Question Title

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?

This is not deemed necessary by the FCA for brokers of mortgages, (please see intermediary service disclosure guidelines from the FCA website below*) loans and other financial services and therefore is completely overkill for energy brokers too. Energy brokers are already duty bound under the **law of agency** to disclose commissions to customers for whom the act on behalf. If brokers are found by a small claims court to not be disclosing commissions to an unsophisticated microbusiness then those commissions will have to be repaid. All small businesses are able to request how much commission brokers are charging and all brokers should be telling customers how they get paid.

We do not feel it is necessary to put commissions on bills, statements of accounts and this is overkill. Too much disclosure will cause customers to lose trust in brokers which will in time will put control back in the supplier's hands (examples of what we mean are detailed below). For example, if you used a mortgage broker to secure a residential mortgage for your home then as part of their paperwork, they disclose a commission. The bank does not add a commission onto its annual statements, or any further documentation. A mortgage can be secured for circa 5 years. Mortgage brokering fees can be £1,000s or on larger mortgages £10,000s. If the FCA deems this acceptable then anything more than this would be completely overkill.

Will the suppliers be forced to display the same margin that a broker may make, added by sales managers aiming for targets, pricing teams to mitigate financial risk, sales people who work for suppliers adding margin to hit sales targets, outsourced sales agencies acting on behalf of suppliers also adding margin?

The entire industry works based on the principle that there is a cost price of energy, a cost to serve a customer and then each part of the supply chain adds its margin on top, to run a business and of course to make a profit (The energy in deregulated to create competition and is not nationalised). Too much disclosure forced only on brokers will give suppliers an unfair advantage as illustrated below. We would be happy to elaborate further, provide many more examples of this scenario and provide evidence if it would be helpful to assist you. This is the way that most energy suppliers generate revenue and profit and is common proactive on almost every contract whether its consumers, micro businesses, and non-micro businesses.

Example 1

Customer uses 20,000Kwh of electricity per annum.
Customer allows contract to lapse and is placed on deemed rates of at least 50% above the most competitive price available from a supplier.
Deemed rate – 24.19p/Kwh and £1.0837/day standing charge (Actual rates of a recent customer)

Scenario 1
3 months later the customer realises their bill has increased by almost double and contacts the supplier.
The supplier offers to renew the customer and apply a backdate (back date the new lower rate to the contract end date. This is a common tool used to trap customers on higher rates as it means they can't move to another supplier and get the backdate which can be significant)
Offered rate is 17p (3p above the supplier's best price of 14p for a new customer and 4 p more than the cheapest price available from an alternative supplier.)
Supplier makes £600 per annum extra revenue or £3,000. Sales person/retentions team has revenue added to their target, earns commission, bonus's etc, telesales manager gets bonus, sales managers get bonus, head of sales gets bonus, CEO gets bonus etc shareholders get dividend.
Will the supplier be asked to disclose this at the point of sale, as is being proposed by brokers and put this extra margin/disclosure of additional revenue on the bill?

Scenario 2
A broker contacts the customer proactively, gets an LOA and discovers the customer is on deemed rates
Broker negotiates a back date with the supplier.
Supplier has a base rate for brokers of 13p broker adds. 0.5p margin for its work and customer service.
Offered rate is 13.5p/Kwh (2.5p cheaper than the suppliers price)
Broker makes £100 per annum revenue. Probably less than the cost of looking after this customer.
Under the proposal of broker disclosure of additional revenue by broker, this will be disclosed to the customer and potentially added to the bill and statements. If yes, then it seems a totally unfair way of treating brokers in comparison to suppliers, using the same scenario, particularly when the supplier could potentially make loads more margin without having to explain this to the customer.

This is a common scenario which happens almost every time a customer is on deemed rates, out of contract rates or they receive a renewal offer from a supplier. Suppliers often charge more than brokers; potentially suppliers would not have to disclose but brokers would which is clearly unfair to the customer and unfair to the brokers.

If the suppliers offered clear and fair prices no business would need to use a broker. Brokers are disruptive and overall keep suppliers from overcharging customers.

FCA Intermediary service disclosure

First published: 21/04/2016 Last updated: 22/08/2017

New requirements for intermediary service disclosure.

** MCOB 4 and MCOB 4.4A set out the initial disclosure requirements for mortgage intermediaries.*

The rules require intermediaries who are not also lenders to provide information on their service in good time before beginning the service, including:

- *their identity and the geographical address (MCOB 4A.1.1R(1))*
- *their Financial Services Register entry (MCOB 4A.1.1R(2))*
- *whether they are a mortgage adviser (MCOB 4A.1.1R(3))*
- *the procedures allowing consumers or other interested parties to complain to the intermediary, whether complaints may subsequently be referred to the Financial Ombudsman Service and, if so, the methods of accessing it (MCOB 4A.1.1R(4)).*

When an intermediary is not offering products from an unlimited range across the market (for example, if it has ties to either one or a group of lenders), it must name those lenders for which it is acting.

Firms paid by commission must tell customers they have the right to ask for information on the commission paid by the lenders for which they are acting. This means ensuring firms have access to relevant market data to allow them to respond. Firms must also disclose the actual amount of commission.

If the amount is not known at the time of disclosure, the customer must be told that the actual amount will be disclosed at a later stage in the European Standardised Information Sheet (ESIS) (MCOB 4.4A.8R(1)(d)).

Timings of disclosure

Intermediaries must provide information about remuneration and the scope of their services 'in good time' (MCOB 4.4A.12R) before carrying out any MCD credit intermediation activity. This means ***before*** *acting as a mortgage advisor or arranger regarding any mortgage contract covered by the MCD.*

Firms should therefore consider the point at which this activity begins and provide the required disclosure 'in good time' before carrying out that activity. PERG 4.5 and 4.6 provide guidance on what counts as arranging and advising on regulated mortgage contracts. In addition, MCOB 4.4A.13G provides guidance on the interpretation of MCOB 4.4A.12R and states that 'in many cases, MCOB 4.4A.12R means that information will be given at the time of the first contact between the firm and the customer', although it explains this is not always the case.

Firms should also consider Principle 6 and ensure they pay due regard to the interests of their customers and treat them fairly.

Surely almost all broker behaviour and commission declaration can be sorted out with something as simple as this. Logically if the FCA feels this protects consumers its good enough for the energy industry for businesses.

Particularly relevant is at the time of quoting the exact amount is unknown.

Question Title

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?

Please see previous referencing FCA guidelines financial brokering, repeated disclosure on billing information and documentation is not necessary, as potential commissions are clearly explained at the point of sale, under the law of agency energy brokers are already required to disclose the types of commissions they earn to customers are able to reclaim any monies made through secret commissions either through small claims court of the ADR scheme proposed which is a great idea as it would stop rogue claims companies preying on companies and taking a % of anything which is mis sold.
Most sales in the micro business sector are completed as verbal contracts. We disclose to customers that we get paid a commission as part of our verbal script.

Question Title

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

As is demonstrated by the current unprecedented business closures and reduction in energy usage during the covid-19 pandemic it is impossible for TPIs to know exactly how much revenue a given energy contract will generate. It is therefore impractical for suppliers to be able to confirm this information on bills or statements. Payments to TPIs are based on actual usage and payment of invoices to suppliers.

If customers do not pay their bills, we get nothing.
If customer moves premises, we get nothing.
If customers consume less energy, we get a variable amount.
If contracts do not go live, we get paid nothing.

There is no problem having to tell customers that commission will be earnt, we already do this so it's not secret. If the customer wishes to know the exact amount of commission then the broker should disclose this, as we already do. So long as the broker has sought competitive prices and the customer is happy with the rates and that commissions will be earnt, then the transaction can proceed.
The current law of agency and secret commissions should be adequate along with a code of conduct like the FCA code of conduct for mortgage brokers.

Question Title

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

As stated, we believe something similar the FCA rules for mortgage brokers would be more than adequate.

Suppliers already have a blacklist of bad brokers this should be shared and enforced.
The onus should be on ALL suppliers to vet brokers, quality check brokers and ensure brokers adhere to a code of conduct. (Some suppliers are much more thorough than others currently).
All suppliers already control how much revenue brokers can make. (Some allow ludicrous margins; others are more reasonable)
Most suppliers have a code of conduct.
Most suppliers refer to brokers as agents and we are therefore covered by the law of agency anyway and must disclose commissions anyway.

Changes that could be made to help Micro businesses without affecting the ability of brokers to function as part of a competitive free energy market are as follows:-

Suppliers should not be able to have high OOC, and deemed rates (They do this to make customers stay)
Suppliers should not be able to offer a different rate for a renewal and a new customer
Suppliers should not be able to offer a cheaper price to one broker than another
Suppliers should not be able to offer a cheaper price than a broker's base price (This happens often as they build margin into the broker price)
Suppliers should be responsible for brokers' conduct
Suppliers should control how much margin brokers make
Suppliers should behave in way which is much fairer to customers than they do.

There are rouge Brokers in the market that do pretend to be a supplier or just get bank account details so they can set up a new agreement with the existing supplier or move it to another supplier. There really needs to be some changes to address these issues.
However, a high percentage of brokers provided a great service to customers, giving good advice and disrupting the relationship between the supplier and the customer. Just leaving the customers to deal with suppliers would ultimately put more control in the hands of the suppliers and encourage the suppliers to continue to charge customers as much as possible .

From our perspective, any review should be targeted at forcing out rogue brokers by some form of industry code along with suppliers only accepting agreements by approved/credited brokers.
A framework to make sure brokers behave in an honest and credible way does need to put in place but only asking brokers to disclose the commission it earns is not the solution. This just plays into the hands of the suppliers whose extra margins they may make is not seen as commission but as extra profit.

When you buy an insurance, mobile, broadband, or energy product on line, the small print does say commission will be earnt so it's not secret, but you hardly ever get told the exact amount. You also do not get told how much profit has been built into the price the insurance, telco or energy company are making.
So why then is it necessary to go further with brokers in an deregulated energy market which allows and even promotes driving profits from micro business customers.
We have provided an example as an answer to our first question as to how most suppliers operate unfairly and we have included a further example below.

Example 2

The renewal notices that go out from suppliers, all of which are higher than the lowest price they can offer. Different suppliers have different renewal strategies, some may add 2p/kwh to the lowest unit rate they could offer some 5p/kwh. With half hourly meters, they can also make large margins on the capacity charges.

The renewal notices ask the customers to sign and return the renewal agreement otherwise they will go onto out of contract rates.

If the customer just signs the renewal, should the supplier have to put on the correspondence/bill or verbal contract that they have made 2p-5p/kwh extra margin above the rock bottom price they could have offered?

Of course, some customers may call the supplier to negotiate.

If the customer calls to negotiate a lower rate, most customers would be happy to get a lower rate but they are unlikely to be offered the rock bottom rate which a new customer may be offered in a competitive tendering process. The price offered will also most likely be more expensive than a potential price offered by a broker or the cheapest possible supplier.

The supplier will be making potentially £10,000s of margin above the minimum price they could have offered.

Should the supplier be obliged to inform the customer how much extra money they are making above the best price they could get and put this extra margin on the correspondence/bill much like it is proposed for a broker to do?

Potentially if a TPI was involved in this process and found a cheaper price for the customer than the offer from the incumbent supplier with say 0.5p margin added on the rate and inform the customer that our feed would be say £1,500

The customer may then go back to the supplier knowing we as Brokers can get lower rates, the supplier may offer 0.4p/kwh or match our price (this often happens). Will the supplier have to put this 0.4p/kwh extra margin and commission for the sales team on the correspondence/bills/contracts?

This is a real current example:

Day usage 56,039 kwh

Night usage 11,390 kwh

kVA is 215

supplier renewal rates offered:

Fixed Charge Single rate - 3.662 £/month so £43.94 per year

Capacity Charge Consolidated rate - 2.838 £/Mon/kVA your kVA is 215 so £7,322.04 per year

Day - 07:00-00:00, All Week, All Year - 16.356 p/kWh * 56,039 kwh so £9165.73

Night, 00:00-07:00, All Week, All Year - 11.778 p/kWh * 11,390 kwh so £1341.51

This comes to **£17,873.22**

These are an alternative rate we offered:

Std charge 46.76 p/day so £170.67 per year
Day rate 14.98 p/kwh * 56,039 kwh so £8394.64 (this includes our margin)
Night 13.25 p/kwh * 11,390 kwh so £1509.17
Capacity Charge (p/KVA/day) 3.6400p/kva/day so £2856.49 per year

This comes to **£12,930.97**

The customer is better off by £4942.25 by using the broker rates.

Had the customer signed the supplier renewal, will the supplier under this review, have to tell the customer that they have just agreed to circa 2p/kwh extra margin or £4942.25 extra profit on the correspondence/bill much like it is proposed for a broker to do?

Question Title
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?

Some suppliers already have a code of conduct and we have no problem acting in a professional way, however we feel the same code of conduct should apply to suppliers.

We think that a code which embraces certain behaviours will be good for brokers and customer confidence.

No business should mislead or miss sell a product, under the law of agency customers are protected and if there was an ombudsman for TPIs/Micro businesses then any disputes could be resolved quickly and easily. The ombudsman could ban TPIs selling just like OFGEM does for suppliers who break licence rules.

Question Title
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?

This is a terrible idea. Switching will be almost impossible suppliers will win back customers left right and centre and it will be an admin nightmare. It will encourage rogue brokers to cancel contracts left right and centre.
All suppliers will go introduce aggressive win back teams and switching any business will become almost impossible. You will have bills from different suppliers for different periods if supplies switch and the result will be businesses on out of contract or deemed rates.

With the introduction of faster switching which is ongoing then allowing cooling off periods will increase the time it takes to switch by a minimum of 14 days. No supplier will apply for a change of supply until the 14 days has passed so what the point of having faster switching if no one uses it.

If a contract is miss sold by a broker or a supplier then contracts are cancelled anyway. This is completely unnecessary.

Question Title

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

If implemented, we believe over time there will be less disruption to the suppliers who will take advantage of this by making more profit.

Suppliers will have to spend a fortune and take years to put anything on bills / contracts as their legacy billing systems are often unlinked to their broker commission systems.

Question Title

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

There should be a code of conduct that reaches across all suppliers and brokers.
No broker should be allowed to work with a supplier without signing up tom this code of conduct
Any broker not adhering to the rules, should be stuck off so they can not represent the supplier and customer
Suppliers should not be able to have really high OOC, and deemed rates (They do this to make customers stay)
Suppliers should not be able too offer a different rate for a renewal and a new customer
Suppliers should not be able to offer a cheaper price to one broker than another
Suppliers shouldn't be able to offer a cheaper price than a brokers base price (This happens often as they build margin into the broker price)
Suppliers should be responsible for brokers' conduct
Suppliers should control how much margin brokers make
Suppliers should behave in way which is much fairer to customers than they do.

Question Title

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?

This is a great idea and will ensure that customers get all of their money returned to them directly if they are deemed to have been miss sold and will stop the rising numbers of claims company's preying on customers and keeping a % of the customers money.

Question Title

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?

We do agree termination notices only serve to trap customers with suppliers and leave them on higher than necessary out of contract rates. Suppliers should not be allowed to object to a change of supply without good cause either. It is common practice for customers with £10,000s of pounds of annual billing to be objected to because they owe a few hundred pounds in bad debt.

Question Title

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 frame should be 30 days?

It would be much better 30 days would be fair if suppliers didn't object to the transfer of supplies for no significant reason. Some suppliers still object to every supplier as a matter of policy and then try to retain then customer aggressively even though they have a new supply agreement in place.

Question Title

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

If you introduce a 14-day cooling period it will prevent fast switching happening. Some suppliers such as BES still will not respond to information requests from brokers and will almost never accept termination notices.

Option 1: Do nothing

We welcome stakeholders to provide any additional evidence to supplement our existing evidence base that demonstrates the financial and non-financial impact of the status quo. This includes further data on the monetary and non-monetary impacts to microbusinesses, suppliers, and brokers of continuing with the current arrangements.

We believe that the onus should be on suppliers to ensure brokers act fairly and that the law of agency sufficiently protects customers and drives the correct behaviour from good brokers. The addition of a dispute resolution service from the ombudsman would independently and fairly resolve disputes and further protect customers and could help compile a list of good and bad brokers.

Question Title

Option 2: Implement a package of short to medium term policy solutions

Broker conduct principle

To improve our understanding of the impact of introducing a broker conduct principle it would be helpful if stakeholders can provide views and evidence for the questions below:

- What additional costs may stakeholders incur through the introduction of a broker conduct principle

Minimal impact and costs as most brokers adhere to some form of code of conduct enforced by suppliers or trade organisations already and are governed already by the law of agency and the need to not make secret commissions and by standard of miss selling inforced by consumer law and the suppliers own quality controls.

- Views on the impacts this proposal will have on microbusinesses; these impacts can be financial and non-financial

Suppliers already have a significant advantage over brokers in terms of information and control over the switching process. Suppliers which are profit making organisations who are run for the interest of their shareholders are driven to charge customers as much as possible. Brokers being to tightly restricted will lead to less switching and ultimately paying more for their energy. Smaller micro businesses will be the most negatively impacted by many changes suggested.

Question Title

Broker commission

We welcome views on the impacts of providing additional transparency around broker costs to microbusinesses. In particular:

- If stakeholders consider there are significant additional costs associated with these proposals

Energy brokers often provide services to smaller businesses where the cost to serve is higher than the total revenue generated by commissions. Brokers do this at their own cost because we want to offer services to smaller businesses as well as larger ones.

If some of the larger commissions earnt on larger sophisticated micro businesses were capped or reduced do to excessive control and disclosure of potentially variable commissions then brokers would not be able to afford to help the smallest most vulnerable micro businesses who often need the help of brokers the most.

As a result brokers will need to charge higher commissions to these micro businesses or will cease to engage with these businesses meaning that suppliers will be free retain these customers on higher rates due to a lack of switching.

- Evidence and views on the impact this proposal could have on the energy brokers and TPI market. These impacts can be financial and non-financial

The proposal may have the affect of creating an unfair competitive advantage for suppliers as per examples as they can charge higher rates than the cheapest possible cost and not declare commissions, revenue, profit. Suppliers will gain additional sales by under cutting brokers marginally or matching prices without disclosure. As detailed in our examples above.

- Evidence and views on the impact this proposal will have on microbusinesses. These impacts can be financial and non-financial

The proposal may have the effect of promoting less switching, more win backs and ultimately less interest from brokers in helping smaller microbusinesses.

More customers will simply agree poor renewal rates, out of contract rates and deemed rates.