of policy measures and have posed a number of consultation questions at the end of each chapter.** We have included draft supply licence conditions to illustrate how these measures could take effect. We have also published a draft Impact Assessment alongside this document which includes a separate set of consultation questions. We welcome views from stakeholders on our proposals.

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## Executive summary

Ofgem's priority is to protect current and future consumers. We want to see a retail energy market that works in the interests of all consumers, including microbusinesses. We have identified some areas where the retail energy market is not working well for microbusinesses, and are now setting out a package of proposals designed to improve their customer journey and ensure they can access a fair deal.

In our Forward Work Programme 2019-2021, we noted that microbusinesses face many of the same issues as domestic consumers. We said that we would take steps to better understand the issues faced by microbusinesses and take action where necessary so that they are able to access a competitive retail market and secure appropriate levels of protection.

To help us understand these issues we launched our Microbusiness Strategic Review last year. Our Opening Statement set out our theories of consumer harm, the scope of the review and the sources we would use to build an evidence base. It also outlined the customer journey model we would use to underpin our work. Alongside our Opening Statement we published a Call for Inputs, seeking views and evidence on our theories of consumer harm and areas of consumer detriment at each stage of the customer journey.

The views and evidence we have gathered have identified a mixed picture of consumer experience.

On the one hand, engagement levels are relatively high in the microbusiness segment with around three in four microbusinesses on a negotiated, fixed-term deal. The majority of businesses are able to negotiate bespoke contracts that suit their needs and agree competitive prices where they switch to a new supplier or agree a new deal with their existing provider. Microbusinesses can access a good quality of service from the best performing suppliers and obtain valuable market insight and contracting services from brokers and other third party intermediaries who play an important role in the market.

On the other hand, microbusinesses who do not engage with the market face particularly high prices. For those that do, too many encounter procedural barriers, opacity and poor practice that hamper their customer journey and can leave them overpaying for their energy. As many microbusinesses use brokerage services to engage with the market, the activities of a minority of brokers is causing particular harm in individual cases and we believe this poor practice is having a broader impact on trust across the market too.

To address these issues, we have developed a package of proposed policy measures :

- **Broker conduct principle:**Introducing a principles-based requirement for suppliers to ensure brokers they work with conduct themselves appropriately
- **Broker dispute resolution:** Introducing a requirement for suppliers to only work with brokers signed up to an alternative dispute resolution scheme
- **Informed contract choices:** Applying targeted sales and marketing rules to suppliers and brokers they work with via supply licence changes
- **Broker commission transparency:** Clarifying and strengthening existing supply licence obligations to provide information about broker commission payments on contracts, bills and account statements
- **Cooling-off period:** Introducing a 14 day cooling-off period for microbusiness contracts
- **Contract extensions:** Requiring suppliers to maintain existing contract rates for up to 30 days while issues with a blocked switch are being resolved
- **Banning notification requirements:** Banning suppliers from requiring microbusinesses to provide notice of their intent to switch

In addition, we propose to work collaboratively with leading consumer groups to improve awareness raising materials and information provision.

We believe that each of these measures will have a significant positive impact on microbusinesses' ability to act confidently and increase supplier accountability

We recognise that a well-functioning market will be more important than ever in the coming months as microbusinesses emerge from the challenges posed by the Covid-19 pandemic. We believe introducing each of the measures in this package of policy proposals will play an important role in contributing to the longer-term recovery by greatly improving microbusinesses experience at each stage of their customer journey. We believe each measure represents a proportionate intervention that can realistically be implemented by suppliers and other industry participants who are also working hard to recover and rebound from the pandemic. Alongside this Review, we are continuing to monitor the impact of the pandemic on the business retail energy market and considering whether any regulatory action beyond the proposals set out here will help ensure the effective functioning of the market.

**We have posed a number of consultation questions at the end of each chapter in this document.** We have included draft supply licence conditions to illustrate how our policy proposals could take effect. We have also published a draft Impact Assessment alongside this document. We welcome views from stakeholders on our proposals.



## Introduction

### Background

#### Microbusinesses in the UK economy and retail energy market

Microbusinesses play a central role in the UK economy, providing a wide range of products and services. According to government data, there were over 5.6 million microbusinesses in the UK by 2019, accounting for 96% of all businesses, 33% of employment and 22% of turnover.<sup>1</sup>

Microbusinesses are equally important in the retail energy market. As of December 2019, the largest suppliers (who supply approximately 90% of the microbusiness market) provided supply to circa 1.4m electricity and 0.5m microbusiness gas meter points. Microbusinesses make up a significant proportion of energy expenditure too, with expenditure from all these meter points accounting for £3.8bn in 2019.<sup>2 3</sup>

#### Why we launched a strategic review of the microbusiness market

The regulatory framework protecting microbusinesses in the energy market has evolved in recent years. For example, in 2013 we introduced 'Standards of Conduct' setting overarching rules for suppliers to follow when engaging with microbusinesses. We also introduced rules to limit back billing in November 2018. However, our evidence base, including published research, indicated that despite this evolution, the market is not working well for some microbusinesses. For example, the Competition and Markets Authority's (CMA) price transparency remedy which took effect in 2017, aimed to reduce microbusinesses' search costs, encourage them to engage in the market, and ultimately pay less for their energy. However, our evaluation of the remedy indicated that attempts to introduce price

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<sup>1</sup> House of Commons Library (2019),

<https://researchbriefings.files.parliament.uk/documents/SN06152/SN06152.pdf>

<sup>2</sup> All these values were compiled using an ongoing request for information to suppliers that represent approximately 90% of the small business market segment. These suppliers are British Gas, Corona, EDF, Eon, Gazprom, Npower, Opus, Scottish Power, SSE, and Total Power for electricity, and British Gas, CNG, Corona, EDF, Eon, Gazprom, Npower, Opus, Scottish Power, SSE, TEGS, and Total Power for gas.

<sup>3</sup> For the purposes of this data, microbusinesses are defined as those non-domestic consumers who use no more than 100 MWh of electricity per year, and/or no more than 293 MWh of gas per year.



transparency had not yet had a significant impact on the way the market operates.<sup>4</sup> It revealed a market where pricing is still far from fully transparent and where companies hold significantly more key information than the customers they serve.

Meanwhile our annual micro and small business survey identified that a significant proportion of microbusinesses who are not engaging with the market and accessing the best deals. The survey found that of those businesses undertaking no switching activity, 43% believe that all suppliers charge the same and 51% believe the differences between deals are marginal.<sup>5</sup>

Government, consumer groups and industry parties have consistently raised concerns with the way the microbusiness segment of the energy market is operating too. They have placed a particular emphasis on poor practices by a minority of brokers who operate in the microbusiness market that are having a detrimental impact on customers, for example citing a lack of transparency around commission costs as a specific issue.

We acknowledged these issues in our Forward Work Programme 2019-2021, where we noted that microbusinesses face many of the same issues as domestic consumers. We said that we would take steps to better understand the issues faced by microbusinesses and take action where necessary to ensure these businesses are able to access a competitive retail market and secure adequate levels of protection.

### **What outcomes do we want to see? Our vision for a positive microbusiness customer journey**

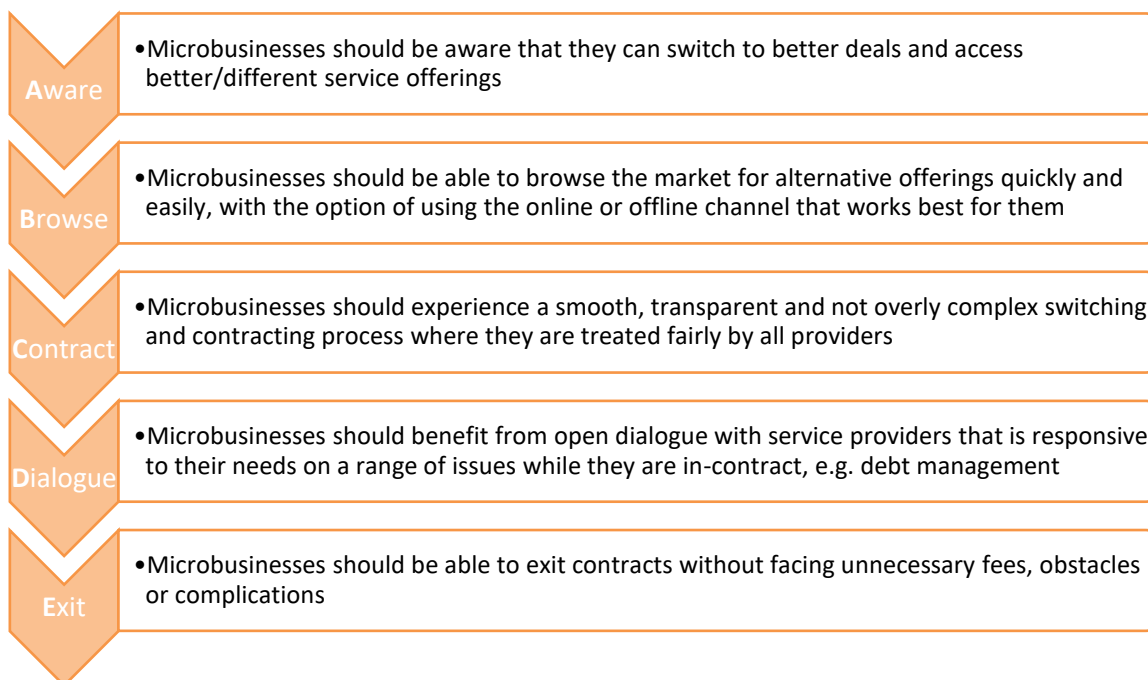
We envisage a retail market where providers meet microbusiness' needs and preferences; where microbusinesses receive appropriate protection and great customer service; and are able to easily navigate and access competitive offerings to make informed decisions.

Based on this vision, we developed a customer journey model with a set of practical principles which we considered should be applied at each stage of the journey.

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<sup>4</sup> Ofgem, Evaluation of CMA Price Transparency Remedy (2019), <https://www.ofgem.gov.uk/publications-and-updates/evaluation-cma-price-transparency-remedy-final-report>

<sup>5</sup> Ofgem, Micro and small business engagement survey (2018), [https://www.ofgem.gov.uk/system/files/docs/2018/10/micro\\_and\\_small\\_business\\_engagement\\_survey\\_2018\\_report.pdf](https://www.ofgem.gov.uk/system/files/docs/2018/10/micro_and_small_business_engagement_survey_2018_report.pdf)



## Theories of consumer harm

We developed eight theories of consumer harm based on areas where either we had already seen some evidence of detriment, or where we saw a likelihood of consumer harm. Below we set out our theories of consumer harm, representing both overarching and specific concerns relating to the customer journey.

### *Overarching theories of consumer harm*

- 1) The smallest microbusinesses cannot effectively engage with the current market given its complexity, including the very wide range of offerings and providers. At present their size and lack of expertise places them at a significant disadvantage when engaging with providers, leading to them ending up on expensive and/or unsuitable deals.
- 2) The cost of disengagement is higher for microbusinesses than disengaged domestic consumers leading to disengaged microbusinesses overpaying for their energy.
- 3) Barriers to accessing, using and sharing consumption data are preventing some microbusinesses fully benefiting from smart data and other technological innovations. This is hampering their ability to make informed switching decisions, use energy more efficiently and budget effectively.

### *Awareness*

- 4) A significant number of microbusinesses are generally unaware of the opportunities presented by the market, their rights, and company obligations. This is leading to a lack of engagement and/or a substandard experience during the customer journey.

### *Browsing*

- 5) Despite the CMA's attempts to improve price transparency, pricing is still not fully transparent and it is difficult to compare prices. This is leading to a significant proportion of microbusinesses not identifying the best deals.

#### *Contracting*

- 6) The supplier/third party intermediary contracting process is, or is perceived to be, overly complex, costly and opaque, leading to some consumers ending up on costly contracts with disadvantageous terms.
- 7) Microbusinesses often rely on brokers to switch and weak broker regulation is allowing room for sharp practices by some brokers. Gaps in current consumer redress mechanisms add further to this harm.

#### *Dialogue*

- 8) The absence of rules concerning debt management in this segment of the market is resulting in some microbusinesses struggling with debt being treated unfairly and not benefiting from customer-focused debt management policies and processes.

### **Scope of the Review**

In our Opening Statement where we launched our review we set out the scope of our review as follows.<sup>6</sup>

*Business classifications:* We noted that we are focusing on microbusinesses as defined in the gas and electricity supply licences and are not therefore considering larger businesses.<sup>7</sup> In keeping with our long-standing approach to the regulation of the business consumer market, we believe larger businesses are generally well equipped to look after their own interests without needing the support of regulatory intervention.

*Home-based single site businesses:* We recognised that a typical home-based single site business (by this we mean where an individual uses one room in their home as an office) is

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<sup>6</sup> Ofgem, Opening Statement – Strategic Review of the microbusiness retail market (2019), <https://www.ofgem.gov.uk/publications-and-updates/opening-statement-strategic-review-microbusiness-retail-market>

<sup>7</sup> A Microbusiness is defined in the gas and electricity supply licence as a Non-Domestic Customer:

- (a) which is a "relevant consumer" (in respect of premises other than domestic premises) for the purposes in article 2(1) of The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 (S.I. 2008/2268); or
- (b) which has an annual [gas] consumption of not more than 293,000 kWh, and/or an annual [electricity] consumption of not more than 100,000 kWh

unlikely to engage with the business energy market. Instead they will likely consume energy under the terms of one (or two if they are a dual-fuel customer with different suppliers for each fuel) domestic supply contract(s). We noted that our review will not consider consumers on domestic supply contracts.

*Industry and other parties:* We stated that our review would focus on the experiences microbusinesses have at each stage of their customer journey. Suppliers, third party intermediaries (TPIs)<sup>8</sup>, Citizens Advice, Citizens Advice Scotland, the Energy Ombudsman and others interact with consumers at various points in the journey. We said that we would therefore consider the role and impact of all parties at each stage of the customer journey.

### **Other related work**

A number of other workstreams are focused on complementary reforms that will help improve microbusinesses' experience and we have summarised these below.

#### *Future retail market design*

In the future, Government may develop statutory regulation of third party intermediaries, potentially including those operating in the non-domestic energy market. As part of the work Ofgem has done with Government on the merits of a regulatory framework for energy third party intermediaries, we have shared our evidence on consumer protections issues in the non-domestic market.<sup>9</sup> We will provide input as further proposals are developed by Government.

#### *Smart metering rollout*

Suppliers are required to rollout smart meters to domestic and designated non-domestic premises they serve, and this includes their microbusiness customers. Smart meters give consumers near real time information on energy use – expressed in pounds and pence – so that consumers will be able to better manage their energy use, save money and reduce metering issues. We provide regulatory oversight of rollout delivery, ensuring energy

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<sup>8</sup> Third party intermediaries (TPIs) can be defined as organisations or individuals that give energy related advice, aimed at helping you to buy energy and/or manage your energy needs. TPIs include switching sites, energy brokers and any company that offers support with energy procurement.

<sup>9</sup> Ofgem/BEIS, Flexible and responsive energy retail markets (2019), <https://www.gov.uk/government/consultations/flexible-and-responsive-energy-retail-markets>

suppliers' compliance with their smart meter licence obligations and working to secure the best possible outcomes for customers.

#### *Switching programme*

The Switching Programme is working with industry stakeholders to put in place the central systems and processes which will enable faster and more reliable switching. This will enable non-domestic consumers to switch within two working days. It will also improve data to ensure that there are fewer issues with switches going wrong, or being delayed. Improving the speed and reliability of switching will increase the number of consumers who engage actively in the market and, by doing that, will drive competition in the market leading to better tariffs, products and services for consumers. The Switching Programme is currently in its Design, Build and Test phase. The expected go-live date for the new central systems is in early 2022.

The Retail Energy Code (REC), introduced as part of the Switching Programme, is a dual fuel code that will, in time, govern all energy retail processes and rules, including access to energy data. In 2019/20, with the support of the Retail Energy Code Company, Ofgem worked with Gemserv and Xoserve to improve access to the data required to facilitate tariff comparison, in advance of migration to the REC. Xoserve and Gemserv have now published the technical specifications of the application programming interfaces (APIs) available, including the specific data that is available to TPIS. Industry approved a code modification to formalise TPI access to non-domestic electricity data in June 2020. Similar proposals are under consideration in the gas sector. We recognise the importance of these and other changes that will be needed in the future as type of offerings and structure of the market continues to evolve.

#### *Market-wide Half-hourly Settlement (MHHS)*

We are seeking to introduce revised electricity settlement arrangements. Building on the smart meter rollout, market-wide half-hourly settlement (MHHS) will ensure electricity suppliers and other retailers face the true costs of serving all of their customers. This should incentivise them to develop and offer new tariffs and services to their consumers to help them to use energy more flexibly. This applies to microbusiness consumers as much as to households. MHHS is expected to enable system-wide benefits by minimising the need to invest in generation and network capacity, and by making it easier to incorporate intermittent renewable generation into the network, reducing costs and enabling a lower-carbon system.

## Our approach to assessing and prioritising issues

### Evidence sources

We have used a range of evidence sources to help assess the nature and impact of the challenges faced by microbusinesses. They include:

- *Stakeholder engagement:* We have engaged with a range of external stakeholders through attendance at relevant events and via bilaterals with all stakeholders showing an interest in the review.
- *Research synthesis:* We produced a synthesis of existing published research to map previously identified issues against each stage of the customer journey.
- *Call for Inputs (CFI):* We published a Call for Inputs alongside our Opening Statement last year, seeking views and evidence on our theories of consumer harm and areas of consumer detriment at each stage of the customer journey.
- *Supplier contractual and pricing data:* We receive data on revenue and consumption volume by contract type through a recurring request for information from suppliers and have used it to identify contract and pricing trends.<sup>10</sup>
- *Complaints data analysis:* We have used complaints data we receive from suppliers/Citizens Advice/Citizens Advice Scotland and the Energy Ombudsman to identify complaints trends and key areas of concern for microbusinesses.
- *Price transparency remedy evaluation:* We published a report summarising our evaluation of the impact of the CMA's price transparency remedy alongside our Opening Statement last year, and used these findings to inform our thinking.<sup>11</sup>

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<sup>10</sup> The analysis included information from an ongoing request for information to suppliers that represent approximately 90% of the small business market segment. These suppliers are British Gas, Corona, EDF, Eon, Gazprom, Npower, Opus, Scottish Power, SSE, and Total Power for electricity, and British Gas, CNG, Corona, EDF, Eon, Gazprom, Npower, Opus, Scottish Power, SSE, TEGS, and Total Power for gas.

<sup>11</sup> The Price Transparency Remedy requires suppliers to provide clear prices to microbusiness customers through a quotation tool on their own websites or through Price Comparison Websites (PCWs). It aims to reduce microbusinesses' search costs, encourage them to engage in the market, and ultimately pay less for their energy

- *Cross-sector research*: We have consulted with regulatory colleagues in other sectors to identify transferable learning concerning the approaches to regulation and customer experiences in these sectors.

### **Categorising and prioritising issues**

Our stakeholder engagement helped us build a broad picture of the challenges faced by microbusinesses engaging in the retail energy market at each stage of their customer journey. We then used analysed the view and evidence obtained to assess the impact of the harms we identified in terms of their likely scale and severity.

- **Scale**: We assessed the likely scale of a harm by considering the number of microbusinesses potentially affected by it.
- **Severity**: To assess the severity of a harm, we considered the likely harm for individual microbusinesses accounting for financial impacts, but also impacts on trust, future engagement in the market and inconvenience.

Applying this model enabled us to draw up a list of harms for prioritisation. In the following chapters we map the harms against each stage of the customer journey model and highlight those that have been prioritised. For the sake of brevity, we have highlighted the most pertinent pieces of evidence to help illustrate the scale and severity of the harms identified.

### **Package of proposed policy measures**

Our proposed policy measures are as follows:

- **Broker conduct principle**: Introducing a principles-based requirement for suppliers to ensure brokers they work with conduct themselves appropriately
- **Broker dispute resolution**: Introducing a requirement for suppliers to only work with brokers signed up to an alternative dispute resolution scheme
- **Informed contract choices**: Applying targeted sales and marketing rules to suppliers and brokers they work with via supply licence changes
- **Broker commission transparency**: Clarifying and strengthening existing supply licence obligations to provide information about broker commission payments on contracts, bills and account statements
- **Cooling-off period**: Introducing a 14 day cooling-off period for microbusiness contracts

- **Contract extensions:** Requiring suppliers to maintain existing contract rates for up to 30 days while issues with a blocked switch are being resolved
- **Banning notification requirements:** Banning suppliers from requiring microbusinesses to provide notice of their intent to switch

In addition, we propose working collaboratively with leading consumer groups to improve awareness raising materials and information provision.

Alongside this document we have published a draft Impact Assessment setting out our thinking on the likely impact of our proposals and seeking further evidence from stakeholders to enrich our assessment.

## Related publications

Stakeholders may wish to view the following publications alongside this consultation:

[Opening Statement - Strategic Review of the microbusiness retail market](#)

[Evaluation of CMA Price Transparency Remedy](#)

[Microbusiness Research Synthesis](#)

## Consultation stages

Following the closure of this policy consultation, we expect to issue a statutory consultation in Winter 2020/21. We then anticipate publishing a final decision document later in 2021.

## How to respond

We want to hear from anyone interested in this consultation. Please send your response to the email address provided on the front page of this document by close on 23 October 2020.

We will publish non-confidential responses on our website at [www.ofgem.gov.uk/consultations](http://www.ofgem.gov.uk/consultations).

## Your response, data and confidentiality



You can ask us to keep your response, or parts of your response, confidential. We will respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, statutory directions, court orders, government regulations or where you give us explicit permission to disclose. If you do want us to keep your response confidential, please clearly mark this on your response and explain why.

If you wish us to keep part of your response confidential, please clearly mark those parts of your response that you *do* wish to be kept confidential and those that you *do not* wish to be kept confidential. Please put the confidential material in a separate appendix to your response. If necessary, we'll get in touch with you to discuss which parts of the information in your response should be kept confidential, and which can be published. We might ask for reasons why.

If the information you give in your response contains personal data under the General Data Protection Regulation 2016/379 (GDPR) and domestic legislation on data protection, the Gas and Electricity Markets Authority will be the data controller for the purposes of GDPR. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. Please refer to our Privacy Notice on consultations, see Appendix 4.

If you wish to respond confidentially, we will keep your response itself confidential, but we will publish the number (but not the names) of confidential responses we receive. We will not link responses to respondents if we publish a summary of responses, and we will evaluate each response on its own merits without undermining your right to confidentiality.

## General feedback

We believe that consultation is at the heart of good policy development. We welcome any comments about how we have run this consultation. We would also like your answers to the following questions:

1. Do you have any comments about the overall process of this consultation?
2. Do you have any comments about its tone and content?
3. Was it easy to read and understand? Or could it have been better written?
4. Were its conclusions balanced?
5. Did it make reasoned recommendations for improvement?
6. Any further comments?

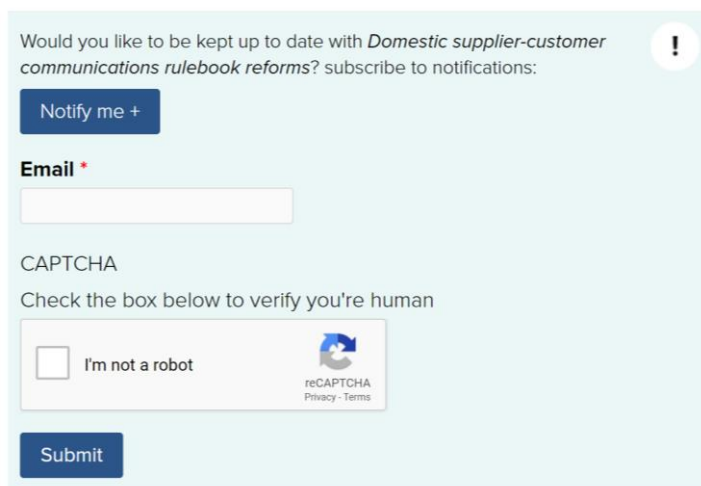
Please send any general feedback comments to [stakeholders@ofgem.gov.uk](mailto:stakeholders@ofgem.gov.uk)


## How to track the progress of the consultation

You can track the progress of a consultation from upcoming to decision status using the 'notify me' function on a consultation page when published on our website.

[Ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations).

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## Awareness: Knowing about opportunities and risks

### Section summary

Our review has highlighted a number of areas where a lack of awareness is hampering microbusinesses' ability to effectively engage with the energy market. In this chapter we set out these issues and our proposal to address them through improved awareness raising materials and information provision. Our review has identified a number of gaps in customers understanding and awareness of the energy market that is impacting their ability to get the right energy deal for them. In this chapter we highlight some of the main awareness gaps and the impact these gaps have on microbusinesses' experience of navigating the market as well as our policy proposal to address this issue.

### What outcome do we want to see?

We want a retail market where microbusinesses are aware and able to make switching decisions easily. This means knowing that they will need to periodically review their options and switch providers to access better deals. This includes easily understanding contractual arrangements including those which may typically carry very high energy costs (for example Deemed contract rates).

Understanding that suppliers and TPIs can offer added services like data management products can also help microbusinesses make the most of new technology and innovation.

A basic level of broader awareness benefits microbusinesses too. Having some understanding of their consumer rights can help microbusinesses in their day-to-day interactions with companies, as does awareness of impartial advice and information sources. Knowing how to resolve disputes and gain redress – for example, being aware of the service provided by the Energy Ombudsman - is important if microbusinesses are to have a positive consumer experience. Awareness of the benefits that can be accessed through smart metering and consumption data is also important.

In our CFI, we asked whether awareness raising materials/initiatives would be of significant benefit to microbusinesses to help achieve the consumer outcomes we want to see. We also asked what key information any new materials should focus on and how these could best be delivered to microbusinesses to help increase their knowledge and understanding of the way the market operates for them.

## Stakeholder views and evidence

Stakeholder views and evidence point to awareness gaps impacting microbusinesses at each stage of the customer journey.

At the Browsing stage of the customer journey – where customers search for deals - there appears to be an awareness gap around the availability of online comparison tools. Following its investigation into the energy market in 2016, the CMA introduced requirements on suppliers through its Price Transparency Remedy (PTR) to use Price Comparison Websites (PCWs) or their own website quotation tools to provide clear prices to microbusinesses.<sup>12</sup> However, our evaluation found that the PTR has to date been ineffective in creating a fully transparent market, and that some aspects of the remedy are not working as well as they could. Our evidence suggests there are various issues including low awareness and take-up of online supplier tools by microbusinesses.<sup>13</sup>

At the Contracting stage of the customer journey - where customers sign up to a new contract - there appears to be a general lack of knowledge about the nature and cost of brokerage services. Microbusinesses are uncertain or entirely unaware of the typical commercial arrangements between brokers and suppliers, the impact they may have on the offers presented to microbusinesses, and the true costs of agreeing a supply contract when using a brokerage service. Lack of knowledge about broker commission appears to be a particularly significant issue. The lack of transparency around broker commission charges means that many microbusinesses don't realise how much of what they pay via their energy bill goes to their chosen broker. Our evidence suggests that this leaves the consumer questioning the true intention behind brokers recommending a particular energy deal.<sup>14</sup>

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<sup>12</sup>The CMA's investigation into the energy market found that microbusinesses were not able to easily access information about energy prices, creating a barrier to engagement and to finding a better energy deal - Competition and Markets Authority (CMA), Energy Market Investigation Final Report (2016), <https://www.gov.uk/cma-cases/energy-market-investigation>

<sup>13</sup> Ofgem, Evaluation of the CMA Price Transparency Remedy for microbusinesses – final report (2019), <https://www.ofgem.gov.uk/publications-and-updates/evaluation-cma-price-transparency-remedy-final-report>; Npower CfI response; Collaborate Research, How microbusinesses engage with energy and implications for the CMA Price Transparency Remedy – qualitative interviews with microbusinesses (2018), <https://www.ofgem.gov.uk/publications-and-updates/how-microbusinesses-engage-energy-implications-price-transparency-remedy>

<sup>14</sup> Citizens Advice CfI response; BMG research, Micro and small businesses' experiences with and perceptions of energy broker services (2014 & 2015), [https://www.ofgem.gov.uk/sites/default/files/docs/2015/06/bmg\\_research\\_ofgem\\_depth\\_interviews\\_report\\_d3.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2015/06/bmg_research_ofgem_depth_interviews_report_d3.pdf); Association of Convenience Stores (ACS) CfI response.

At the Dialogue stage of the customer journey – where customers engage in two-way communication with their service providers - awareness gaps seem to lead to various harms including bill shocks, not being able to resolve problems when things go wrong, and missing out on opportunities to save on bills through efficient energy use.

Some microbusinesses appear unaware of the need to and benefits of providing opening and regular meter readings, there may also be practical difficulties from a lack of knowledge about how to take the meter reads, knowing where the meter is and ensuring the read relates to the correct meter; all potentially leading to bill shocks.<sup>15</sup>

Awareness of redress availability also appears relatively low. Evidence from a research survey by GfK<sup>16</sup> indicated that 25% of consumers interviewed were not aware of the Energy Ombudsman, with 66% of those stating that they would have escalated their complaint with the Energy Ombudsman had they known of their existence.

Evidence received through the review also suggests that some microbusinesses are unaware of how to effectively save money on bills through more efficient and sustainable energy usage. For example a recent study by Citizens Advice found many businesses feel it is not possible to improve energy efficiency and are unaware of support available.<sup>17</sup>

At the Exiting stage of the customer journey - where customers seek to switch away from an old contract, awareness gaps appear to relate primarily to a lack of knowledge about switching procedural requirements and again a lack of knowledge about the nature of some brokerage offerings. These lead to microbusinesses encountering delays with the switching process and incurring additional unnecessary costs.

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<sup>15</sup> Bristol University/ Money Advice Trust (MAT) study (2018), [http://www.bristol.ac.uk/media-library/sites/geography/pfrc/pfrc1802\\_supporting-small-businesses-with-energy-debt.pdf](http://www.bristol.ac.uk/media-library/sites/geography/pfrc/pfrc1802_supporting-small-businesses-with-energy-debt.pdf); Citizens Advice Research (2020) <https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/energy-policy-research-and-consultation-responses/energy-policy-research/getting-through-to-business/>, a few suppliers also reported these scenarios to us.

<sup>16</sup> GfK, Complaints to Ombudsman services: Energy; (2015), [https://www.ofgem.gov.uk/sites/default/files/docs/2013/12/ofgem\\_gfk\\_complaints\\_to\\_ombudsman\\_services\\_energy\\_report\\_2013\\_0.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2013/12/ofgem_gfk_complaints_to_ombudsman_services_energy_report_2013_0.pdf)

<sup>17</sup> Citizens Advice Research (2020), <https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/energy-policy-research-and-consultation-responses/energy-policy-research/getting-through-to-business/>

A range of stakeholders including some CFI respondents have suggested that many microbusinesses have a poor understanding of termination notice requirements.<sup>18</sup> Stakeholders said that this could result in switches being blocked with costly default contract rates being applied in the meantime.<sup>19</sup>

Other stakeholders, including the Energy Ombudsman in its CFI response has also cited an issue with microbusinesses mistakenly moving away from costly deemed rates onto slightly cheaper, but in practice poor value fixed-term rates in their haste to move off deemed rates.

### **Policy Proposal**

Due to the scale of its impact of awareness gaps we are proposing to address this issue via our policy proposals.

We propose working collaboratively with leading consumer groups on a two-pronged approach to improving awareness levels. First, building upon and developing new awareness raising materials for microbusinesses, for example increasing the information available on consumer group websites. Second, utilising the most effective channels to disseminate information, harnessing the latest technological developments. We would like to work collaboratively with leading consumer groups to achieve this, tapping into their expertise and local networks to build up and disseminate/provide access to key information.

We believe this initiative will increase awareness at all stages of the consumer journey, keeping microbusinesses to be informed of their options and rights. We believe this measure would effectively complement the rest of our proposed policy measures.

To assess the impact of this measure, we anticipate working with consumer groups and our own communications team to track engagement with awareness raising activities. This could include, for example, monitoring social media traffic and webpage visits.

*Question: What are the most effective ways to ensure that microbusinesses can access key information about the retail energy market?*

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<sup>18</sup> Energy Ombudsman, St Lukes' Church, and Verastar in their CFI responses.

<sup>19</sup> Verastar and St Lukes Church in their CFI responses.





## Browsing: Searching for deals

### Section summary

Our review has highlighted four main issues impacting microbusinesses' ability to browse for deals and their experience of doing so: market opacity, contract complexity and opacity, data access limitations, and poor telesales practices. In this chapter we set out these issues and their impacts as well as detailing our proposals to require that suppliers ensure brokers they work with provide key contractual information to consumers and requirements around disclosure of broker costs.

### What outcomes do we want to see?

The consumer outcome we want to see at the browsing stage of the customer journey is that microbusinesses are able to quickly and easily search for a suitable energy deal in the market, using the online or offline channel best suited to them.

Browsing the market for better deals and services should not be an overly time-consuming process. Being able to quickly identify options is crucial to most microbusinesses with limited time to spend on activities outside of their core business.

The browsing process should not be overly complex either. Microbusinesses need to be able to identify key information like pricing details easily. Needing to provide large amounts of data is likely to complicate the browsing process and dissuade microbusinesses from switching.

In practice browsing may mean identifying deals directly via supplier sales channels or using online or phone-based comparison and brokerage services. We recognise that different businesses will have different preferences concerning the way they want to search for a new deal, with the option of using the online or offline channel that works best for them. We consider that a well-functioning market will be responsive to these needs.

In our CFI, we asked for views and evidence of the most impactful issues hindering microbusinesses' attempts to effectively browse the market in search of an improved deal /service offering.

### Stakeholder views and evidence

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Stakeholder views and evidence suggest that the four main issues affecting microbusinesses at this stage of the customer journey are:

- a) Market opacity
- b) Contract complexity and opacity
- c) Data access limitations
- d) Poor telesales practices

### **Market opacity**

Stakeholder views and evidence suggests there is a lack of transparency in the market when microbusinesses initially search for deals.

The previous chapter included commentary on how the CMA's Price Transparency Remedy has been ineffective in creating a fully transparent market. Separately some CFI respondents noted that some microbusinesses continue to want more online deals and a system to allow a whole of market comparison, believing this will reduce complexity and avoid the need to negotiate directly with the supplier. Currently, with the majority of the best deals seemingly available offline and requiring negotiation, together with the inability to access a whole of market comparison, microbusinesses are finding it challenging to compare deals on a like-for-like basis independently.<sup>20</sup>

We also received evidence from a small number of stakeholders to suggest that some microbusinesses prefer to negotiate a bespoke deal over the phone, as this allows them to secure a deal that best suits their needs.<sup>21</sup>

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<sup>20</sup> Collaborate Research, How microbusinesses engage with energy and implications for the CMA Price Transparency Remedy – qualitative interviews with microbusinesses (2018), [https://www.ofgem.gov.uk/system/files/docs/2019/05/how\\_microbusinesses\\_engage\\_with\\_energy\\_research\\_report.pdf](https://www.ofgem.gov.uk/system/files/docs/2019/05/how_microbusinesses_engage_with_energy_research_report.pdf); Ombudsman CFI response

<sup>21</sup> Collaborate Research, How microbusinesses engage with energy and implications for the CMA Price Transparency Remedy – qualitative interviews with microbusinesses (2018), [https://www.ofgem.gov.uk/system/files/docs/2019/05/how\\_microbusinesses\\_engage\\_with\\_energy\\_research\\_report.pdf](https://www.ofgem.gov.uk/system/files/docs/2019/05/how_microbusinesses_engage_with_energy_research_report.pdf)

### **Contract complexity and opacity**

Stakeholder views and evidence indicate that once microbusinesses have identified a preferred deal or selection of preferred deals, they can often be complex in structure and lack transparency, making them difficult to compare like-for-like, especially around charges.

Many stakeholders point to a lack of clarity on TPI commissions and remuneration meaning that microbusinesses are unable to make informed choices about their energy supplier.<sup>22</sup>

Some research and stakeholders indicate there is a challenge for microbusinesses due to a lack of clarity on the breakdown and composition of deals more broadly. This includes for example understanding the differences between fixed versus variable deals and standing charges.<sup>23</sup>

### **Data access limitations**

We identified some evidence suggesting that it is difficult for microbusinesses to access contractual data including their existing contract end date, or for TPIs to access metering data to produce accurate quotes for switching.

We recognise recent positive developments made in this area. The Retail Energy Code (REC), introduced as part of the Switching Programme, is a dual fuel code that will, in time, govern all energy retail processes and rules, including access to energy data. In 2019/20, with the support of the Retail Energy Code Company, Ofgem worked with Gemserv and Xoserve to improve access to the data required to facilitate tariff comparison, in advance of migration to the REC. Xoserve and Gemserv have now published the technical specifications of the application programming interfaces (APIs) available, including the specific data that is available to TPIs. While TPI data access has focussed on domestic consumer data in the past, there is now recognition of the benefits of opening up non-domestic consumer data too.

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<sup>22</sup> BEC and ACS in their CFI response

<sup>23</sup> Bionic CFI response; Collaborate Research, How microbusinesses engage with energy and implications for the CMA Price Transparency Remedy – qualitative interviews with microbusinesses (2018), <https://www.ofgem.gov.uk/publications-and-updates/how-microbusinesses-engage-energy-implications-price-transparency-remedy>

Industry approved a code modification to formalise TPI access to non-domestic electricity data in June 2020. Similar proposals are under consideration in the gas sector.

### **Poor telesales practices**

Information provided by a wide range of stakeholders suggests that microbusinesses are receiving a significant amount of unsolicited calls from brokers during business hours, causing disruption and significant nuisance.<sup>24</sup> Some evidence also suggests that a minority of brokers are using aggressive sales tactics when engaging with microbusiness customers.

Research suggests that the volume and nature of unsolicited calls has been increasing in recent years and can cause disengagement among microbusinesses.<sup>25</sup> In some instances, evidence suggests that pressured sales techniques are used during customer engagement. For example, a study by the Centre for Competition Policy (CCP) found that 48.8% of microbusinesses sampled were quite or very dissatisfied with brokers' sales approaches in 2014<sup>26</sup>.

We recognise the role the Telephone Preference Service (TPS) and Corporate Telephone Preference Service (CTPS) can play in helping microbusinesses screen out unwanted sales calls. The TPS/CTPS are the UK's official 'Do Not Call' registers for landline and mobile numbers. Individual consumers, sole traders and partnerships (except in Scotland) are able to register for the TPS stating their preference to opt out of receiving unsolicited sales or marketing calls. Businesses of any type or size can register for the CTPS which mirrors the TPS for free via the TPS website.

Where a phone number is registered with the TPS/CTPS, organisations are legally required - by the Privacy and Electronic Regulations 2003 - to refrain from calling it unless they have explicit consent to do so. In the UK, the Information Commissioner's Office (ICO) enforces

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<sup>24</sup> CFI responses from St Lukes Church and ACS

<sup>25</sup> Research to support the evaluation of the CMA Price Transparency Remedy (2018), [https://www.ofgem.gov.uk/system/files/docs/2019/05/how\\_microbusinesses\\_engage\\_with\\_energy\\_research\\_report.pdf](https://www.ofgem.gov.uk/system/files/docs/2019/05/how_microbusinesses_engage_with_energy_research_report.pdf); Quadrangle Report, Micro and small business customer engagement in the energy market (2016), [https://www.ofgem.gov.uk/system/files/docs/2017/04/ofgem\\_-\\_micro\\_and\\_small\\_business\\_engagement\\_2016\\_-\\_research\\_report.pdf](https://www.ofgem.gov.uk/system/files/docs/2017/04/ofgem_-_micro_and_small_business_engagement_2016_-_research_report.pdf); Bristol University/ Money Advice Trust (MAT) study (2018), [http://www.bristol.ac.uk/media-library/sites/geography/pfrc/pfrc1802\\_supporting-small-businesses-with-energy-debt.pdf](http://www.bristol.ac.uk/media-library/sites/geography/pfrc/pfrc1802_supporting-small-businesses-with-energy-debt.pdf); Zellar and CCP CFI response; Collaborative research, [https://www.ofgem.gov.uk/system/files/docs/2019/05/for\\_publication\\_research\\_synthesis\\_0.pdf](https://www.ofgem.gov.uk/system/files/docs/2019/05/for_publication_research_synthesis_0.pdf)

<sup>26</sup> CCP CFI response

these regulations and has the power to fine firms if they breach them. We are in contact with the ICO and are aware of current investigations into cold calling by TPIs in the energy market.

### **Policy Proposals**

Due to both its scale and the severity of its impact on individual affected consumers, we believe the issue concerning opacity around the make-up of charges, especially TPI commissions, should be tackled through our policy proposals

For the market to work well it is essential that consumers receive accurate and understandable information during the browsing and contracting process, as well as having adequate time and space to assess this information so they can make appropriate decisions. Our proposals below are designed to address the issues we have identified by ensuring that microbusinesses are provided with suitable information.

We believe that our proposals for specific sales and marketing requirements detailed in the next chapter will also help to ensure that the information provided to customers is appropriate and comprehensible.

#### *Requirement to provide Principal Terms*

Currently suppliers must take all reasonable steps to bring the Principal Terms of a contract, in plain and intelligible language, to the attention of a microbusiness customer before entering into a contract.<sup>27</sup> We have considered whether this obligation suitably ensures that consumers are provided with the necessary contractual information when contracts are agreed via a broker and believe that this could be strengthened.

We propose strengthening the existing obligation by requiring suppliers to bring, and ensure that any Broker brings, a written version of the Principal Terms to the consumer in any circumstances when negotiating a contract between a supplier and microbusiness consumer.

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<sup>27</sup> The Principal Terms contain the key terms of a contract. A full definition of what is included in the Principal Terms is available within the Electricity Supply Licences, <https://www.ofgem.gov.uk/licences-industry-codes-and-standards/licences/licence-conditions>

### *Commission transparency*

Increasing the transparency of broker costs will allow consumers to make more informed contract choices and assess the value of services offered by brokers in identifying energy contracts. The evidence provided to us suggests that at least some microbusinesses are unaware of the broker costs which can be very high relative to the costs of the energy supply. We believe that clearly providing microbusinesses with this information up front will reduce overall consumer harm by enabling consumers to make informed choices about brokerage services.

We remind suppliers of their existing obligation to include within the Principal Terms any term that may reasonably be considered to significantly affect the evaluation by the customer of the contract. Evidence provided to us has shown that a lack of clarity concerning broker commission can prevent consumers from making an informed choice about a contract offer. We believe that the presence of broker commission costs will significantly affect the evaluation of contracts by microbusiness customers, and should therefore be included in the Principal Terms. For the avoidance of doubt and unnecessary complexity, and to maximise transparency, our view is that this applies in all cases involving a microbusiness consumer contract.

As well as providing information on broker costs when first entering into a contract via the Principal Terms, we believe it would be beneficial for this information to be disclosed throughout the duration of the contract as this would ensure consumers are able to use this when comparing offers. This is especially pertinent in the microbusiness market as fixed term contracts can last multiple years and some consumers choose to negotiate new contracts well in advance of their existing contract end date. We therefore propose introducing an additional requirement for suppliers to disclose brokerage costs included as part of the supply contract on bills, statements of account and at the request of the microbusiness customer.

We are aware that there are situations where consumers may make payments directly to brokers as part of an agreement separate to the contract agreed for the supply of gas/electricity. These payments can be for a variety of services offered by brokers and may include negotiating, identifying or managing energy contracts. This obligation would not extend to these arrangements, which we believe to already have greater transparency around the costs of these services because the payments are disaggregated from the bills received from suppliers.

*Question: Do you agree with our proposal to strengthen the requirements to present a written version of the Principal Terms to customers?*

*Question: Do you agree with our proposal to require that suppliers disclose the charges paid to brokers as part of the supply contract, on bills, statements of account and at the request of the microbusiness customer?*

*Question: Do you think that further prescription or guidance on the presentation and format of broker costs on contractual and billing documentation would be beneficial? If so, how should broker costs be presented?*

*Question: What challenges do you think suppliers and brokers may face implementing these proposals?*

*Question: Do you have any comments on the associated draft supply licence conditions in Appendix 1 of this document?*

*Question: Do you think there are other changes which would better address the consumer harm that has been identified?*

## Contracting: Signing up to a new contract

### Section summary

Our review highlighted a range of issues connected to market features and broker practice which can lead to some microbusinesses overpaying when contracting for a new deal. Stakeholder views and evidence also showed that some microbusinesses experience a complex and burdensome contracting process resulting in a suboptimal consumer experience. We set out these issues and their impacts in this chapter as well as our proposals to address them by introducing a broker conduct principle, targeted sales and marketing requirements, and a contract cooling-off period.

### What outcomes do we want to see?

At the contracting stage of the customer journey we want to see microbusinesses experience a smooth, transparent and not overly complex switching and contracting process, where they are treated fairly by all providers.

The mechanics of the switching process itself should run smoothly. It is vital that a switch allows for a swift and seamless transfer from the old provider to the new one. Anything less will result in a poor consumer experience and may dissuade microbusinesses from switching again in the future.

Contracts and providers offering them need to be transparent. Microbusinesses need to know who they are contracting with and what they are signing up to.

Simple, clear contracts make it easy for microbusinesses to make a decision about whether to enter into a commercial arrangement with a new provider. Clarity on pricing is especially important – microbusinesses need to know what they will be paying, when and to whom, and any circumstances that might change the amount they pay.

Microbusinesses should not be treated unfairly during the contracting process in any way, for example by being misled about the terms of a contract.

In our CFI we asked stakeholders what they see as the key issues microbusinesses face when they come to enter into a new contract for their energy supply. We also sought evidence



demonstrating the extent and impact of any poor practice by brokers dealing with microbusinesses.

### **Stakeholder views and evidence**

Stakeholder views and evidence point to a wide range of issues mostly leading to microbusinesses overpaying when signing up to a new contract.

#### *Higher prices for disengaged microbusinesses*

Microbusinesses have the opportunity to engage with the market and secure a competitive deal. Analysis of supplier contractual and pricing data suggests that those who do not engage can pay substantially more for electricity and gas. Average unit revenues for default electricity contract types can be around 50% higher than unit revenues associated with negotiated contracts.<sup>28</sup> Average deemed unit rates are around 75% higher than negotiated contract rates. Similar differences exist for gas microbusiness contract types.

These differences are more pronounced for microbusinesses who consume relatively small amounts of electricity or gas. Microbusinesses who fall within the E0 consumption band can pay default and deemed contract unit revenues that are around 55% and over double the unit revenues associated with negotiated contracts.<sup>29</sup>

#### *Limited choice of contracts and higher prices for certain groups of engaged customers*

Stakeholders report a market where a minority of microbusinesses have a limited choice of contracts, with those that are offered often being extremely costly or having unattractive terms due to supplier perceptions about their business type or financial history (raising concern that they may default on payments).

We recognise that the Covid-19 pandemic and the resulting impact on the financial positioning of both microbusinesses and suppliers may exacerbate this issue further.

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<sup>28</sup> Unit revenues are calculated using the microbusiness RFI data submitted by suppliers. It is total revenue associated with contract types divided by the corresponding volume. Default contract types include Out of Contract, Evergreen and rollover contracts. Negotiation contract types include acquisition and retention contracts.

<sup>29</sup> E0 consumption band consume less than 5MWh annually.

Alongside this review we are investigating this specific issue to ascertain whether the retail market is able to provide a suitable offering to all microbusinesses with energy needs.

#### *Higher prices for smaller microbusinesses*

Analysis of supplier contractual and pricing data indicates a price differential exists between smaller and larger consumption microbusinesses.<sup>30</sup> For example, larger consumption microbusinesses pay around 30% lower negotiated electricity contract prices and 25% lower negotiated gas contract prices than the smallest consumption microbusinesses.

We want prices to be competitive for all microbusinesses. However, we acknowledge a number of factors may produce a price differential between larger and smaller microbusinesses including higher costs to serve small microbusinesses or the ability to negotiate volume discounts. Supplier contractual and pricing data also suggests that prices paid by smaller microbusinesses on negotiated contracts are comparable to the domestic consumer price cap assuming consumers consume similar volumes of energy. On this basis, we do not consider smaller microbusinesses are paying disproportionately high amounts for negotiated energy prices compared to larger microbusinesses.

#### *Telesales contracting*

Stakeholders provided views and evidence suggesting that the common market practice of agreeing contracts verbally over the phone is flawed. As indicated by Citizens Advice in their CFI response, in some cases it appears that microbusinesses are unwittingly signing up to deals over the phone without realising that they are signing up to a legally binding contract. In other cases they evidence scenarios where on reflection microbusinesses are feeling as though they have been misinformed or not provided with complete information.

As with a number of similar case studies, Citizens Advice in their CFI response reported a situation where a consumer agreed a verbal contract but on reflection felt they were not provided with full and comprehensive information. In this case study the consumer attempted

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<sup>30</sup> The analysis included information from an ongoing request for information to suppliers that represent approximately 90% of the small business market segment. These suppliers are British Gas, Corona, EDF, Eon, Gazprom, Npower, Opus, Scottish Power, SSE, and Total Power for electricity, and British Gas, CNG, Corona, EDF, Eon, Gazprom, Npower, Opus, Scottish Power, SSE, TEGS, and Total Power for gas.

but failed to contact the broker and has since been advised that the contract is now legally binding.

### *Broker conduct*

Stakeholder views and evidence point to dissatisfaction with some brokerage services and poor practice by a minority of brokers in various forms impacting microbusinesses at the contracting stage of their customer journey.

We recognise that TPIs play an important role in the non-domestic energy market, where they are widely used by microbusinesses for a variety of reasons including helping to search for an energy deal. Our micro and small business engagement survey 2018 noted that brokers are the most widely used form of TPI (67%) and the main source for microbusinesses when making switching decisions (41%).<sup>31</sup>

We have received evidence from multiple case studies of various brokers serving multiple suppliers appearing to show brokers charging overly high commissions and applying poor practices. For example, a Business Energy Claims (BEC) case study appears to show a broker only offering one deal to a golf club despite claiming it would search the entire market.<sup>32</sup> It later transpired that the deal contained 'hidden' commission of 50% of the golf club's energy spend, and the microbusiness felt the five year length of the contract was not made clear. BEC estimate that the golf club owed £24,000 in 'hidden' commission charges.

Other evidence points to a minority of brokers allegedly engaging in potentially fraudulent practices and misrepresentation, causing microbusinesses to end up on a contract and/or paying for additional services they hadn't signed up for.<sup>33</sup>

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<sup>31</sup> Ofgem, Micro and small business engagement survey (2018), <https://www.ofgem.gov.uk/publications-and-updates/micro-and-small-business-engagement-survey-2018>

<sup>32</sup> BEC, Report on TPI Misconduct in the non-domestic energy market (2019) - CFI response

<sup>33</sup> Potential fraudulent practice includes forging signatures or letters arguably in an attempt to falsely represent suppliers e.g. in the context of CoTs. Mis-representation includes claiming to work with all suppliers, having mis-leading contract terms and presenting inaccurate information.

False Change of Tenancy (CoT) applications and phantom switches, as well as falsified Letters of Authority are forms of specific poor practice regularly cited by stakeholders, as demonstrated by numerous evidence sources including Energy UK in their CFI response.<sup>34</sup>

### **A complex and burdensome contracting process**

Stakeholder views and evidence also suggests the contracting process and administrative requirements involved in switching can sometimes be complex, inefficient and burdensome, which acts as a barrier to switching.

Various respondents to our CFI suggested that supplier terms and conditions were perceived as confusing and complex and could lead to multiple other issues (e.g. being unaware of exit fees).<sup>35</sup>

More specifically, we received some evidence indicating that there is a lack of consistency among supplier procedures to handle Letters of Authority (LoA), including the time taken to process them.<sup>36</sup> In some cases this can lead to microbusinesses ending up on costly out-of-contract rates while the LoA is processed.

### **Policy Proposals**

Due to the broad scale and severity of the impact on individual affected consumers, we believe that the issues identified concerning both telesales contracting and broker conduct should be addressed through our policy proposals.

#### *Broker conduct principle*

As detailed above, we have found evidence to suggest a dissatisfaction with some brokerage services and poor practice by a minority of brokers in various forms impacting microbusinesses especially at the browsing and contracting stages of their customer journey. This includes brokers charging overly high commissions, engaging in potentially fraudulent practices and misrepresentation. These practices are causing microbusinesses to end up on a contract and/or paying for additional services that they hadn't signed up for. These

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<sup>34</sup> A Phantom switch is when a TPI pretends to be a microbusiness to instigate a contract change

<sup>35</sup> British Independent Retailers Association (BIRA) CFI response

<sup>36</sup> A Letter of Authority is a legal document allowing customers to authorise an energy broker/TPI to act on their behalf. CFI responses from Federation of Small Businesses and Bionic

behaviours are causing harm for individual customers and we believe they are also leading to a wider lack of trust in the market.

To help address these issues, we propose introducing a supply licence condition requiring suppliers to ensure that brokers they work with conduct themselves appropriately when interacting with microbusinesses. We propose extending relevant parts of the existing 'Standards of Conduct' (SLC 0A) to achieve this. We anticipate suppliers using the assurance frameworks we know many already have in place when dealing with brokers to ensure those they do work with continually meet appropriate standards of conduct. We have considered the impact of this proposal on all brokers and suppliers and believe that the standards we are proposing should not present an undue burden for either.

We considered whether it would be appropriate to work with industry to agree a voluntary approach to ensuring appropriate broker conduct. However it appears that despite some suppliers making efforts to regulate the conduct of the brokers they work with and some brokerages operating self-regulation schemes, voluntary actions have not been sufficient to protect consumers. At this stage a market-wide, mandated approach appears necessary to root out the poor practice that persists and build trust among microbusinesses engaging with brokers.

To assess the impact of this proposed measure, we anticipate monitoring the volume and nature of customer complaints received by suppliers, Citizens Advice, Citizens Advice Scotland and the Energy Ombudsman.

#### *Sales and marketing practices*

In addition, we propose targeting poor sales and marketing practices directly by introducing specific requirements on suppliers and the brokers they work with. We propose that suppliers and brokers they work with must:

- ensure that the structure, terms and conditions of contracts are clear and easily comprehensible
- not mislead or otherwise use inappropriate tactics when selling or marketing
- only recommend contracts which are appropriate to a customer's characteristics and/or preferences
- maintain a record of information provided to microbusiness customers concerning a contract during Face-to-Face Marketing Activities or Telesales Activities for a period of 2 years

To assess the impact of this proposed measure, we anticipate monitoring the volume and nature of customer complaints received by suppliers, Citizens Advice, Citizens Advice Scotland and the Energy Ombudsman.

#### *Introducing a contract cooling-off period*

While we consider that our proposals to address sales and marketing issues and broker conduct detailed above would increase overall confidence in and effectiveness of the market, it is likely that there may still be some occasions where poor practice persists. Our proposal for a broker alternative dispute resolution scheme (set out in detail in the following chapter) would allow for redress in these situations but it would be preferable to limit the need for consumers to have to resort to using dispute resolution after an event has occurred. The measures detailed above also focus on ensuring that correct and appropriate information is provided; however in order for the market to work well consumers also need adequate time to assess this information before being bound by a contract.

To address this we considered prohibiting the use of verbal contracts altogether and requiring all contracts to be agreed in writing. However we believe that this could have detrimental effects on consumers for whom the verbal contracting process works well. Instead we propose introducing a cooling-off period for microbusiness contracts. This would provide microbusinesses with the right to cancel the contract by giving notice to the licensee, while only incurring the costs of energy consumed, for 14 days after the date they have entered into the contract and have also been provided with the Principal Terms in writing.<sup>37</sup>

We believe that starting the cooling-off period once a written copy of the Principal Terms has been provided would give protection for microbusinesses who unwittingly agree to unfavourable terms during a verbal conversation while still maintaining the benefits that verbal contracting offers to customers.

We propose that the length of the cooling-off period should be 14 days as we believe this will allow sufficient time to evaluate the terms of the contract. Microbusinesses would be able to

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<sup>37</sup> The Principal Terms contain the key terms of a contract. A full definition of what is included in the Principal Terms is available within the Electricity Supply Licences, <https://www.ofgem.gov.uk/licences-industry-codes-and-standards/licences/licence-conditions>

request that supply starts within this period but would need to pay for the energy supplied under the terms of the contract up to the point of cancellation.

We anticipate assessing the impact of this measure by gathering data on the number of occasions where microbusinesses invoke their right to cool off.

*Question: What do you think the impact of our proposal to introduce a broker conduct principle will be? Are there any particular reasons why suppliers/brokers couldn't achieve the broker conduct principle?*

*Question: Do you agree that our proposal to introduce specific sales and marketing requirements on suppliers and the brokers they work with is important to help customers make more informed choices and increase trust in and effectiveness of the market? If so, do you agree that face-to-face marketing and sales activity should be covered alongside telesales activity under these proposals?*

*Question: Do you agree that our proposal to introduce a cooling-off period for microbusiness contracts represents an effective way to protect consumers during the contracting process? If so, do you agree that the length of the cooling-off period should be 14 days?*

*Question: What challenges do you think suppliers and brokers may face implementing these proposals?*

*Question: Do you have any comments on the associated draft supply licence conditions in Appendix 1 of this document?*

*Question: Do you think there are other changes which would better address the consumer harm that has been identified?*

## Dialogue: Two-way communication with service providers

### Section summary

Our review has identified consumer harm resulting from metering and billing-related issues, debt-related issues, and customer service problems as the three main issues affecting microbusinesses at this stage of their customer journey. We set out these issues and their impact in this chapter as well as our proposal for a requirement that suppliers only work with brokers signed up to an Alternative Dispute Resolution scheme.

### What outcome do we want to see?

We want microbusiness consumers to receive good levels of customer service underpinned by open communication with service providers. It should be easy to contact providers on a range of issues, including where a microbusiness is experiencing financial challenges, with a view to promptly resolving any problems while recognising specific needs and circumstances.

In our CFI, we asked stakeholders to focus specifically on providing any evidence demonstrating the extent and impact of any consumer detriment caused by providers approaches to communication with consumers about debt management issues.

### Stakeholder views and evidence

Stakeholder views and evidence highlighted three main issues affecting microbusinesses at this stage of the customer journey:

- a) Metering and billing-related issues
- b) Debt-related issues
- c) Customer service problems

### Metering and billing-related issues

Stakeholder views and evidence pointed to some instances of metering and billing-related issues leading to a suboptimal consumer experience.



For example, according to Citizens Advice, in Q1 2019 the main issue from non-domestic consumer calls about smart metering related to billing problems. Citizens Advice provided case studies in their CFI response of shock bills post smart-meter installation including those where consumers received unexpected bills for several thousands of pounds.

Another of the more frequently raised issues concerned customers being caught out by debt owed by previous tenants, particularly when looking to change tenancy. In their CFI response, the Energy Ombudsman gives examples of instances where the supplier becomes suspicious of the Change of Tenancy request owing to the build up of debt on the meter. The microbusiness consequently faces the challenge of convincing the supplier that the tenancy has genuinely changed ownership and that they are not liable for historic energy consumption.

### **Debt-related issues**

Stakeholder views and evidence suggested some harm linked to debt build-up in the form of bill shocks or disconnection.

A study by Bristol University and the Money Advice Trust, including 22 in-depth interviews with microbusinesses, found that poor communication from suppliers was often exacerbating situations where microbusinesses fell into debt.<sup>38</sup> Participants stated that communication was sporadic, with suppliers often not responding to letters or emails and providing inconsistent information.

Evidence from case studies provided by Citizen's Advice in their CFI response demonstrate the impact on microbusinesses once they experience a bill shock after not receiving bills post smart meter installation, including examples of a £4,000 and £1,300 catch-up bill.

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<sup>38</sup> Bristol University and MAT, Supporting small businesses with energy debt (2018), [http://www.bristol.ac.uk/media-library/sites/geography/pfrc/pfrc1802\\_supporting-small-businesses-with-energy-debt.pdf](http://www.bristol.ac.uk/media-library/sites/geography/pfrc/pfrc1802_supporting-small-businesses-with-energy-debt.pdf)

Where bill shocks are concerned, we note that suppliers cannot back-bill microbusinesses for more than 12 months due to our recent changes to the supply licence.<sup>39</sup> This change should reduce the amount of any single bill served on a microbusiness.

Some case studies provided to us by Citizen's Advice in their response also appear to show some suppliers refusing to adopt flexible approaches to dealing with debt e.g. refusing to agree debt repayment plans although other evidence in this area was limited.

### **Customer Service problems**

Stakeholder views and evidence highlighted various general customer service issues. Of these the most prominent themes covered complaint and dispute resolution.

Supplier complaints data shows that microbusiness complaints overall take longer to resolve than domestic complaints although it is often unclear whether this is due to the nature of the cases or supplier service offerings.<sup>40</sup> Microbusiness complaints are less likely to be resolved on the same day (or within one working day) - with 58% of microbusiness complaints versus 71% domestic complaints. The data also showed that the average complaint resolution time for microbusiness customers is 12 days, compared to 10 days in the domestic segment.

Regarding dispute resolution, a 2015 Gfk report for Ofgem explored why few energy consumers refer their complaint to the Energy Ombudsman.<sup>41</sup> The report showed that some microbusinesses felt that suppliers weren't providing enough information about alternative dispute resolution routes. On a related theme, the absence of an independent dispute resolution service for microbusinesses where the dispute involves a broker has been cited by various stakeholders including for example Money Advice Trust in their CFI response as a clear protection gap.

### **Policy Proposal**

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<sup>39</sup>Ofgem, Modification of the electricity and gas supply licences to introduce rules on backbilling to improve customer outcomes (2018), [https://www.ofgem.gov.uk/system/files/docs/2018/03/backbilling\\_final\\_decision\\_policy\\_document\\_-\\_march\\_5\\_-\\_website.pdf](https://www.ofgem.gov.uk/system/files/docs/2018/03/backbilling_final_decision_policy_document_-_march_5_-_website.pdf)

<sup>40</sup> Quarterly complaint submissions to Ofgem 2018-2019

<sup>41</sup> Gfk, Complaints to Ombudsman Services: Energy (2015), [http://ofgemintranet/DivisionsAndCommittees/Divisions/Delivery/ORE/ConsumerInsight/Consumer%20Research%20and%20Insight%20Document%20Library/Complaints%20to%20Ombudsman%20Services%20\(Energy\)%20-%20Main%20Report.pdf](http://ofgemintranet/DivisionsAndCommittees/Divisions/Delivery/ORE/ConsumerInsight/Consumer%20Research%20and%20Insight%20Document%20Library/Complaints%20to%20Ombudsman%20Services%20(Energy)%20-%20Main%20Report.pdf)

Due to the severity of the impact that the absence of an independent dispute resolution function for disputes involving brokers can have on individual affected consumers, we believe this protection gap should be addressed through our policy proposals.

In the previous chapter we set out how we believe introducing a principle based licence obligation on suppliers and a set of other targeted measures could help to prevent many of the brokerage-related issues we have identified. However, we recognise that even with the introduction of other measures, there may still be some cases where consumers believe they have been treated unfairly and cannot resolve a dispute with their broker. At present, unlike where a microbusiness has a dispute with their supplier that they cannot resolve via the supplier's complaints handling process, there is no mandated route available to microbusinesses allowing them to pursue independent redress with their broker.<sup>42</sup>

To address this protection gap, we propose to introduce a supply licence condition requiring suppliers to only work with brokers signed up to an ADR (Alternative Dispute Resolution) scheme. This would allow microbusinesses to raise a complaint to the ADR provider if they cannot resolve a dispute with their broker directly. We propose outlining high-level requirements for the scheme in the supply licence, with the scheme provider(s) setting out detailed scheme arrangements and requirements in their terms of reference.

As an alternative, we have considered working with industry to agree a market-wide voluntary approach to dispute resolution in cases involving a broker. However we think it would be very difficult to ensure the effectiveness of voluntary arrangements especially considering the vast number of brokers in the market. We also believe that the systemic harm caused by a lack of trust in brokerage services makes it more important that there is consistency in the availability of a dispute resolution service. Additionally, we believe that not all brokers would sign up and that those likely to employ poor practices would be least likely to do so. At this stage a market-wide, mandated approach appears the most effective way to fill the existing consumer protection gap.

To assess the impact of our proposed measure, we anticipate gathering data from the ADR provider(s) on the number of disputes being raised, the number of cases being upheld, and the amount of redress paid to consumers.

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<sup>42</sup> Microbusinesses can access the Alternative dispute resolution service via the Energy Ombudsman if their dispute is with their supplier and has not been resolved within 8 weeks of their supplier receiving the complaint.

The Energy Ombudsman currently acts as the sole provider of alternative dispute resolution services for microbusinesses where they have a complaint about their supplier they cannot resolve directly. On this basis we have approached the Energy Ombudsman to gain their insight and early thoughts on how an ADR scheme covering brokers might work in practice. The Energy Ombudsman has agreed to share their initial views with stakeholders while this policy consultation is open and we believe this, alongside input offered by any other bodies with similar expertise, will serve as a good opportunity for suppliers and brokers to understand how a scheme might work.

*Question: Do you agree that our proposal for a mandated ADR scheme represents an effective way to fill the existing consumer protection gap where a microbusiness has a dispute with their broker?*

*Question: What challenges do you think suppliers and brokers may face implementing our proposal regarding dispute resolution?*

*Question: Do you have any comments on the associated draft supply licence conditions in Appendix 1 of this document?*

*Question: Do you think there are other changes which would better address the consumer harm that has been identified?*

## Exiting: Switching away from an old contract

### Section summary

Stakeholder views and evidence highlighted problems with the switching process both delaying and deterring microbusinesses' attempts to exit their supply contact and move to a new one. We set out these issues and their impacts in this chapter as well as our proposals to prohibit suppliers from requiring notice periods to terminate contracts and a requirement for suppliers to continue to charge consumers under the existing rates for up to 30 days while issue with a blocked switch are resolved.

### What outcomes do we want to see?

We want microbusinesses to be able to move away from an old contract without facing unnecessary fees, obstacles or complications via a process that is smooth and swift.

To facilitate that there shouldn't be any unnecessary contractual barriers that prevent customers from switching suppliers. Any such barriers will cost microbusinesses time and money, lead to a poor consumer experience, and likely dissuade consumers from engaging in the switching process in the future.

In our CFI, we asked stakeholders to provide us with evidence demonstrating the extent and impact of any consumer detriment caused by issues when a microbusiness customer comes to exit a contract with their provider.

### Stakeholder views and evidence

Stakeholder views and evidence highlighted two main issues impacting microbusinesses at this stage of the customer journey:

- a) Switches being delayed
- b) Switches being deterred

*Switches being delayed*

Various process issues appear to delay switches, leading to a suboptimal consumer experience for those affected and higher bills where microbusinesses are placed on costly Out-of-Contract rates while issues are resolved.

We have received a range of evidence from across our evidence base suggesting that poor knowledge/misunderstanding and unnecessary complexities associated with supplier termination notice requirements is causing significant issues. Stakeholders have pointed to this resulting in microbusinesses switches being blocked with costly default contract rates being applied in the meantime.<sup>43</sup> For example Verastar in their CFI response advocated simply using switch transfer requests as sufficient notice of a customer's wish to terminate their contract.

Processing Change of Tenancy (CoT) applications appears to be another common cause of delays. For example, according to their CFI response, Bionic see 80% of suppliers take more than five days to raise an objection to a CoT. According to Bionic's data nearly half of those (49%) take more than a further week to resolve with 16% taking three weeks.

Inconsistent supplier procedures for contract terminations also appear to cause delays to the switching process. Our evidence suggests how some suppliers take differing actions and reiterates the impact of varying supplier procedures on overall customer experience.<sup>44</sup>

### *Switches being deterred*

Most microbusinesses are unable to leave energy contracts early without paying high exit fees, which are typically charged at the remaining value of the contract.<sup>45</sup> Such terms may be important for enabling suppliers to effectively manage the commercial risks they take when providing a supply contract, but these fees do also act as a strong deterrent to switching away mid-contract.

## **Policy Proposals**

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<sup>43</sup> CFI responses from Energy Ombudsman, Verasar and St Lukes Church

<sup>44</sup> CFI responses from FSB, UIA and Bionic

<sup>45</sup> CFI responses from St Lukes Church and Citizens Advice

Due to the severity of the impact of the procedural issues delaying affected consumers attempting to switch, we believe this harm should be tackled through our policy proposals.

Our Switching Programme will improve the switching experience as we introduce faster and more reliable switching in the retail energy market. These reforms will improve the switching process by reducing complexity and providing better management and oversight of industry data which should reduce the number of microbusinesses encountering delayed switches.<sup>46</sup>

We also believe that our proposed interventions focussed on improving broker conduct should reduce the incidence of poor practice by a minority of brokers which contributes to these delays and that our awareness raising proposals would improve consumer knowledge on how to effectively manage exiting contracts and switching suppliers. However we believe that the following targeted proposed measures would help to further improve the switching experience for microbusinesses and tackle the areas of harm identified.

#### *Termination notice requirements*

Currently suppliers can require microbusiness consumers to provide 30 days notice to terminate a contract. This means that if insufficient or no notice is given then suppliers may object to a switch and move the consumer to a (typically costly) Out-of-Contract contract when the fixed-term period comes to an end. We consider this to be an unnecessary obstacle to microbusiness switching.

To reduce the administrative burden on microbusinesses, suppliers and brokers when switching and cut the number of blocked switches, we propose amending the supply licence to prohibit suppliers from requiring a termination notice before terminating a contract. Notice of a proposed transfer from a gaining supplier would then be sufficient for a switch to proceed. This should speed up the switching process and help to prevent microbusinesses who wish to negotiate a new contract from spending periods of time on costly Out-of-Contract rates. Suppliers would still be able to charge appropriate termination fees if a customer wishes to terminate a contract before any fixed term ends and customers would still need to

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<sup>46</sup> The Ofgem Switching Programme is a programme of work being undertaken to radically transform current switching arrangements, and deliver faster, more reliable switching for consumers, <https://www.ofgem.gov.uk/gas/retail-market/market-review-and-reform/smarter-markets-programme/switching-programme>

provide notification if they want to prevent a contract from being extended into the Roll-Over Period.<sup>47</sup>

We propose that negotiated Evergreen Contracts should be exempt from this prohibition on notice periods and suppliers should still be allowed to require up to 30 days notice to be given.<sup>48</sup> This would continue to allow suppliers to provide non fixed-term contract options at a lower cost than Deemed or Out-of-Contract rates.

We propose applying this requirement to both existing and future contracts to avoid further complicating the requirements to terminate contracts. A misalignment could persist for an extended period of time as many microbusiness contracts last for multiple years.

#### *A 30 day contract extension following blocked switches*

While the proposed measure outlined above should reduce the overall incidence of delayed switches we consider that when a switch is delayed, customers should be protected from the period of increased rates they currently face when switches are blocked.

To limit this financial impact of being moved onto costly Out-of-Contract rates, we propose introducing a requirement for suppliers to continue to charge consumers on the basis of the rates in place prior to a blocked switch until the customer has either agreed a new contract with their existing supplier; agreed a new contract with another supplier (and supply has started); or 30 days have passed. This will ensure that engaged customers are not disadvantaged by increased charges while an issue with their switch is resolved.

We believe that 30 days is an appropriate length of time for this provision to last as while timescales can vary significantly, we understand it can often take up to this length of time to rectify issues with switches.

We have considered an alternative approach – namely a requirement for the outgoing supplier to refund customers where their switch is delayed due to procedural issues and they end up paying higher rates than those they are switching onto while these issues are

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<sup>47</sup> The Roll-Over period is the period of time after the Initial Period for which a Micro Business Consumer Contract will continue.

<sup>48</sup> An Evergreen Contract is a Micro Business Consumer Contract which is for a period of an indefinite length and which does not contain a fixed-term period and is not an Out-of-contract Contract.



resolved. However we believe that this would be complex to effectively design, implement and monitor and is therefore likely to be a sub-optimal approach.

*Question: Do you agree that termination notice requirements represent an unnecessary barrier to switching and should be prohibited? If so, do you agree that a prohibition on notification periods should apply to both new and existing contracts?*

*Question: Do you agree that our proposal to require that suppliers continue to charge consumers on the basis of the rates in place prior to a blocked switch for up to 30 days represents an effective approach to limiting the financial impact of switching delays? If so, do you agree that the time period should be 30 days?*

*Question: What challenges do you think suppliers and brokers may face implementing our proposals regarding improving the switching experience?*

*Question: Do you have any comments on the associated draft supply licence conditions in Appendix 1 of this document?*

*Question: Do you think there are other changes which would better address the consumer harm that has been identified?*

## Appendices

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## Appendix 1 – Working draft supply licence conditions

We have set out below working draft supply licence conditions intended to illustrate our policy proposals. The proposed new text is double underlined and deletions are in red strikethrough.

The below text is based on the Electricity Supply Standard Licence Conditions. Corresponding changes will be made in the Gas Supply Standard Licence Conditions.

### Broker Conduct Principle

*Policy intent: We propose introducing a supply licence condition requiring suppliers to ensure that brokers they work with meet a high standard of conduct when interacting with microbusinesses. We propose extending the existing 'Standards of Conduct' (SLC 0A) to achieve this.*

#### Customer Objective

0A.1 The objective of this condition is for the licensee and any Broker to ensure that each Micro Business Consumer is treated Fairly (“the Customer Objective”).

#### Achieving the Standards of Conduct

0A.2 The licensee must ~~ensure it, and must ensure that Brokers,~~ achieves the Standards of Conduct in a manner consistent with the Customer Objective.

0A.3 Subject to 0A.4 and 0A.4A, the Standards of Conduct are that the licensee and any Broker:

- a) behaves and carries out any actions in a Fair, honest, transparent, appropriate and professional manner;
- b) provides information (whether in Writing or orally) to each Micro Business Consumer which:
  - i. is complete, accurate and not misleading (in terms of the information provided or omitted);
  - ii. is communicated (and, if provided in Writing, drafted) in plain and intelligible language with more important information being given appropriate prominence;
  - iii. relates to products or services which are appropriate to the Micro Business Consumer to whom it is directed; and
  - iv. in terms of its content and in terms of how it is presented, does not create a material imbalance in the rights, obligations or interests of the licensee and or Broker and the Micro Business Consumer in favour of the licensee and or Broker;
- c) in relation to customer service arrangements:
  - i. makes it easy for a Micro Business Consumer to contact the licensee;
  - ii. acts promptly to put things right when the licensee or any Broker makes a mistake; and
  - iii. otherwise ensures that customer service arrangements and processes are fit for purpose and transparent.

#### Scope of Condition

0A.4 Standard condition 0A applies to all Designated Activities in respect of a Micro Business Consumer.

0A.4A The licensee shall ensure that Brokers achieve the Standards of Conduct in respect of Broker Designated Activities

- 0A.5 Apart from any matters relating to Deemed Contracts, standard condition 0A does not apply in respect of the amount or amounts of any Charges for the Supply of Electricity or any other type of charge or fee, applied or waived.
- 0A.6 Standard condition 0A applies to the exercise of a licensee’s discretion to apply or waive any fee or charge.
- 0A.7 In the event of a conflict between this condition and paragraph 14.2 of standard condition 14, this condition will prevail.

**Guidance**

0A.8 The licensee must have regard to any guidance on standard condition 0A (including in respect of definitions which appear in standard condition 1) which, following consultation (which may be conducted before this condition takes effect), the Authority has issued, may issue and may from time to time revise (following further consultation).

**Definitions**

0A.9 For the purposes of this condition:

"Billing"	all matters relating to the provision of a Bill or statement of account to a Customer, including the content and calculations relating to such a Bill or statement of account and the collection and use of information relating to the consumption of electricity.
<u>"Broker Designated Activities"</u>	<u>mean each of the following:</u>  <u>c) any written or oral communications regarding Billing or Contractual Information;</u> <u>and</u> <u>f) any matters which fall within the scope of standard conditions 7A, 14, 14A and 21B (in so far as they relate to a Micro Business Consumer).</u> <u>and</u> <u>[Informed contract choices obligations]</u>  <u>Together with any such other Designated Activities as the Authority may direct from time to time, following consultation</u>
"Contractual Information"	includes the drafting and content of a Non-domestic Supply Contract or Deemed Contract and the provision of information relating to the Non-domestic Supply Contract or Deemed Contract that applies to a Micro Business Consumer which is being supplied by the licensee <u>or any Broker.</u>
"Customer Objective"	Is to be interpreted in accordance with paragraph OA.1

"Billing"	all matters relating to the provision of a Bill or statement of account to a Customer, including the content and calculations relating to such a Bill or statement of account and the collection and use of information relating to the consumption of electricity.
"Customer Transfers"	includes, but is not limited to, any matters that relate to a Customer's ability to change supplier and/or affect the timeframe for changing supplier (including related terms and conditions of a Non-domestic Supply Contract) or Deemed Contract that applies to a Micro Business Consumer).
"Designated Activities"	mean each of the following:  a) the accuracy of a Bill or statement of Account; b) the timeframe for a Micro Business Consumer receiving a Bill or statement of account and the timeframe for the payment of a Bill; c) any written or oral communications regarding Billing or Contractual Information; d) Customer Transfers; e) any matters relating to Deemed Contracts; and f) any matters which fall within the scope of standard conditions 7A, 14, 14A and 21B (in so far as they relate to a Micro Business Consumer).
"Fair" and cognate expressions	The licensee <u>or any Broker</u> would not be regarded as treating a Micro Business Consumer Fairly if their actions or omissions give rise to a likelihood of detriment to the Micro Business Consumer, unless the detriment would be reasonable in all the relevant circumstances.
"Micro Business Consumer"	has the meaning given in standard condition 7A.
"Standards of Conduct"	Means one or more of sub paragraph OA.3(a) to (c).

## Definitions for standard conditions

1.3 In this licence, unless the context otherwise requires:

### **Broker**

means an organisation or individual that, either on its own or through arrangements with the other organisations or individuals, provides information and/or advice to a Micro Business Customer about the licensee's Charges and/or other terms and conditions and whose payment for doing so is made or processed by the licensee

## Principal Terms and commission transparency requirements

*Policy intent: Currently suppliers must take all reasonable steps to provide microbusinesses with the Principal Terms of a contract, in plain and intelligible language, before entering into that contract. We propose strengthening this obligation by requiring suppliers to ensure that they and any broker negotiating a contract between a supplier and microbusiness also takes bring a written version of the Principal Terms to the consumer. We also propose introducing an additional requirement for suppliers to disclose the charges paid to brokers as part of the supply contract on bills, statements of account and at the request of the microbusiness customer.*

### **Notification of Micro Business Consumer Contract terms and other information**

- 7A.4 Before the licensee enters into a Micro Business Consumer Contract, it must ~~take all reasonable steps to~~ bring, and ensure that any Broker brings, the following information to the attention of the Micro Business Consumer and ensure that the information is communicated in plain and intelligible language:
- (a) a statement to the effect that the licensee is seeking to enter into a legally binding Contract with the Micro Business Consumer; and
  - (b) the Principal Terms of the proposed Contract.

### **Information on Bills etc**

- 7A.10A Where the licensee has entered into a Micro Business Consumer Contract for a fixed term period, the licensee must provide the information specified in paragraph 7A.10B on each Bill and statement of account and display that information in a prominent position and ensure that it is drafted in plain and intelligible language.
- 7A.10B The specified information is:
- (a) the date the fixed term period of a Micro Business Consumer Contract is due to end;
  - (b) where the licensee has entered into a Micro Business Consumer Contract for a fixed term period and it may, in accordance with that Micro Business Consumer Contract, be extended for a further fixed term period:
    - (i) the Relevant Date (or, where applicable, such a later date as may be specified in the Micro Business Consumer Contract);
    - (ii) a statement to the effect that the Micro Business Consumer may send a notification in Writing to the licensee before the Relevant Date (or, where applicable, such a later date as may be specified in the Micro Business Consumer Contract) in order to prevent the licensee from extending the duration of the Micro Business Consumer Contract for a further fixed term period and in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed term period which currently applies; and
  - (c) where the licensee has entered into a Micro Business Consumer Contract for a fixed term period and it does not have the ability to extend that Micro Business Consumer Contract for a further fixed term period:

- (i) the latest date the Micro Business Customer could give notice in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed term period which currently applies; and
- (ii) a statement to the effect that this is the latest date the Micro Business Customer could give notice in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed term period which currently applies.

7A.10C.1 Where the licensee has entered into a Micro Business Consumer Contract, the licensee must disclose any form of fees and commission, including a benefit of any kind, paid to a Broker in respect of that Micro Business Consumer Contract.

7A.10C.2 The licensee must ensure that the information that the licensee is required to disclose by virtue of condition 7A.10C.1:

- (a) is displayed on each Bill and statement of account in a prominent position, and provided to the Micro Business Consumer on request;
- (b) enables a Micro Business Consumer to understand the amount or proportion of those sums that it is due to pay which are, or are attributable to, fees, commission or any benefit in kind ultimately due to the Broker, as well as any Charges (so far as they are different) or other sums. This may be expressed in cash terms, or percentage terms if not possible given the method of billing or calculation.; and
- (c) is drafted in plain and intelligible language.

## **Microbusiness Consumer Cooling-off Period**

*Policy intent: To ensure that microbusinesses have adequate time to assess the terms of a contract, we propose introducing a cooling-off period for microbusiness consumer contracts. This would provide microbusinesses with the right to cancel the contract, while only incurring the costs of energy consumed, for 14 days after the date they have entered into the contract and have also been provided with the Principal Terms in writing.*

### **Micro Business Consumer Cooling-off Period**

7A.13E.1 The licensee must include a term in a Micro Business Consumer Contract that enables a Micro Business Consumer to cancel the Contract at any time in the cancellation period, without giving any reason, by giving notice of cancellation to the licensee.

7A.13E.2 Notice of cancellation includes any communication by the Micro Business Consumer to the licensee, made in the cancellation period, setting out the Micro Business Consumer's decision to cancel the Contract.

7A.13E.3 The cancellation period begins the day on which a Micro Business Consumer enters into a Contract with the licensee and the Micro Business Consumer has been

provided with a copy of the Principal Terms in accordance with paragraphs 7A.4(b) and 7A.9(a).

7A.13E.4 The cancellation period ends at the latter of:

- (a) 14 days after the day on which the Contract is entered into; or
- (b) 14 days after the day on which on the Micro Business Consumer has been provided with a copy of the Principal Terms.

7A.13E.5 Where a Micro Business gives notice of cancellation the licensee must not:

- (a) charge the Micro Business Consumer a Micro Business Termination Fee; or
- (b) apply terms and conditions or Charges for the Supply of Electricity which are not under the Micro Business Consumer Contract; or
- (c) require payment of any Charges for the Supply of Electricity determined under the Micro Business Consumer Contract, other than in relation to what has been consumed by the Micro Business Consumer.

## **Termination notice requirements**

*Policy intent: To reduce the administrative burden on microbusinesses when switching and cut the number of blocked switches, we propose amending the supply licence to prohibit suppliers from requiring a notice period before terminating a contract. Suppliers would still be able to charge appropriate termination fees if a customer wishes to terminate a contract before any fixed term ends during the Initial Period.*

### **Termination during Initial Period of Micro Business Consumer Contracts which include a fixed term period**

7A.11 In relation to a Micro Business Consumer Contract that contain a fixed term period, the licensee must ensure that during the Initial Period a Micro Business Customer is not required to give any form of notice to terminate the Micro Business Consumer Contract or to switch supplier.

### **Termination during Roll-Over Period of Micro Business Consumer Contracts**

7A.12 In relation to Micro Business Consumer Contracts during the Roll-Over Period, the licensee must ensure that:

- (a) a Micro Business Customer is not required to give any form of notice to terminate the Micro Business Consumer Contract or to switch supplier; and
- (b) a Micro Business Customer is entitled to take steps to facilitate changing to any other Electricity Supplier at any time without having to pay a Termination Fee.

### **Extending the duration of Micro Business Consumer Contracts**

7A.12A This paragraph applies where the relevant Micro Business Consumer Contract is for a fixed-term period and contains a Roll-Over Clause.



7A.12B Where paragraph [7A.12A] applies, the licensee may only extend the duration of that Contract for a further fixed term period if:

- (a) it has complied with paragraphs [7A.7] and [7A.8];
- (b) the Micro Business Consumer has not sent the licensee a notification in writing before the end of the Initial Period in order to prevent it from extending the duration of the Micro Business Consumer Contract for a further fixed term period and in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed term period which currently applies; and
- (c) the duration of the further fixed term period is 12 months or less.

### **Termination of Evergreen Micro Business Consumer Contracts**

7A.13A If the licensee supplies electricity to a Micro Business Consumer's premises under an Evergreen Micro Business Consumer Contract, the licensee must ensure that:

- (a) notice period for termination of any Evergreen Supply Contract with a Micro Business Customer is no longer than 30 days; and
- (b) a Micro Business Customer is entitled to take steps to facilitate changing to any other Electricity Supplier at any time without having to pay a Termination Fee.

7A.13AB Where paragraph [7A.13A] applies, notice of termination must include but is not limited to a Proposed Supplier Transfer.

### **Termination of Out-of-contract Contracts**

7A.13B If the licensee supplies electricity to a Micro Business Consumer's premises under an Out-of-contract Contract, the licensee must ensure that:

- (a) a Micro Business Customer is entitled to take steps to facilitate changing to any other Electricity Supplier at any time without having to pay a Termination Fee; and
- (b) a Micro Business Customer is not required to give any form of notice to terminate the Micro Business Consumer Contract or to switch supplier.

### **Reporting obligation**

7A.13C.1 The licensee must give the Authority any Information that it reasonably requests about the licensee's compliance with paragraphs [7A.11 to 7A.13B] as soon as reasonably practicable after receiving a request from the Authority.

7A.13C.2 The licensee must give the Authority any Information that it reasonably requests to assess the impact and effectiveness of the obligations contained in paragraphs [7A.11 to 7A.13B] as soon as reasonably practicable after receiving a request from the Authority.

## **30 day contract extension following blocked switches**

*Policy intent: To limit the financial impact on consumers of increased rates following a blocked switch we propose introducing a requirement for suppliers to continue to charge consumers on the basis of the rates in place prior to a blocked switch until the customer has either agreed a new contract with their existing supplier; agreed a new contract with another supplier (and supply has started); or 30 days have passed.*

### **Non-Domestic Customer transfer blocking**

14.3 If the licensee makes a request in accordance with the Master Registration Agreement to prevent a Proposed Supplier Transfer of a Non-Domestic Customer, it must give a Notice to that customer to inform him:

- (a) that it has made a request to prevent the transfer;
- (b) of the grounds for the request; and
- (c) how the customer may dispute or resolve such grounds,

as soon as reasonably practicable after making the request.

14.3A Where the licensee has prevented a Proposed Supplier Transfer in relation to a Microbusiness Customer the licensee must continue to supply the Microbusiness Customer on the basis of the rates which applied immediately to the date on which the outgoing supplier received notification of the proposed switch until the earlier of:

- (i) the Microbusiness Customer has entered into and is being supplied under a new Contract with the licensee; or
- (ii) the Microbusiness Customer has entered into and is being supplied under a Contract with another licensee ; or
- (iii) 30 days from the day after the day that the licensee prevented the Supplier Transfer, at which point the licensee may choose to charge the Microbusiness Customer under a Deemed Contract or Out-of-Contract Contract if any fixed term period has come to an end.

## **Microbusiness Alternative Dispute Resolution (ADR) scheme**

*Policy intent: We propose introducing a supply licence condition requiring suppliers to only work with brokers signed up to an ADR (Alternative Dispute Resolution) scheme. This would allow microbusinesses to raise a complaint to the ADR provider if they are not satisfied with the response from the broker. We propose outlining high-level requirements for the scheme in the supply licence, with the scheme provider(s) setting out detailed scheme arrangements and requirements in their terms of reference.*

### **Dispute settlement**

20.5 The licensee must provide to each of its Non-Domestic Customers information concerning their rights as regards the means of dispute settlement available to them in the event of a dispute with the licensee or, in the case of a Microbusiness Consumer, any Broker by providing that information on any relevant Promotional

Materials sent to the Non-Domestic Customer and on or with each Bill or statement of account sent to each Non-Domestic Customer in relation to Charges or annually if the licensee has not sent such a Bill or statement of account to them. Such information must include, but is not limited to, how the procedures under any Qualifying Dispute Settlement Scheme can be initiated.

30.5A The licensee must ensure that any Broker is a member of a Qualifying Dispute Settlement Scheme.

20.5B In this condition Qualifying Dispute Settlement Scheme means any scheme of dispute settlement, resolution and/or redress operated by the Relevant Energy Ombudsman or such other organisation as offers independent, fair, effective and transparent out-of-court dispute settlement relating to Broker Designated Activities.

## **Informed contract choices - contract comparability and marketing**

*Policy intent: We propose targeting poor sales and marketing practices directly by introducing specific requirements on suppliers and the brokers they work with.*

[X] The licensee must ensure that the structure, terms and conditions of its Tariffs or Micro Business Consumer Contracts are clear and easily comprehensible.

[X] The licensee must not, and must ensure that Brokers do not mislead or otherwise use inappropriate tactics, including high pressure sales techniques, when selling or marketing to Micro Business Consumers.

[X] The licensee must only Recommend and must ensure that its Brokers only Recommend, a Micro Business Consumer Contracts which are appropriate to that Micro Business Consumer's characteristics and/or preferences.

[X] Where a Micro Business Consumer to whom the licensee or Broker has provided information in the course of Face-to-Face Marketing Activities or Telesales Activities enters into a or Non-Domestic Supply Contract with the licensee, the licensee must maintain, or ensure that the Broker maintains, a record of the information which it provided to that or Non-Domestic Customer in accordance with this licence condition for a period of 2 years.

### **Definitions for condition**

[X]For the purposes of this condition:

“Face-to-Face Marketing Activities” means any activities of the licensee or any Broker, that:

- (a) take place with the simultaneous physical presence of the licensee or Broker and a Micro Business Consumer; and

(b) are directed at or incidental to identifying and communicating with Micro Business Consumers for the purpose of promoting the licensee's or Micro Business Consumer Contracts to them and includes entering into such contracts with such customers.

"**Recommend**" means communicating (whether in Writing or orally) to a Micro Business Consumer information about one or more Micro Business Consumer Contracts in a way which gives, or is likely to give, the Micro Business Consumer the impression that the Charges for the supply of Electricity with all other terms and conditions that apply to the particular contract is suitable for their characteristics and/or preferences.

"**Telesales Activities**" means any activities of the licensee or Broker that are:

(a) conducted by telephone; and

(b) directed at or incidental to identifying and communicating with Micro Business Consumers for the purpose of promoting the licensee's Micro Business Consumer Contracts to them and includes entering into such contracts with such customers.

## Appendix 2 – Consultation Questions

### **Awareness: Knowing about opportunities and risks**

Question: What are the most effective ways to ensure that microbusinesses can access key information about the retail energy market?

### **Browsing: Searching for deals**

Question: Do you agree with our proposal to strengthen the requirements to present a written version of the Principal Terms to customers?

Question: Do you agree with our proposal to require that suppliers disclose the charges paid to brokers as part of the supply contract, on bills, statements of account and at the request of the microbusiness customer?

Question: Do you think that further prescription or guidance on the presentation and format of broker costs on contractual and billing documentation would be beneficial? If so, how should broker costs be presented?

Question: What challenges do you think suppliers and brokers may face implementing these proposals?

Question: Do you have any comments on the associated draft supply licence conditions in Appendix 1 of this document?

Question: Do you think there are other changes which would better address the consumer harm that has been identified?

### **Contracting: Signing up to a new contract**

Question: What do you think the impact of our proposal to introduce a broker conduct principle will be? Are there any particular reasons why suppliers/brokers couldn't achieve the broker conduct principle?

Question: Do you agree that our proposal to introduce specific sales and marketing requirements on suppliers and the brokers they work with is important to help customers make more informed choices and increase trust in and effectiveness of the market? If so, do

you agree that face-to-face marketing and sales activity should be covered alongside telesales activity under these proposals?

Question: Do you agree that our proposal to introduce a cooling-off period for microbusiness contracts represents an effective way to protect consumers during the contracting process? If so, do you agree that the length of the cooling-off period should be 14 days?

Question: What challenges do you think suppliers and brokers may face implementing these proposals?

Question: Do you have any comments on the associated draft supply licence conditions in Appendix 1 of this document?

Question: Do you think there are other changes which would better address the consumer harm that has been identified?

### **Dialogue: Two-way communication with service providers**

Question: Do you agree that our proposal for a mandated ADR scheme represents an effective way to fill the existing consumer protection gap where a microbusiness has a dispute with their broker?

Question: What challenges do you think suppliers and brokers may face implementing our proposal regarding dispute resolution?

Question: Do you have any comments on the associated draft supply licence conditions in Appendix 1 of this document?

Question: Do you think there are other changes which would better address the consumer harm that has been identified?

### **Exiting: Switching away from an old contract**

Question: Do you agree that termination notice requirements represent an unnecessary barrier to switching and should be prohibited? If so, do you agree that a prohibition on notification periods should apply to both new and existing contracts?

Question: Do you agree that our proposal to require that suppliers continue to charge consumers on the basis of the rates in place prior to a blocked switch for up to 30 days represents an effective approach to limiting the financial impact of switching delays? If so, do you agree that the time period should be 30 days?

Question: What challenges do you think suppliers and brokers may face implementing our proposals regarding improving the switching experience?

Question: Do you have any comments on the associated draft supply licence conditions in Appendix 1 of this document?

Question: Do you think there are other changes which would better address the consumer harm that has been identified?





## Appendix 3 – Privacy Notice

### Personal data

The following explains your rights and gives you the information you are entitled to under the General Data Protection Regulation (GDPR).

Note that this section only refers to your personal data (your name, address and anything that could be used to identify you personally), not the content of your response to the consultation.

#### **1. The identity of the controller and contact details of our Data Protection Officer**

The Gas and Electricity Markets Authority is the controller, (for ease of reference, "Ofgem"). The Data Protection Officer can be contacted at [dpo@ofgem.gov.uk](mailto:dpo@ofgem.gov.uk)

#### **2. Why we are collecting your personal data**

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

#### **3. Our legal basis for processing your personal data**

As a public authority, the GDPR makes provision for Ofgem to process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

#### **3. With whom we will be sharing your personal data**

We will not share personal data contained in confidential consultation responses with any organisation outside of Ofgem unless legally obligated to do so.

#### **4. For how long we will keep your personal data, or criteria used to determine the retention period.**

Your personal data will be held approximately two years until after the programme of work is closed.

#### **5. Your rights**

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right to:

- know how we use your personal data
- access your personal data
- have personal data corrected if it is inaccurate or incomplete
- ask us to delete personal data when we no longer need it
- ask us to restrict how we process your data
- get your data from us and re-use it across other services
- object to certain ways we use your data
- be safeguarded against risks where decisions based on your data are taken entirely automatically
- tell us if we can share your information with 3<sup>rd</sup> parties
- tell us your preferred frequency, content and format of our communications with you
- to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

**6. Your personal data will not be sent overseas**

**7. Your personal data will not be used for any automated decision making.**

**8. Your personal data will be stored in a secure government IT system.**

**9. More information** For more information on how Ofgem processes your data, click on the link to our [Ofgem privacy promise](#).