Microbusiness Strategic Review: Policy Consultation

Response by: Cost Advice Services Ltd 11.09.2020

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?
Online information from an independent party such as Ofgem allows microbusinesses to gain non-biased information quickly and when required. Adding information to invoices could be helpful, but customers would only be able to read that information when they receive an invoice (which may be only quarterly), or have to refer back to that document which may not be efficient, or be impossible if the document is lost.
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?
Yes. However this may be difficult to implement successfully because the correspondence/billing address to which the Principal Terms are sent may not ultimately land with the customer who initially agreed the contract, if the correspondence/billing address is another department, different person, broker contact or elsewhere.
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?
No, not entirely. Many suppliers already have clauses in their agreements with brokers that if requested by customers, they are permitted to disclose the broker fees included in supply contracts. With regards to disclosure of broker fees on supply contracts, we believe this has potential to seriously damage customers, as many rogue brokers who Ofgem are seeking to protect customers against will simply become ‘rebillers’. We have made Ofgem aware of rebillers previously yet little seems to have been done to tackle the issue. Rebillers are companies which contract with the end user (the actual customer) and without (or in some cases with) the knowledge of the licensed supplier, they agree a supply contract in their name for the supply point. Effectively they (the rebiller) becomes the customer as far as the licensed supplier is concerned. The rebiller receives invoices for the supply point and then generates their own invoices (at whatever price they agreed) to the customer leaving them none-the-wiser with regards to uplifts. *Note – this is NOT white-labelling, and is another process altogether.* Some rebillers have caused serious harm to businesses, as they are not subject to any broker agreements/code of conduct with suppliers or Ofgem license requirements, and can simply rely on contract law to implement extremely tight or unfair conditions with which ultimately the Ombudsman is also not able to assist (as the supplier in these cases is not necessarily to blame).

A rebiller in this instance would not be captured under your proposed definition of a broker, and so would be free to continue with their poor practices whilst good brokers are hindered by the newly implemented rules.

If Ofgem are not extremely careful here, we believe you will simply see rogue brokers shifting business model to become rebillers, and the industry will have a much larger problem to deal with. Contrary to the aim of transparency and fairness, there could be a significant upturn in the opposite.

We also believe that although commission disclosure will in the short-term result in a financial benefit to customers through increased comparisons taking place and competition, it will ultimately lead to many good brokers being either forced out of the market as margins will be unsustainable, or forced to offer lesser services due to the reduced margins. As a whole this will leave either only the larger brokers (those for whom suppliers offer reduced rates and therefore the opportunity for decent margins) or the rogue elements as rebillers or verbal contract call centres.

Many microbusinesses often look at the bottom-line cost for their contract, rather than the added-value benefits of using a reputable broker, yet are often the customers which need most assistance with billing issues, contract reminders, meter problems or many other issues with their energy supply. With so many customers in the short-term shifting to the cheapest brokers which may provide zero service, this will ultimately lead to customers requiring assistance, and being able to receive none. Customers will have to contact suppliers themselves to resolve issues, which is very the reason many good brokers currently exist – to act as the *intermediary* not only on sourcing contracts, but to hold suppliers to account when they get things wrong.

Ofgem have themselves identified that it is the "*activities of a <u>minority</u> of brokers*" that are causing the harm, yet are seeking an industry-wide, complex change to resolve the issue. If you have already identified the issue is due to a minority of brokers, then we would recommend tackling those particular brokers as a first course of action.

You have also stated that the majority of businesses are able to negotiate bespoke contracts that suit their needs, agree competitive prices, access good quality service from suppliers and obtain valuable market insight and contracting services from brokers <u>when they engage with the market</u>. **Therefore the issue seems to be around market-engagement, not the services offered by the majority of market participants**. Yet many of your proposals are not tackling *engagement*, they are simply imposing restrictions on market-participants which is a completely different undertaking.

On page 43 you recognise that there are a "vast number of brokers in the market" so therefore market forces would apply in ensuring prices are fair if engagement were higher. **From our experience, in the majority of cases, microbusinesses are only placed onto highly priced deals where the broker is charging overly high commissions when the customer simply does not shop around and contact more than one broker to compare fairly.**

You state on Page 9 that you "*envisage a retail market where microbusinesses…are able to easily navigate and access competitive offerings to make informed choices.*" As it is recognised by Ofgem that a "vast" number of brokers participate in the market, that are easily found with internet-searches or via some supplier pages, it is not unreasonable to presume that microbusinesses are very capable and have every opportunity to compare prices **prior** to agreeing a contract, and the

highly-priced contract would be easily competed against and the customer would receive a better price. This would further make the case to tackle the issue of engagement. In cases where a customer has been found to have agreed a highly-priced contract via a broker earning overly high fees, it would be interesting to learn the number of brokers the customer contacted to compare prices prior to agreeing the contract. **We are absolutely positive, that if the golf club Ofgem provide as an example on page 35 were to have compared priced against multiple brokers, they would have achieved a much better deal via a different broker.** Lastly, disclosing broker fees on contracts will have absolutely zero effect where many rogue brokers have a carte-blanche Letter of Authority (LoA) allowing them to sign whatever deal they like on the customer's behalf. The customer will never see the contract. Whilst you may believe the other proposals for the Principal Terms to be provided in writing and a 14 day cooling-off period may resolve this, they come with their own flaws described in their respective sections. Rogue brokers will simply avoid abiding by the intention of this proposal and their customers will remain unaware of their overly high fees.
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?
Some suppliers already have reminders or highlighted text on contracts advising about broker fees and to confirm that broker fees are included in the contract, giving customers every opportunity to request confirmation of the fees included in the contract. If this practice were to be rolled out amongst all suppliers, this would encourage more customers to question broker fees whilst also not hindering supplier processes in having to change their contractual documentation to reflect actual commission included for each and every contract produced individually.
Question: What challenges do you think suppliers and brokers may face implementing these proposals.
We believe that some suppliers which seem to favour the rogue brokers and the volumes of business they can bring on board may suddenly be faced with challenges from those brokers. From a broker point-of-view, the changes would be fairly simple to implement, however if Ofgem are not <u>extremely</u> careful, we believe you underestimate how willing some brokers will be to simply ignore the rules or create a workaround. Bearing in mind we have experienced numerous brokers very willing to undertake fraudulent activities (which Ofgem themselves on p36 refer to), we seriously doubt they would take much notice of Ofgem's rules. As you are placing the onus on suppliers to ensure these rules are enforced, we strongly believe that some suppliers may be more willing to 'turn a blind eye' in cases where large rogue brokers are ignoring the rules in an effort to retain the business they receive via those brokers.
Question: Do you have any comments on the associated draft supply licence conditions in Appendix 1 of this document?
Your definition of Brokers will not capture rebillers. As such you are seriously risking many rogue brokers converting their business practices to become rebillers which you and suppliers will have zero control or influence.

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

Yes.

We have mentioned this to Ofgem previously, but we believe a maximum commission/fee 'ratecard' introduced by Ofgem would be a simpler, fairer way to tackle the consumer harm of some customers being affected by sharp practices or extraordinarily high broker fees.

The ratecard could be split by supply size, supply type or any other criteria which Ofgem/suppliers deem appropriate, but ultimately be the <u>same across all suppliers</u>.

This would create a 'fee cap' whereby customers would then:

a) Be reassured that a contract cannot include more than the ratecard allows,
b) Not be able to be placed onto contracts containing extraordinarily high broker fees,
c) Be more inclined to ask about the fees included and make their own judgements accordingly.

We must remember that although micro-businesses tend to be smaller, they are still knowledgeable, intelligent people and are very capable of making decisions on who to work with, and who to not, if they are just given the tools and information to do so.

Many suppliers already have self-imposed 'commission caps' however they do **not** tend to be:

- The same across all suppliers, resulting in many rogue brokers simply placing business with whichever suppliers has the highest cap, or
- Split by customer size/type, so this allows high-using customers to still be caught out with extremely high broker fees.

If the fee cap in pence per kWh were to diminish as customers become larger, this would create a fairer and clearer broker fee structure for customers, and we believe would be very easy for suppliers to implement as it would not change their contractual or billing processes.

Another suggestion would be to simply advise customers to shop around before they sign a contract. As identified in a previous section, customers have every opportunity to compare prices prior to agreeing to contracts, yet in our experience the majority of those customers that have agreed highly-priced deals have simply not chosen to obtain quotations from more brokers in order to ensure competitive or fair pricing. Ofgem could very easily create a marketing campaign advising customers to compare brokers, or request the advice be placed onto supplier invoices as a reminder.

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?

This appears to be an overly arduous route to weed-out the rogue brokers from the market, when tackling the extraordinarily high broker fees is the root of these issues.

i.e. by tackling the extraordinarily high commission issue, we believe you will at the same time tackle the brokers who are conducting themselves poorly. It would be common sense to find that brokers would not conduct themselves poorly in an effort to earn lower fees. They are quite clearly using misleading or pressured sales tactics in an effort to earn higher fees. Ergo, if you tackle the high fees, the poor conduct goes away.

Achieving the principle should not be the issue, however it will depend on how that is policed that matters. If you place the onus on each supplier to police each broker they have a relationship with, we believe there will be a significant duplication of work, increasing costs for all, and ultimately be more about ‘ticking boxes’ than actually helping to resolve the customer harm.

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.?

Yes, but many of these practices are already self-imposed by suppliers anyway, yet some suppliers seem to simply not care, or value the business rogue brokers highly enough to not consider reprimanding that broker.

In practice, it’s a nice idea, but we do not believe it will work how you intend. We cannot stress enough how much **rogue brokers will not care about your principles or rules**, they will simply continue to do what they want to do, and in the meantime your added red-tape will simply cause more work and hardship for good brokers.

With regards to face-to-face sales, they should absolutely be covered under any rules which may be applied to telesales. If Ofgem have considered that pressure sales can take place via telephone, when the caller is not in the same physical location of a customer, please take time to consider how pressure sales tactics may work when the salesperson is in front of the customer in person. It is much easier for rogue brokers to intimidate or use pressure sales tactics when face-to-face, and we have experienced numerous customers signing high-priced contracts during a visit from a rogue broker.

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

No, we strongly disagree, and this proposal has the potential to cause significant harm to customers and suppliers alike.

Firstly, the market can move significantly in 14 days. If customers can simply cancel contracts for any reason, suppliers will find many customers simply cancelling contracts during a period where the market price has fallen. This will add additional cost to customers as we believe suppliers will have to factor in this added risk across their offers to take into account potential losses they may incur.

Secondly, the 14 day cooling-off period may be an extremely effective tool for rogue brokers to use, leaving customers still on costly contracts with high broker fees yet without any service.

With the rogue brokers simply ignoring your sales and marketing practices (which they will), this gives them an opportunity not only to present a misleading contract to a customer, but also gives them an opportunity to make the original offer signed via the good broker look extremely poor in the interim. The good broker loses the contract and the faith from the customer, the previous supplier may make a significant loss, the customer is still signed up to a poor deal, and they are left without any service. No-one wins apart from the rogue broker – the party which this process is intended to protect the customer against.

Thirdly, this will have very little effect with rogue brokers, as there is serious doubt over whether the cooling-off notice or statement of principal terms will actually land with the customer.

Brokers (good and bad alike) can assign themselves as the correspondence/billing address, so where will suppliers send these notices to? You may consider not allowing the correspondence/billing address to be allocated as the broker, but this would prevent the majority of brokers and customers from continuing their good relationships whereby customers actively want their broker to take care of all energy-related correspondence and bills.

With your 14 day cooling-off period only commencing when the customer has received the notice – what if they never receive it or the broker doesn't send it onward? We believe there are many flaws in this process.

In conjunction with this, as per p38 where Ofgem state "*we considered prohibiting the use of verbal contracts altogether and requiring all contracts to be agreed in writing…Instead we propose introducing a cooling-off period for microbusiness contracts*", if the cooling-off period is not introduced, Ofgem should therefore revisit and reconsider banning verbal contracts (if not by all parties then certainly from brokers). **The banning of verbal contracts via brokers is most certainly a better option than any cooling-off period for commercial contracts.**

In our 25+ years of experience as a broker, the vast majority of cases (estimate 95%+) where a customer has unwittingly agreed a high-priced or unfavourable deal, these have been via verbal contracts. We believe that although many reputable brokers may use verbal contracts, they are the default if not only contracting method used by rogue brokers. It would not be difficult for good brokers to revert to written contracts only, especially with the advancement of electronic signature software.

Fourth, the cooling-off period will have absolutely no effect whatsoever where rogue brokers use a carte-blanche Letter of Authority allowing them to sign deals on the customer's behalf and the broker is the named correspondence/billing address, as those customers will simply not receive the 14 day cooling-off reminder/Principal Terms.

Lastly, there will be an issue with the current definition of a microbusiness. Currently, a customer may be defined as a microbusiness if they only meet one of your criteria. Therefore if a customer (for which we have several examples) were to be a large half-hourly metered electricity user, yet use less than 293,000 kWh of gas annually, the **customer** is classed as a microbusiness (not just the gas supply).

In this case, suppliers quoting for the very large electricity supply would have to consider the repercussions of the customer potentially cancelling the electricity contract up to 14 days after signing. Currently, many suppliers only hold HH electricity prices for the day (if not withdrawn prior) due to the extreme volatility and sensitivity or the market. We believe there is very little chance of suppliers being able to commit to holding HH electricity prices for 14 days, or they may have to increase margins to protect themselves against such potential losses. A 14 day cooling-off period in these instances will simply not work, or push up prices for those (if not all) customers.

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

From a Broker's point of view, there would be a large amount of uncertainty with regards to contracts going live. This could actually result in many brokers increasing margins to offset that uncertainty and the inevitable actions some customers will take if they choose to simply cancel their contract within 14 days because the market has fallen and a more competitive offer is available.

Whilst you may consider that a customer being able to negotiate a better deal than one they had previously sourced is good for them, it will not be good for suppliers. In the business world there appear to be very few other sectors where a cooling-off period is available, as it is a **commercial** transaction. Cooling-off periods are usually reserved for residential or contracts otherwise transacted between a company and an individual/the general public.

Ultimately suppliers making losses to benefit customers is not sustainable, and you could see many more suppliers exiting the market, or closing altogether, leading to less choice for customers, more barriers to entry and a highly unbalanced market.

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

With regards to section 7A.13E.3: the phrase 'provided with' is ambiguous, and does not guarantee delivery by a supplier nor receipt by the **end user**. For example what if the end user never receives the Principal Terms (for whatever reason)? Could it be argued that the cooling-off period never commenced and so the customer would be able to exit the contract at any time?

How will proof of sending the Principal Terms be evidenced by suppliers? If the supplier can only evidence from their *own* internal records a paper document was sent by post – is this sufficient to say the customer was 'provided with' the document?

There seems to be many more questions and issues the cooling-off period creates than solutions it provides.

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

Yes. As the harms caused have been identified as customers being placed onto high prices via poor telesales practices and poor broker conduct – tackle those issues rather than trying to resolve those issues by proxy.

Ban verbal telesales via third parties/intermediaries. We appreciate that you may have found some "*consumers for whom the verbal contracting process works well"*, but we would challenge this as advancements in online forms has made it increasingly easy for consumers to see what they are agreeing to prior to the contract being agreed, and easily return signed documents without the need for printing. As previously noted it is our estimate in our 25 years of operation that if third party telesales were banned, 95%+ of rogue broker/third party practices would be halted immediately.

We would challenge Ofgem to find a reasonable number of customers that have fairly and accurately compared offers via verbal methods ONLY, to any degree of accuracy. Indeed in your own document on page 5 section c) you state "*Despite the CMA's attempts to improve price transparency…it is still difficult to compare prices*." If it is deemed difficult to compare prices as a

blanket statement, surely it would have to be perceived to be an extremely difficult task to compare prices if calculations and figures were only to be available verbally, at a time which may not be suitable for the customer, and the amount of time the customer has to consider the prices is determined by the length of the phone call rather than the customer being able to fully calculate and compare, in writing, and at their convenience? We do not believe the verbal contracting process works well for the vast majority of customers, and rather it seems to only work well for those rogue brokers which purposefully attempt to disguise highly priced contracts by quickly, and often aggressively, performing verbal contracts.
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?
Yes. This does appear to be a suitable way to protect customers and provide an effective way to help customers who have a dispute with their broker.
Question: What challenges do you think suppliers and brokers may face implementing our proposal regarding dispute resolution?
The cost of such scheme should not represent a barrier to entry or be cost-prohibitive for brokers. We would be concerned if the scheme were to be so cost-prohibitive that it drives many of the smaller (often more reliable and service-oriented brokers) out of the market, leaving only the larger brokers, some of which we find to be the ones causing most consumer harm. Any scheme should be managed by an independent industry body such as the Ombudsman, rather than a privately-owned company with shareholders.
Question: Do you have any comments on the associated draft supply licence conditions in Appendix 1 of this document?
No comments
Question: Do you think there are other changes which would better address the consumer harm that has been identified?
Yes. Although it has been referred to in previous sections, if you were to ban verbal telesales practices by brokers, we believe you may not even require a scheme outside of that which suppliers already provide. **Banning verbal telesales by brokers**, from our experience, would seem to prevent the vast majority of broker complaints, and therefore prevent the need for a potentially costly and arduous ADR scheme. We would recommend to ban verbal-telesales via brokers first, analyse the results of that change over 12 months, and then consider introducing an ADR scheme. We strongly believe you may find an ADR scheme isn't required in that instance.
Exiting: Switching away from an old contract
Question: Do you agree that termination notice requirements represent an uneccessary 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 somewhat agree.

Whilst we do appreciate that suppliers may need to have some degree of accuracy with regards to their trading requirements, and so may need to know by a certain point in time which customers will/will not be supplied by them in a given period, we believe some suppliers may be using the termination notice period for financial gain.
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?
We believe that logic would dictate that this is not feasible without suppliers potentially increasing risk margins in their supply offerings, resulting in higher prices paid by all. For example, as Ofgem will be aware, although wholesale electricity charges may have fallen recently (Aug 20 vs 2018/2019 averages), the retail rates to customers has not fallen to the same degree mainly because of the rising cost of non-commodity charges. Non-commodity charges will still have to be paid by suppliers at the prevailing rates at the time, and so the objecting supplier (who may have a fully reasonable and contractual reason to object) will be significantly at a loss through no real fault of their own. We do however agree with the proposal to require that suppliers continue to charge consumers on the basis of the rates in place prior to the blocked switch (even for more than 30 days) **where it is found the objecting supplier has done so without sufficient grounds or reason**. We have experienced numerous suppliers objecting “in error” and then attempting to charge customers out-of-contract rates for the interim between switching suppliers. This requires independent complaints to be submitted with varying degrees of success.
Question: What challenges do you think suppliers and brokers may face implementing our proposals regarding improving the switching experience?
From a broker’s point of view, we cannot see any challenges with implementing the proposal if this were to be introduced.
Question: Do you have any comments on the associated draft supply licence conditions in Appendix 1 of this document?
No comments
Question: Do you think there are other changes which would better address the consumer harm that has been identified?
Yes. Introduce a cap on deemed and out-of-contract rates charged by suppliers, which may be altered depending on market conditions. This will enable suppliers to still ensure they are not unfairly penalised if objecting to a transfer correctly, yet it will also mitigate the harm caused to customers in cases where the objection is ‘in error’ and hopefully dissuade certain suppliers from attempting to profiteer from the process.

End of document