

Question 1

Do you agree that our theories of harm (see earlier in this document and Annex 2) represent the most significant and impactful areas of consumer detriment?

Yes

Question 2

Are there any other key areas of consumer harm that should form the focus of our review?

No

Question 3

Do you think awareness raising materials/initiatives would be of significant benefit to microbusinesses? What key information should any new materials focus on and how would they best be delivered to microbusinesses?

There is already a plethora of materials out there, but it is a confusing space with relevant information only accessible to those who know where to look and who to trust. A quick search using various internet browsers steers the consumer to commercial entities in the first instance. If Ofgem wish consumers to have easy access to impartial, 'trusted' sources, then better signposting is required, and a complete overhaul and review of information already provided by trusted sources (i.e. Ofgem, Citizens and the Energy Ombudsman) undertaken.

We noted on visiting their websites that there is less information for micro business consumers compared to domestic despite their similarities. Ofgem's advice to micro business has not been updated since 2015, which could undermine consumer confidence in its relevancy and the Energy Ombudsman provides no information for consumers (other than on the complaints process) or links signposting consumers to further information that would raise their awareness – in our opinion a missed opportunity.

Retrieving information on specific areas is difficult – Ofgem's "Key Terms and Issues" page is an example of where some prior understanding of industry terms would be necessary in order to access relevant information. Better use of Indexing and the use of Related Terms and search boxes would improve the consumer's experience. A high-level overview of the consumer journey from start to finish with the option to drill down to detail would aid understanding. The use of mediums such as video links, charts and infographics would provide time poor micro business consumers with alternatives to having to read a text document.

In terms of actual content, more needs to be done to highlight areas which have the potential to negatively impact on the consumer, such as breach of contract; rights under which a supplier can vary charges or change terms; dispute policy, exit fees and security deposits. Consumers should know how long it should take to register a supply, lift an objection, deal with an erroneous transfer and raise a Change of Tenancy. Identifying the various parties involved in the supply process including those who are customer appointed and what their roles are.

Information and advice for consumers on using TPI's or PCW's should have a higher profile than what it does currently. In the absence of direct regulation, Ofgem, CAB and the Energy Ombudsman should do more to make consumers aware of what current protection is available to them and signpost consumers to organisations and trade association like the UIA who may be able to help.

Ofgem, CAB and (if permissible) the Energy Ombudsman should ensure that content and arrangement of content on their websites is consistent and makes clear who it applies to (i.e. micro business or domestic or both). Information should be easily accessible, concise and written in plain

English. Alternatively Ofgem could become the centralised source for information with CAB and Ombudsman signposting or providing links from their websites.

A requirement should be placed on suppliers to mirror this advice or link to the relevant website/s and third parties such as Price Comparison Websites (PCWs) and Third-Party Intermediaries (TPIs) encouraged to do the same. All should be obligated (where it is possible) to provide the same information and use the same terminology or links.

Initiatives to raise awareness such as media campaigns and advertising would be complex and costly to implement, consideration therefore should be given to combining with other initiatives such as Smart Energy GB's extended remit to raise awareness to micro business and ally with appropriate consumer organisations to get messaging across.

Question 4

Our evaluation of the CMA's price transparency remedy (published alongside this document) has identified a number of issues at this stage of the customer journey. What do you see as the most impactful issues hindering microbusinesses attempting to effectively browse the market in search of an improved deal/service offering? Please provide **quantitative and/or qualitative evidence** demonstrating why you believe these issues to be most impactful.

We have not had much feedback from members in this area, other than it has been business as usual for them. We agree with Ofgem's observations as to why this remedy has not delivered the benefit that the CMA anticipated.

Question 5

What do you see as the key issues microbusinesses face when they come to enter into a new contract for their energy supply? Please provide **quantitative and/or qualitative evidence** demonstrating the **extent and impact** of the consumer harm caused by these issues in the form of both financial and non-financial detriment.

Supplier terms and conditions can be very confusing and difficult to understand. All suppliers should be adopting the Plain English Crystal Mark and Ofgem should monitor.

Customer's are failing to appreciate that they are signing a legally binding agreement for supply and either do not understand or are not made aware of the ramifications for reneging on contracts. We are aware of some suppliers actively seeking to 'win back' customers or alternative suppliers or TPI's encouraging customers to break their contract agreement. In this situation, some suppliers will charge the customer a cancellation fee, or even seek to recover their perceived losses for the duration of the contract.¹

Failing to understand when termination fees may apply, many are not aware that a change of tenancy is an early termination and may incur a charge.

Excessive fees for late payment, for example a late payment charge of £50 per day per site²

Termination charges that cannot be verified. The customer by accepting the contract, is 'agreeing' that the charge represents a fair and reasonable amount for the losses incurred by the supplier. We

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have seen termination fees calculated based on a proportion of the remaining estimated spend as opposed to calculating any losses based on system sell prices.³

Products being offered as fully fixed and not being so. This is a very common problem. Suppliers will market their products as fixed, however, the small print contained in both the offer acceptance and the terms and conditions places caveats around that. Prices may be fixed up to a point, certain elements may be passed through, certain elements may change, for example where there has been a change in charging methodology, There is a lot of inconsistency in how suppliers present this information, all should strive to make this a lot clearer.

Overall, we have found that supplier terms are heavily loaded in the supplier's favour, the burden of risk falling firmly on the consumer. Domestic consumers are protected from unfair contract terms, but micro business and SME customers are not.

Question 6

Do you have **evidence demonstrating the extent and impact** of malpractice by brokers dealing with microbusinesses? We are seeking both qualitative and quantitative evidence demonstrating consumer harm in the form of both financial and non-financial detriment.

For over 13 years, the UIA has been handling TPI and Supplier complaints from business consumers in the energy sector. Many of those complaints have centred around verbal contracts. The use of verbal contracts in the gas and electricity markets is an established practice, particularly for micro Business and SME consumers.

Despite verbal contracts being carefully scripted by suppliers to ensure their compliance with both legal and supplier licence obligations, this has not prevented abuses in the energy market from occurring. That is because a lot of the issues stem from what is said outside of the scripted/recorded conversation.

We have provided evidence to Ofgem on several occasions of abuses around verbal contracts. Customers are often bamboozled with rapid fire, near incomprehensible script reading, false statements around the identity of the caller or who they represent; whether the offer has been competitively sourced or represents the best deal, and even in some cases playing down some of the more onerous terms of the contract, such as exit clauses. Abuses where they have occurred tend to be where consumers have been cold called by a third party (be it a supplier, supplier agent or TPI) and the instances of unsolicited calls tends to be much higher where there has been a recent change of ownership. All of these 'discussions' are occurring outside of the recorded conversation and can often occur over several telephone conversations.

Requiring that every conversation between TPI and consumer which relates to the procurement of the customer's supply is recorded and stored for the duration of the supply agreement it relates to would remedy a lot of these issues and bring pressure to bear on non-regulated parties like TPI's to adhere to the six principles⁴ (there should be no more expense for telephony for TPIs as they already

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⁴ <https://www.ofgem.gov.uk/ofgem-publications/93764/openlettertpiprinciplesmarch2015forweb-pdf>

have the facilities to record the scripts so this should be possible). It would also mean that suppliers will have a duty of care beyond the scripted conversation, so therefore cannot turn a blind eye (which some do) to dubious practices by either their appointed agents or TPIs. In addition, it also affords security for suppliers, their agents and TPIs alike as not all consumers are beyond doubt.

It is our opinion that it should be a requirement for all calls to be recorded in their entirety and retained for the duration of the contract. (Ofwat have recently agreed to the whole of the conversation being recorded in the water retail market.) The supplier should hold the recordings. We would also argue for a further requirement on suppliers to provide access to those recordings upon request, by either the consumer or consumer appointed agent, in a cooperative and timely manner and in an accessible format. This would enable any potential issues to be investigated and remedied promptly, minimising the level of consumer harm, and reputational damage to the energy industry.

Some TPI's have locked their clients into lengthy agreements and or required their client to sign a Letter of Authority (LOA) which has given the TPI authority to sign contracts on their behalf. Cases we have witnessed have seen customers placed on long term contracts (three years plus) that represented poor value in terms of price and or service and were not suitable for their particular requirements. Consumers must accept some responsibility for putting themselves in such a position, but we would urge more be done to raise consumer's awareness of the risks of signing agreements with TPI without reading and understanding the terms.

How prices and contracts are presented is another area which has negatively impacted some consumers. We are aware of instances where pass-through contracts have been sold as fully fixed, or where certain elements such as metering and data collection, have been omitted in order to present a more favourable price to the customer (particularly in instances where the TPI is competing against another TPI or supplier).

TPI's claiming to represent either a supplier or an official body in order to gain trust and then pressure sell.⁵ This type of ruse is almost always unsolicited and is prevalent where there has been a change of tenancy, suggesting that the TPI has somehow obtained industry data.

The difficulties in all the above scenarios that we have provided is that they are very difficult to prove and may fall outside of the regulator's scope.

On a final note, some customers are being mis-lead about the level of protection afforded to them by certain TPI's. These TPI's market themselves as being either accredited or signed to a TPI Code of Practice. The suggestion is that this code is industry wide, but the reality is that it only applies to E.ON energy supply agreements and that is not made clear.⁶

Question 7

Can you provide **evidence demonstrating the extent and impact** of any consumer detriment caused by providers approaches to dialogue with consumers about debt management issues? We are seeking both qualitative and quantitative evidence demonstrating consumer harm in the form of both financial and non-financial detriment.

Question 8

Are you aware of microbusinesses facing significant and impactful issues when they come to exit a contract with their provider?

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Yes where they are unable to leave because of conditions placed on them to prove they have a better offer, and the supplier then having a further 14 days to respond – thus rendering any competitive offer that had been available no longer valid, and potentially meaning the customer's contract with incumbent lapsing and them incurring default charges.⁷

A supplier being able to object on the grounds of debt even where the customer hasn't been invoiced.⁸

Being obstructive around the termination process such as stipulating that notices must be submitted in writing to a specified address to be considered valid and refusing to accept any authorised communications from a TPI (including notices of terminations) on behalf of the consumer (despite have previous interaction with said TPI during contract negotiation and placement)⁹

Customers having to submit a request in writing for the return of their security deposit (for which no timeframe for releasing security deposits is given), and in some cases having to write to the supplier to have any credits owing to them returned¹⁰

Customers' remaining responsible for a supply even where they have served notice until the supplier is registered to another customer¹¹

Question 9

Please provide **evidence of the extent and impact** of consumer detriment caused by the issues you have commented on in response to the above question. We are seeking both **qualitative and quantitative evidence** demonstrating consumer harm in the form of both financial and non-financial detriment.

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