



## About Love Energy Savings

Love Energy Savings is the UK's most trusted independent energy retailer, with almost 12,000 reviews on Trustpilot (4.7 \*). Each year we help over 65,000 (predominantly SME) businesses to save money on their energy contracts, offering a wide range of tariffs and market-leading price comparison services to help customers find the best deal. Awarded UK's number 1 SME TPI by Cornwall Insight in 2019 and 2020, our aim is to make switching simple and save customers money. To date, we have helped over 350,000 UK businesses save over £96 million on their energy. We do this through our strategy of providing full online price transparency and working with suppliers to achieve a smooth and fair switching process, saving customers both time and money.

The working relationship with our suppliers is very important in helping us to bring this service to the customer. We are also one of the largest TPIs to most of our suppliers and the indirect channel is important to them as a route to market. This is not only the case for established suppliers, but also as an entry point for new supplier wanting to disrupt the market by offering more competitive options for customers.<sup>1</sup> We leverage these relationships not only to obtain the best product at the best price for customers (including deals which are exclusive to Love Energy) but also to achieve the best possible switching process for the customer regardless of the supplier they have chosen. As part of this we constantly strive to improve consistency and market standards on behalf of the customer as well as standardisation and digitalisation to drive down costs to serve.

TPIs therefore play an important role not only in facilitating and growing the switching market, but also in the development of best practise and consistency on behalf of the customer across suppliers. Based on this, we would encourage Ofgem to leverage the role TPIs can play in helping to implement the mechanics of some of the proposals through a code of conduct framework approach, as opposed to implementation via supplier licence.

## Headline views

We are extremely supportive of Ofgem's strategic aims in this consultation, and many of the proposals are strongly aligned with our own customer priorities.

For our consultation response, we have liaised with a significant number of energy suppliers and partners to understand how they feel these proposals may impact the market and ultimately the customer. We have also discussed this with various members of our customer-facing teams who are responsible for the largest number of customer switches in the UK microbusiness market. We have also met with Ofgem directly on several occasions, including the stakeholder discussions. Therefore, we feel we have a very balanced view of the proposals.

Ofgem's objectives align with a lot of the work we have been doing with suppliers to date. For example, we are proud to support customers with the market's only real-time "Track my Switch" portal, as well as a full online price comparison engine, and work relentlessly across suppliers to bring these improvements to customers.

Whilst we are supportive of the aims of the consultation, we are concerned around some of the proposed mechanics outlined/ proposed in the consultation designed to achieve these aims.

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<sup>1</sup> Cornwall Insight and Citizens Advice - The role of TPIs in the GB SME and microbusiness energy supply sector (2019) <https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/energy-policy-research-and-consultation-responses/energy-policy-research/the-role-of-third-party-intermediaries-tpis-in-the-gb-sme-and-microbusiness-energy-supply-sector/>



We have offered to use our experience and supplier relationships to support Ofgem in achieving their aims, for example where a code of conduct approach may provide a more consistent and higher quality solution for customers. In our view, the approach of TPI regulation via supplier licence poses risk of poor-quality and inconsistent application and increased costs (eventually being passed to the customer) as well as anti-competitive outcomes (causing potential damage to the TPI market and barriers to new entrants and innovation). This could result in unintended consequences on the transparency and efficient operation of the market which could have knock-on effect to the ability for microbusinesses to access the market and compare a choice of products to find the best deal for them.

We do have some concerns around how the fee disclosure is intended to be presented to customers and regulated via suppliers who are in effect competitors. We believe that this should instead be executed through a framework approach to avoid potentially reducing transparency and independent advice, increasing customer prices and anti-competitive practices and limiting access for new supplier entrants.

We have also provided recommendations elsewhere in the report (in relation to the ADR process, consistency of principal terms, tweaks to the notification / 30 day extensions, and cooling off period) as well as making other suggestions which sit outside the scope of Ofgem's specific questions but are important to consider (e.g. appropriate scope of controls, definition of microbusinesses, standardisation across suppliers, availability of industry data, customer debt management and access to product).

Therefore, whilst we are very supportive of the aims and measures, our investigations suggest that there is some cause for concern in the detail and mechanics of certain of the proposals. It would be our strong preference to instead implement the proposals through a code of conduct – this would allow TPIs to have input, independent competitive forces to thrive and act in a positive way, allowing collaboration and evidence to surface best practices in a consistent and fair manner with the least amount of unintended consequences and cost increases.



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## Awareness: Knowing about opportunities and risks

### Overview

We fully support Ofgem's aim to increase awareness amongst microbusinesses and ability for them to browse different deals in the market by ensuring the availability of key information. Whilst there is a strong crossover between smaller microbusinesses and domestic consumers, reports show that significantly fewer microbusinesses are engaging with TPIs to compare their options than domestic.<sup>2</sup> The main reason for this in our view is the lack of key information (including price) being surfaced online and in key marketing channels by independent TPIs/PCWs. The bias towards offline sales, in conjunction with no standard of best practise or code of accreditation in place, means the market is in a state of inertia and businesses today are still not provided with complete information or transparency to make informed choices (in comparison, for example, to the domestic market).

### Love Energy Savings recommendations

We agree with Ofgem however that this key information needs to be better surfaced to allow microbusinesses to better access and browse competitive offerings. The main recommendations we make are:

- **Presentation of key information in the most popular customer channels (including online)** - There are a large number of channels through which customers find key information nowadays. Some of the most popular routes include: online search, direct visits to energy switching websites, business utility websites, affiliates (deals websites), suppliers websites, social media, word of mouth, other influencers (e.g. Forbes / Know your money), sector groups, industry bodies (such as FSB/CAB), TPI / broker relationships and PCWs. We believe the most simple and effective way for microbusinesses to access key information is to show pricing and contract information clearly in each of the key market channels. The vast majority of customer research activity now happens online, with our 80% of our initial customer contact derived from the web initially.<sup>3</sup> However, as key information is not currently required to be presented, transparency and choice in some of the most popular channels is limited and customers are not well informed to make the best decisions.
- **Full online price transparency** – There is hardly any price disclosure in those key online channels making up 80% of a customers' research activity. Whilst all customers who visit the Love Energy website directly can see a full online price comparison, unfortunately many brokers and suppliers do not provide prices and other key contract information online. This is because of the negative impact it would have on their conversion and/or fees. Currently there is limited financial incentive, market pressure or regulatory requirement for market participants to show this information online. In our view, the Competition and Markets Authority's Price Transparency Remedy for Microbusinesses has largely been ineffective in this respect, which is a key stumbling block in achieving these aims. As a result, the customer is reliant on moving their search 'offline', whereby a

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<sup>2</sup> 30% of microbusinesses surveyed as part of *Federation of Smaller Businesses, Time and Energy: An FSB review of the microbusiness retail energy market (2020)* stated they used a TPI to identify their tariff, compared with 68% of domestic customers using a price comparison website as confirmed in *Accent, Household Consumer Perceptions of the Energy Market (2019)*

<https://www.fsb.org.uk/resource-report/time-and-energy.html>

<sup>3</sup> Source: Love Energy Savings Management Accounts for month ended 30<sup>th</sup> September 2020





## Browsing: Searching for deals

### Providing Principal Terms in Writing

#### Overview

We fully support Ofgem's suggestion that customers are provided with the relevant key information to allow them to compare options and make informed decisions. Specifically in relation to the proposal for the Principal Terms to be presented to a customer in writing prior to entering a contract, we believe this is a step in the right direction, however, presenting the information in a different method does not necessarily mean the information is delivered to the customer in a format which is easier to digest and comprehend. There is some risk that the customer transparency could in fact reduce unless the following points are addressed as part of the implementation.

#### Love Energy Savings recommendations

- **A requirement for more consistency of content in the Principal Terms** - to achieve full transparency in principal terms it would be best to first have consistency in content across suppliers, to combat contract complexity and allow customers to make comparisons easily across contracts. Currently, Principal Terms differ vastly across suppliers, with some being very lengthy to the point they could constitute full terms and conditions, whilst others are very simple which customers have argued do not contain 'key information' (such as there is no cooling off period). This makes it difficult for customers to browse for alternative offerings quickly and easily and can result in a lack of transparency.
- **A requirement for increased focus on presentation of Principal Terms** - The contents of energy contracts are created and controlled by the supplier. Some suppliers audit the presentation/accuracy of the contracts and take enforcement action where they are not adhered to compliantly.<sup>5</sup> We note Citizens Advice Bureau presented some evidence that microbusinesses are unaware they have entered into a contract verbally over the phone, which suggests that this current process has fallen short on a number of occasions. Therefore, regardless of the overall mechanism used, we agree that additional rigour is required from suppliers in ensuring that TPIs make these as terms clear as possible. This will ensure that all customers are protected from harm, whilst allowing them to engage in the market via their preferred method.
- **A requirement to review the presentation of Principal Terms** - Disclosing the Principal Terms in writing may not provide any additional benefit to the customer if they are lengthy documents written in a legal form. Studies conducted have confirmed that a high percentage of people accept terms and conditions without reading them.<sup>6</sup> To prevent the disclosure in writing becoming a 'tick box' exercise, it is important the disclosure is delivered in a content and format which truly fulfils the aim of providing the customer with the relevant transparent information to allow them to make an informed decision. Furthermore, if Ofgem proceed with the proposal to bring the Principal Terms to the customer's attention in writing, we would suggest improving

<sup>5</sup> From our panel of 20 suppliers, we are regularly (monthly and/ or annually) audited by 7 suppliers.

<sup>6</sup> Deloitte, Global Mobile Consumer Survey (2017) – 91% accepted legal terms and conditions without reading them. For ages 18 to 34, this increased to 97%.

<https://www2.deloitte.com/ch/en/pages/technology-media-and-telecommunications/articles/mobile-consumer-survey.html>



the presentation to ensure it is engaging to the customer and will prompt them to read it. Unchanged, we believe that this process will merely add additional administration and paperwork, which we expect would not be reviewed in full by a large proportion of customers.

- **Supplier licence wording** - Under Standards of Conduct 0A.3(b), the proposals require the supplier to send a copy of the Principal Terms in writing to the customer's attention prior to entering into a contract, however, the wording of the Conditions does not state how the information must be brought to the customer's attention, i.e. in writing specifically. Without this clarification, there is a potential for dispute whether a supplier or TPI acted sufficiently in bringing this information to the customer's attention and might allow for inconsistencies in application of this requirement between suppliers.

## Fee Transparency

### **Overview**

Love Energy Savings strongly support increased price transparency for customers, to enable them to make an informed decision. Not only should this include comparison of retail prices across suppliers but also contractual terms of tariffs (including term / standing charges / exit provisions etc) as well as any other features and services. This helps customers to make an informed decision on the most appropriate energy contract, but also for them to decide what value they place on a TPI or other market participant and the advice, support and comparison services they provide.

In most cases this 'cost to serve' is very reasonable and is deemed to be of value to the customer in terms of time and money saved, as well as peace of mind that they have secured the best deal available (often, we are able to source better deals for customers as a result of the volumes we facilitate with suppliers). However we agree with Ofgem that in certain instances across the market, this fee is either unreasonable, would not be seen to add value to the customer and/or form part of the lack of transparency problem in surfacing of key contract information.

Whilst we fully agree with the principle of price transparency, as drafted the fee disclosure proposal does not meet the intended aim and potentially has wide-ranging consequences for the TPI market, damaging the progress which has been made in SME switch rates (and bill savings) to date. This has mostly been driven by customers relying on TPIs to provide independent advice, support and comparison.

There are a number of changes we would propose to avoid unintended customer consequences (such as inaccurate or inconsistent application and increased costs / prices) as well as anti-competitive outcomes (causing severe disruption to the TPI market and barriers to new entrants and innovation) which would indirectly affect the customer in the medium term.

### **Challenges**

The particular aspects of Ofgem's Fee Disclosure proposals that we have concerns with are:

- 1) **The lack of consideration for price presentation** – *due to the potential for increased complexity if fee presentation is not handled correctly, which could impact customer transparency and engagement;*



- 2) **The proposed method of fee presentation (i.e. disclosed on supplier bills)** – due to the supplier’s ability to use the proposal for competitive gain, but also due to the potential for customer misinformation and increased costs and complexity for the customer; and
- 3) **The proposed method of execution (i.e. supplier as regulator)** – due to the potential for this to give rise to anti-competitive activity, but also higher prices for the customer and/or suppliers exiting the TPI market completely as a result of the increased complexity and costs resulting from the burden of regulation.

All of this has potential to result in unintended consequences on the transparency and efficient operation / competitiveness of the TPI market which could have knock-on effect to the ability for microbusinesses to access the and compare a choice of products to find the best deal for them. We cover each point in turn.

### 1) Our concerns around the lack of consideration for price presentation

We believe that any fee presentation should follow the principles we have set out below, and it is difficult to see how these can be met consistently with confidence through the supplier-led model outlined in the proposal. This may have detrimental impact on customer transparency, ease of interacting with the market and overall levels of engagement, which is exactly the opposite of the aims set out.

- **The need to ensure the switching process is “smooth, transparency and not overly complex”** – As a starting point, any disclosure to a customer should be simple and transparent. It should be easy to understand and not detract from the switching process. In an ideal world, customers would understand the breakdown of retail prices into all its components (wholesale, network, operating and regulatory costs), as well as any service charges/ fees paid to TPIs or suppliers. However, disclosing the cost to serve should not add further complexity or unnecessary worry for customers when it can often be a very reasonable percentage of the overall price (<10%). This may ultimately cause customers to disengage in the independent switching market reversing all of the positive progress which has been made in the switching market in recent years, deterring them from using TPIs and causing them to miss out on the competitive options and advice the market has to offer. It should also not be misleading; we note that variation in retail contracts can be much higher by region (>14%)<sup>7</sup> and by supplier (>13%)<sup>8</sup>; and that retail prices themselves have risen 12.5% (since mid-April 2020)<sup>9</sup>.
- **The need to ensure we focus on the key contract information** – Introducing TPI fees is a significant concept and change for the market in its current stage of development and needs to be handled carefully so as not to undermine other work being done elsewhere to encourage engagement. When browsing the best option for their business, customers primarily focus on the overall price they will be paying.<sup>10</sup> As a principle, fees and charges should be secondary to the overall prices presented in order to enable customers to focus on comparison of key contract information. Giving too much prominence to intermediary fees at this point could detract from the overall aim of increasing understanding and awareness of key contract information. We do

<sup>7</sup> The variation is based on the same supplier across two different regions with the following profile – annual consumption of 25,000, 03 profile class, 3-year term. Region 12 vs region 13; correct as at 20/10/2020.

<sup>8</sup> The variation is based on two different suppliers in region 12 with the following profile – estimated annual consumption of 25,000, 03 profile class, 3-year term.

<sup>9</sup> 12.5% increase is based on standard book pricing for the following specific profile – estimated annual consumption of 25,000, 03 profile class, region 14. 17/04/2020- 20/10/2020..

<sup>10</sup> FSB, Time and Energy (2020) – 75% quoted one of the top three factors for choosing their current tariff was price stability, followed by cheapness of price (65%).



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not believe the majority of customers have a sufficient level of knowledge to understand this information if it is not presented properly. Ofgem have already highlighted an existing issue within the market, where customers are unable to carry out effective comparisons due to the complexity of what is available. This was a view supported by research carried out by the Citizens Advice Bureau as mentioned in the stakeholder discussions. Adding an additional piece of key information to compare may confuse customers and dissuade them from using a TPI altogether to avoid further complicating their search (if it is done in the wrong way).

- **The need to avoid increasing search costs for the customer:** In its current format the proposal is likely to increase search costs for customers, as they will have to compare tariffs, suppliers and now TPI costs. Without effective online price comparison, this fee comparison / search will mostly be done offline and take a lot of time and effort. There is a risk this disengages customers from the benefits a TPI can provide, as one of their main drivers when choosing their tariff is time and effort.<sup>11</sup> In addition, if too much prominence is placed by the customer on identifying which TPI has the lowest cost to serve, this may force TPIs with good practices (who have a reasonable cost to serve) out of the market.
- **The need to ensure consistency and comparability across all industry providers** - The concept of a TPI's "commission" in our view is effectively the cost to service customers, and it can be compared to the margins earned by suppliers, which they are not currently required to disclose to customers. This in our view does not allow customers to evaluate other (often larger) aspects of energy retail prices. In addition, TPIs who are charging customers directly are not required to disclose fees under the proposal. We believe this should be required to ensure fair and consistent transparency. Having a bias towards disclosing TPI fees only puts an unnecessary emphasis on this market only, making it confusing for the customer and leading to a competitive advantage in markets where fees do not have to be disclosed (e.g. supplier direct).

## 2) Our concerns on the proposed method of fee presentation (i.e. disclosed on supplier bills)

We agree under price transparency measures that all key contract information should be disclosed at the point of sale, and ideally at the customers' request at any time. However, whilst we understand why Ofgem have suggested that suppliers should communicate TPI fees on statements and bills (because this is a useful reference point for customers and is easy to find), we consider that there are a number of potential negative outcomes, in particular anti-competitive and pricing implications of it being disclosed on supplier communications, which far outweigh the positives.

- **Potential for suppliers to use TPI fee information for competitive gain** - We consider that there would be serious competition issues with suppliers (who are also competitors) presenting other market participant's pricing. The disclosure of fees on supplier communications could give suppliers the opportunity to give unnecessary prominence when illustrating TPI fees in relation to the other costing information on the bill (or even have different approaches in order to favour one TPI over another). In the licence conditions suggested wording part 7A.10C.2, there are no controls to prevent suppliers giving undue prominence to broker commission within this information – either as a means to promote direct sales or to distract the customer from other less favourable terms of their contract (e.g. upfront payments). In contrast to this, the disclosure on post-sale documentation has specifically been worded to ensure the supplier displays the TPI fees in a prominent position. Overall, there is a significant risk that this information could be manipulated or abused,

<sup>11</sup> Federation of Smaller Businesses, Time and Energy: An FSB review of the microbusiness retail energy market (2020) – 47% quoted one of the top three factors for choosing their current tariff was minimal time/effort.



for example used by suppliers to justify more aggressive direct sales strategies and stifling competition in the longer run which would give them an unfair advantage and reduce competition in the market overall. This thought has also been echoed by industry specialist Cornwall Insight.<sup>12</sup>

- **Potential for a supplier to devalue the TPI service into a 'commission' line** – Most customers recognise that by paying a fee to TPIs they are able to obtain a fuller market view and save time, as well as often actually benefiting from a lower retail price (as a result of the TPI negotiating over a higher volume of contracts), as well as various other value-added services. TPIs are critical in facilitating consumer choice,<sup>13</sup> with the fees charged by TPIs providing a fuller market comparison that a single supplier cannot provide. The role of TPIs is also critical in supporting new entrants into the business energy supply market, by providing these new entrants with an effective and established route to market. This in turn promotes competition and competitive prices amongst all energy suppliers in the knowledge of independent third parties providing greater choice to the customer. A lack of control around disclosures could result in unintended harm – for example, discouraging microbusinesses from using TPIs to compare tariffs and instead drive them to contract directly with a supplier, even though the supplier covers its cost to serve within its own price. It is important not to undermine the important work TPIs carry out with microbusinesses,<sup>14</sup> as it could devalue the TPIs service to compare tariffs and encourage contracting supplier directly with limited research or choice.
- **Inability for the customer to accurately evaluate the service provided:** The fees earned by a market participant is a matter between the service provider and their customer, yet under this model the service provider would have no control over their pricing disclosure, its prominence or context. Disclosure of those fees has a direct impact as to whether that customer chooses to proceed / renew that participant's services therefore they should be in control of communicating it to the customer. They may need opportunity to explain the service that the customer will receive for the fees (which could in fact include the securing of better prices from the supplier).
- **Potential for TPI fees to be explained incorrectly or inconsistently** – A further risk of suppliers explaining TPI fees to customers is that they may have limited knowledge or ability to explain the service and charge; for example, where provisions differ between TPIs. The disclosure may not be accompanied with a fair and accurate context of the TPI fees or services, as the supplier does not (and cannot be expected to) understand them in full. In the supplier licence wording, it does not state there is a responsibility placed on the supplier to add context to the TPI's commission or to include the contact details, to allow the TPI the opportunity to add any missing context should the customer be dis-satisfied. Furthermore, the word 'prominent' is also open to interpretation by the supplier and some may choose to feature this information more prominently than others. This problem will be exacerbated as we move towards Net Zero with newer products such as electric

<sup>12</sup> Cornwall Insight, Why Now? Regulation in the TPI Market (2020)

<https://www.cornwall-insight.com/newsroom/all-news/why-now-regulation-in-the-tpi-market>

<sup>13</sup> Federation of Smaller Businesses, Time and Energy: An FSB review of the microbusiness retail energy market (2020) – the report states TPIs 'have an important role to play in helping small businesses to navigate their way through the complexities of the energy market'.

<https://www.fsb.org.uk/resource-report/time-and-energy.html>

<sup>14</sup> Federation of Smaller Businesses, Time and Energy: An FSB review of the microbusiness retail energy market (2020) – the report states TPIs 'have an important role to play in helping small businesses to navigate their way through the complexities of the energy market'.

<https://www.fsb.org.uk/resource-report/time-and-energy.html>



vehicles, time of use tariffs, battery storage etc, when TPI service and remuneration models are likely to become even more complex. Uncontrolled disclosures can lead to distorting a customer's perception of their options and could ultimately cause customer harm if it is misinterpreted or misleading. There is potential for fee disclosures to become very complex and inconsistent across supplier customer communications under this model which would cut across the aim of making key information easy to find. If mishandled, this additional complexity could reduce the volume of microbusinesses engaged in the market.

### 3) Our concerns on the proposed method of execution (i.e. supplier as regulator)

We note that Ofgem suggest the fee disclosure measures should be governed through the supplier licence. In the eyes of the customer this is a fundamental issue, primarily as the consequence is likely to be direct or indirect anti-competitive action, which would have detrimental impact to the TPI market and eventually the microbusiness.

- **Being regulated by a direct competitor** - Market wide 'regulation' of TPIs by Ofgem via suppliers could potentially be viewed as TPI's being controlled by their competition; with said competitor having previously been complicit in the harm referenced by Ofgem within their consultation and others<sup>15</sup>. This could have unintended consequences on the healthy competition in the market that TPIs encourage between suppliers to offer more competitive products/prices, as negotiations will take place around compliance and measures as well as around the usual commercial aspects. In addition, suppliers could interpret the rules in a draconian way, actually increasing the cost to serve and making it even more difficult for TPIs to compete on price with the direct model. Lastly, a number of TPIs may leave the market as they are unable to compete with the direct channel, which would impact the level of customer choice and transparency available.
- **Potential to encourage suppliers as competitors to reduce the size of the TPI market** - Given the increased risks and costs associated with monitoring TPIs under this regulation through bilateral deals, some suppliers have indicated to us that despite the benefits of the large indirect channel, they may choose to disengage from TPIs and instead focus on direct sales opportunities to save them additional cost in resource and reduce their risk as a business. It is no longer an attractive channel for them. Given how large and profitable the indirect channel is for suppliers, this signifies to us that the cost must be extremely prohibitive. Depending on each suppliers' strategy, this could result in either a forced consolidation of TPI providers, or a widespread exiting of the indirect channel by suppliers completely. A reduced TPI market would impact the customer's ability to compare and source deals from a range of suppliers and allow suppliers to increase their pricing as the direct channel has a monopoly. Alternatively, if suppliers do continue working with TPIs, it could result in increased costs, which is likely to be passed on to TPIs / all microbusiness customers depending on how the supplier decides to distribute the risk premium.
- **Lack of consistency in application of the principles** - The proposed Licence Condition wording states that suppliers must ensure brokers achieve the standards set out in the Code of Conduct, although there's nothing to suggest how this will be consistently measured and acted upon across suppliers. This gap could give rise to TPIs being inconsistently informed they are not meeting the relevant standards and no defined

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<sup>15</sup> Control Energy Costs, Open letter to Ofgem (Sep 2020) – commentary on unscrupulous brokers and suppliers 'corroborating' to tie customers into contracts with unfavourable terms, including high level of commission for a broker and a higher margin for the supplier.

<https://cec.uk.com/news/2020/open-letter-to-ofgem-sep-2020>



scope to allow for work to improve processes before a supplier refuses to work with them. There is also no guarantee that it would improve standards at all. It could also result in a two-tier market where certain suppliers work with certain TPIs who have different approaches to what is 'good' or 'bad' practise.

- Potential for increased costs as a result of system changes to implement and monitor compliance** - The investment in people and systems required to implement the proposals will result in a higher investment and operating cost for both suppliers and TPIs. This is not only the up-front system changes but also ongoing compliance monitoring and adaptations as the market changes or new entrants arrive. Customer queries are also likely to rise and there will be increased costs of servicing this. We believe (through discussions with energy suppliers about this consultation) that all energy suppliers will incur significant changes and costs to shoulder this regulatory and administrative burden. Most will be required to increase their base prices consequently, which we are informed there is no option but to pass on to retail charges. We are also conscious of the amount of time required to make these system changes which could delay the timeframe in which Ofgem can execute their plans.
- Time and effort to negotiate bilateral agreements** – The costs and time delays of negotiating standards and practicalities between every TPI (of which there are over 1,500 in the UK) and suppliers (of which there are over 50) will potentially result in tens of thousands of different agreements and processes being drafted. This will cause cost and disruption which will make the measures less timely and introduce additional cost which will inevitably be passed on to customers.
- Specific comments on the supplier licence wording** - Within the draft Standard Licence Conditions, 7A.10C.1, confirms disclosure is required for a “benefit of any kind”. This is very vague and does not target the disclosures Ofgem are looking to focus on based on the case studies it has quoted, which is financial remuneration only. Failure to limit the disclosure could result in unnecessary disclosures which would have no impact on the customer’s ability to make an informed decision. As outlined above, we also do not agree with the following “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” or 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.”

### Love Energy Savings recommendations (alternative to the mechanism proposed)

Overall, whilst we fully support the aims of the price transparency measures, we believe as currently drafted that the implementation of the consultation could lead to (1) reduced transparency (2) increased costs and higher customer prices and (3) anti-competitive activity. In addition, these changes could potentially reduce (independent) customer advice, healthy competition and therefore choice. In its most extreme, the market opportunity for TPIs could be impacted so much that it forces even the larger players to exit the market and dissuade new participants from entering what is already a difficult market. Investment and innovation is critical for the future performance of this market from a customer perspective.<sup>16</sup> Finally, such reduction in the indirect sales channel could create further barriers to new

<sup>16</sup> Cornwall Insight, Why Now? Regulation in the TPI Market (2020)

<https://www.cornwall-insight.com/newsroom/all-news/why-now-regulation-in-the-tpi-market>



energy suppliers in the market as they cannot access the large (lower cost) route to market, again reducing independent customer choice.

Below are some of our thoughts on alternative ways to achieve the desired level of transparency, without creating unnecessary complexity or damage to the market:

- **Fee disclosure at point of sale only** - as outlined above, if the fees are to be disclosed on bills and statements it is difficult to see how Ofgem will prevent suppliers using this for competitive gain and without introducing significant cost to the industry. By ensuring disclosure at point of sale the customer is aware of the cost of the advice they have been given at the point they are making that buying decision.
- **Fee disclosure by the party earning the fees** - as outlined above, any fees should be disclosed by the party delivering the service in order to avoid inaccurate or misleading information and maximise transparency.
- **Fee disclosure based on the principle of proportionality** - Any fees charged should be fair, considering other relevant UK Supreme Court rulings around commission included in contracts.<sup>17</sup> Our view is that many TPI fees are reasonable and proportionate for the service provided. Love Energy Savings' commission a percentage of the customer's overall energy bill across the term of the contract is on average 8.74%.<sup>18</sup> However, we are aware that a minority of market participants do use their position to overcharge customers which is not acceptable. One option is that the disclosure should be based on what is proportionate to take into consideration in terms of cost to serve. Ofgem acknowledge that the cost to serve different microbusinesses can vary and the key issue, therefore, is not the uplift amount itself, but rather whether the fees earned are disproportionate to what the customer is paying for their energy or what it costs to deliver that service. This particular issue was addressed in the successful claims made by Business Energy Claims (BEC) on behalf of their customers, where the commentary of the decision focused upon the proportion of the commission earned by the broker compared to the what the customer was paying for their energy. We consider that a threshold concept may help to simplify the presentation to the customer, whilst also achieving Ofgem's overall aim. This would ensure it is not disproportionate with the unit rate agreed and avoid the issue with certain TPIs who are overcharging customers. One way of achieving this could be to ensure the fee is not greater than say 10% of the overall retail price. In this scenario, the level of fee should significantly impact the customer's ability to evaluate the contract and therefore may alleviate other issues, e.g. they may not necessarily be required as a mandatory disclosure within the Principal Terms of the contract.<sup>19</sup>
- **Fee disclosure managed according to a customer code of conduct** - We believe that any fee disclosure should be governed by a voluntary, principles-based framework rather than mandatory via Supplier Licence. This would ensure that effective disclosure become a standard of best practice, with market participants providing evidence on how and when this can be most effectively disclosed to the customer, either on all contracts or on contracts that pass certain value threshold (in line with principles within the UK Supreme Court's judgment in the Plevin case on commission paid to 3<sup>rd</sup> parties within financial services sector contracts). In effect, meaning that customers would have full visibility on potentially 'unfair/ unreasonable' fee levels and

<sup>17</sup> Plevin v Paragon Personal Finance Limited [2017] UKSC 23

<sup>18</sup> Table 1 is based on the average consumption across all customers from 01/01/2020 to 20/10/2020, based on the average standing charge, unit rate and uplift for both fuels combined – excluding VAT, CCL and other levies.

<sup>19</sup> Condition OA.9, Standard Licence Conditions – contains the definition as to what must be included within the Principal Terms of the contract.



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assurance that non-disclosure equates to a 'fair' fee/ commission earned. This framework should be created by a panel of key suppliers and TPIs in the market, to establish best practise that all suppliers recognise, which is then rolled out across the market as a voluntary procedure. This would overcome the issues stated above – it would avoid unnecessary delays and costs in bilateral contractual and commercial negotiations, as well as reduce the risk of introducing inefficiency and increased costs to the market. It would also avoid the risk of a two-tier market and ultimately the potential destruction of the indirect market and monopolisation via the direct channel. Given the threats to effective operation of the market of the supplier licence model and the potential benefits to the customer (transparency, choice, lower costs and increased competition) of the framework approach, this is a very real option that Ofgem need to consider. Further detail on how we think this mechanism might work is outlined on page 17-18 of this report.

- **Fee disclosure by all market participants (i.e. all TPIs and suppliers):** The format and presentation of disclosure should be consistent across all market participants. It should apply to any provider charging a cost to serve, i.e. including suppliers, TPIs and others (regardless of fee structure). This means it is applied consistently across the market, to ensure that customers are being treated fairly and prices are transparent, regardless of route to market chosen. If not, it can result in market distortion as it is more costly to operate in certain channels of the market resulting in an uneven playing field.

Overall, we consider that the method by which Ofgem implement the fee disclosure proposal is of paramount importance given the level of engagement and understanding of customers in this market, which is already very low. There is a very real risk of unintended consequences on customer transparency, choice, competition and barriers to entry if this is not handled correctly. We would be delighted to be involved in leading from the front in a framework-type approach and look forward to hearing from Ofgem on this.



## Contracting: Signing up to a new contract

### Broker Conduct Principle

#### Overview

Love Energy Savings strongly agree there should be a unified Code of Conduct for market participants to follow. Improving customer standards and protection in the market through collaboration and best practise is a fundamental part of Love Energy's strategy and can be found in a document we produced for customers and stakeholders in 2017<sup>20</sup>. Therefore we are strongly in agreement with what has been set out, however we believe there are challenges with it being enforced via Supplier licence, and we believe a code of conduct approach would alleviate these issues and perhaps allow us to be even more ambitious in terms of the change this can bring about in the market.

#### Challenges

We believe there are a couple of potential challenges with Ofgem's current proposal which can be split into (1) concerns on how exactly this will bring about a change to the current issues being seen and (2) concerns about the mechanism used (i.e. regulated via Supplier licence).

##### 1) Our concerns on how exactly this will bring about a change to the current issues being seen

- **Lack of ambition to change from the status quo** - We believe there needs to be a sustained commitment to high standards, by all market participants; upheld through commercial incentives, market forces, contractual obligation and (if needed) third party intervention. Currently these standards are upheld only by a handful of providers who are trying to transform the market (including Love Energy Savings) and the tide is not turning – there is nothing stipulated within the Standard Licence Conditions which would really move us on from the status quo. A framework approach building on commercial leverage would support with this.
- **Potential lack of consistency of standards across all microbusiness sales** - We believe Ofgem's proposed method of achieving good behaviour across the market may fail due to a lack of market-wide standards being set, as the Code of Conduct wording within the Standard Licence Conditions is too high-level. This is already evident in the current application of the Codes, which some suppliers have extended to TPIs via their own supplier codes of conduct. These codes vary in content and guidance around how sales should be conducted. We believe there is the potential that certain suppliers will uphold very high standards whereas others (perhaps who are looking for higher growth and more risk seeking) may accept certain poorer practices from TPIs. This could result in a two-tier market or an uneven playing field with no way of customers determining a "good" TPI/supplier from a "bad" one. This view is shared consistently across the suppliers we have spoken to.

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<sup>20</sup> Love Energy Savings, Greater Transparency in the UK TPI Sector (2017)

[https://www.loveenergysavings.com/content/outsidecms/documents/greater\\_transparency\\_in\\_the\\_uk\\_tpi\\_sector\\_love\\_energy\\_savings\\_report\\_2017.pdf](https://www.loveenergysavings.com/content/outsidecms/documents/greater_transparency_in_the_uk_tpi_sector_love_energy_savings_report_2017.pdf)



- **Potential lack of consistency in consequences for not meeting required standards** – Each supplier may take a different approach to dealing with each TPI based on commercial / negotiating strength which would lead to multiple standards within the market. Even within each individual Supplier / TPI, the approach to dealing with this could be haphazard and biased if not properly managed, which is not in the best interests of the customer or a consistently functioning market. Under OA.3(c), we would like to the wording to be clarified to make clear what action suppliers will take to “put things right” when a Broker makes a mistake. This appears far reaching and creates an opportunity for disproportionate or anti-competitive consequences of breaches, along with inconsistent approaches across suppliers. In addition, in the supplier licence wording it is not clear whether these rules apply retrospectively or have any associated materiality or element of anticipated/forecast performance. Equally it is not clear on how each supplier, or indeed Ofgem interpret fairly broad-brush clauses such as “fair and cognate expressions.”
- **Lack of requirement for market wide standards to be upheld** - We believe that Suppliers are in effect competitors of TPIs, so we would also like to see them being held to the same high standards as TPIs in negotiating deals with customers (i.e. Suppliers should also join the Code of Conduct for direct sales). Therefore, Informed Contract choices should be part of the Standards of conduct (i.e. suppliers also need to confirm to the agreed standards), not an activity designated to that for a TPI. Under Standards of Conduct OA.4 and 7A.4 (and throughout), we would also like comfort that Ofgem are going to hold suppliers accountable to the same level of standards of conduct that suppliers will hold brokers to in part (a). With regards to “Broker Designated activities” definition, we do not understand why suppliers are not being held to the same standards in respect of directly negotiated contracts. Also, in the supplier licence conditions, the definition of brokers should include any TPI or service provider regardless of how they are paid. Lastly, the definition of brokers should also include aggregation platforms which provide market access for several sub-brokers. Further work is required to determine who is responsible for a breach of a sub-broker and what is the effect of a breach/how it would be enforced. This would all provide a more level competitive playing field and allow customers to know that regardless of sales channel they would receive fair treatment.
- **Potential lack of corrective action on existing Legislation** - We have a query as to how the current problems with fraud and wilful misconduct be solved through the proposed process. In Ofgem’s consultation, examples such as TPIs submitting falsified letters of authority and change of tenancy contracts to dishonestly end a contract early were provided. These behaviours amount to fraud and should have been, and continue to be, reported by suppliers to the relevant authorities, so the brokers in question can be dealt with in accordingly. How does Ofgem expect the legal and supplier response to be better than current under the new reforms?

## 2) Our Concerns about the mechanism used (i.e. regulated via supplier licence)

- **Anti-competitive nature of regulation by direct competitors** - We do not believe it is appropriate for this to be enforced directly by suppliers, as suppliers can be considered as competition to a TPI and they should also be subject to the same level of discipline and oversight in direct sales. If this is not the case, we cannot be certain that customers are treated fairly and consistently during the switch process across all channels. In addition, similar to what we have outlined elsewhere in the document, there is the protentional of a two or three tier market developing, whereby certain suppliers/ TPIs are accepting of different levels of risk and adherence.



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- **Indirect Impact on Customers as a result of regulating via the supplier licence** – From the 20 suppliers Love Energy Savings have on our panel, currently only 7 of those conduct regular audits (to varying degrees). As the proposal would directly put at risk a supplier’s licence, based on a broker’s misconduct, it is likely that suppliers will look to implement more stringent monitoring processes to ensure ongoing adherence. These monitoring processes could be a significant cost to the supplier and could cause unintended harm, such as an increase in prices paid for energy by microbusinesses to account for the increased operation/ administration costs (dependant on the number of TPIs a supplier works with). We understand that certain suppliers are reconsidering working with the TPI market at all should these proposals go through, due to the increased risks and costs of operating. It could also dissuade new supplier entrants to the market from supplying microbusiness customers, choosing instead to focus on customers who are lower risk as they incur lower operating costs and less administration. This would severely impact options and market choice available for the microbusiness energy customer.
- **Review of terms in the standard Licence Conditions** - We have not yet taken any legal advice nor undertaken a detailed review with suppliers, however at this stage our view is that the amendments to the Supplier Licence Conditions are highly rudimentary as a mechanic for implementing the proposals requires significant further discussions. To minimise the legal costs and delays resulting from numerous bilateral discussions between TPIs and suppliers, and to avoid an inconsistent and suboptimal solution for customers, we would need to arrive at a collective position from Suppliers on how these would be implemented in practise, and we believe this would be better achieved through a Code of Conduct. For now, we have merely flagged some issues for your consideration within the bullet points in the section above. Specifically, under the Standards of Conduct OA.3(c), the definition of customer service arrangements could be relatively far reaching in respect of a TPI – the definition of a customer’s needs to be relatively narrow in respect of the provision of energy services to microbusiness customers only and the service itself in respect of the Broker Designated Activities only.

## Love Energy recommendations

We would make the following recommendations in order to address the above:

- **Code of conduct managed by an industry-wide working party (rather than by supplier licence)** - We propose that a Code of Conduct should explicitly define and capture the key proposals around Fee Disclosure and Informed Contract Principles, rather than each being enforced on TPIs through the supplier licence and applied arbitrarily. This voluntary Code of Conduct could be achieved via an agreed working party, which should consist of an Ofgem representative and around 10 industry participants/ key organisations (a combination of suppliers, major TPIs, etc). It could also be administered or facilitated by the representative of another independent third party in addition to Ofgem. The objective of the working party would be to progress the current Ofgem proposals from concepts into workable solutions; ones which promote consistency, transparency and informed customer choices. The group can also work to find solutions to the challenges that Ofgem receive in response to this consultation and agree the roles of each market participant under the Code. For example, in relation to the disclosure of fees, the working party could clarify: the parameters for the proposal in order to allow implementation; the definition and qualification of “fees” for disclosure (i.e. what is a relevant service/ cost to serve); how disclosure can be managed across other routes to market/ constructs (e.g. aggregators); where /when the disclosure should be made (i.e. at point of sale/ on demand/ on bills); parameters for supplier communications; and, how the disclosure should be managed alongside other key contract information. With appropriate legal advice the group could also



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interpret and refine the messaging within the Supply Licence Conditions for all parties. Overall, the working party can set clear benchmarks for quality and performance - based on the agreed overall aims, best practices, evidence and customer feedback; along with agreeing how the Code will be monitored/ enforced and communicating the detail clearly to the wider industry. An appropriate meeting cadence should be agreed with delivery of key proposals in accordance with a timeframe proposed by Ofgem. Once established, the principles of the Code could be adopted by those key parties as best practise, with execution to follow in a commercially reasonable fashion and timeframe. It would be important, however, that all suppliers commit to the standards set out in the Code to ensure the working party and Code is not undermined. Governance and voting rights should be calculated based on a consensus approach. Any participant who then signs up to the Code would benefit from the Ofgem trusted accreditation. The costs of running the group should be absorbed equally by all those participants who benefit from the Code. We would be very interested in discussing this further with Ofgem and forming a key part of the working party.

- **Application of code of conduct to all participants and sales channels** - Love Energy Savings agree with the proposals to have specific requirements placed on all market participants to prevent unethical sales and marketing tactics as well as creating more trust and a more effectively functioning market- place. This includes suppliers and any TPI (regardless of fee model). We also support the concept that all sales and marketing channels should be covered in order to protect the customer, regardless of the platform used to browse/secure a new contract. The lines between telesales and face to face are blurring due to technological advancements and COVID (i.e. sales being completed via webchat, Microsoft Teams, Zoom, emails etc), therefore, we would propose extending the rules to all sales channels.
- **Branding to support customer recognition and trust** - There should be clear benefits of TPIs and Suppliers adhering to the Code of conduct, such as being accredited with associated branding. This would also allow microbusinesses to immediately identify a reputable TPI / Supplier from a poor one and save time and search costs, as well as providing commercial incentive for participants to adopt the Code.
- **Standardisation of supplier information and process flows** - We believe some of the opacity experienced by customers in the market is also due to the lack of standardisation across suppliers and offline manual processes; being able to automate this would get to the root cause of issues with informed contract choices. For example, each supplier uses different ways to determine whether a customer is creditworthy, which makes it difficult to inform a customer of the most suitable supplier and tariff for their business. Following on from this, the proof of address required to challenge a credit decision is not uniformed between suppliers, however, standardisation would allow challenges to be made more efficiently and would ultimately benefit the customer. More consistency in service level agreements (SLA) across suppliers, would also allow for switches to occur smoothly – for example, where a customer initially provided incorrect information at point of sale. Building on this, real time updates of a switch via an application programming interface (API), will help solve the various Excel reports across suppliers, most of which are in different formats. Love Energy are working hard to automate the switch process through our online “Track my Switch” portal, enabling customers to see real-time where their contract switch is up to, but more standardised industry information flows would help with this. In addition, some supplier pricing structures and lack of opacity in their pricing can make comparing prices difficult for customers, such as those which separate the feed in tariff charge to their main price, and those who confirm in their Principal Terms the contract is fixed



(yet increase the prices annually). Consistency in pricing and presentation of prices across supplier will aid customers in their browsing for a better deal.

- **Review of product availability for the most vulnerable microbusinesses** - Due to the impact of COVID19, certain customer groups (specifically those with low credit scores, low annual consumption and in affected sectors) are struggling to access product to enable them to switch. This is requiring TPIs to adapt their usual processes and communications in order to place the customer with a supplier, adding a layer of complexity to the switching process (particularly if the sale fails post submission and needs to be re-signed).

## Cooling-Off Period

### Overview

Love Energy Savings agree with the principle and understand the logic for introducing a 14-day cooling-off period. However, given customers typically enter into an energy agreement an average of 4.5 months prior to their contract start date, we are of the view that the customer already has plenty of time to change its mind, making an extra 14 days fairly insignificant. We do not consider that the customer would be in a materially better position as a result. Further, other means of cancellation still exist for customers post start date; indeed the ADR scheme may provide another option, as a customer who is unhappy with their contact has a form of recourse via the supplier who can cancel the contract if they agree the customer has been mis-sold.

Given the fairly limited benefits versus the list of cost/complexities (outlined below), we suggest that this proposal should be lower in priority than other recommendations made by Ofgem, and that the policy focus should be at the start of the sales process (the root cause of the problem) which may negate the need for this at all.

### Challenges and Love Energy Savings recommendations

- **Aggressive Sales Tactics in the creation of a new 'win back market'**- there is the likelihood that a cooling off period might be exploited by market participants to encourage customers to cancel a valid contract, running the risk that the initial option is no longer available given the propensity for the product availability and prices on the market to change. The introduction of a cooling off period may also create uncertainty in the volume of customers a market participant can expect, which will create a "win back" or "aggressive" sales and retention culture damaging transparency. It could make the market so overly competitive that it could complicate the switching process further (especially with the reduced switching timescales on the horizon) as objections handling and notifications / cancellation processes between suppliers require more careful management to ensure the customer is unclear who they have signed up with, harming transparency and detracting from a smooth switching process. There will also be additional costs incurred by both market participants to resource this new "win back" activity, with the cost potentially being recouped via higher prices for microbusinesses.
- **Increased market complexity and a requirement for better processes and notifications** – There are already challenges in streamlining and managing multiple inconsistent supplier processes to facilitate a smooth switch for a customer. Increased win back activity and customer switching could result in issues in process flows and



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forecasting, as all parties require timely notification to reduce double counting of contract and costly reconciliations down the line. This should not prevent Ofgem implementing the measure in itself however it is worth noting that a cooling off period will result in additional administration and system changes for all parties to avoid and administer this, which could again incur additional costs and be passed on to customers in the form of increased prices.

- **Increased customer pricing as a result of increased risk for suppliers in forward buying energy** – Specifically, we are concerned of the impact of this proposal on supplier purchasing of energy via forward contract on sales that maybe be cancelled due to the 14-day cooling off period. The expectation that an increased proportion of customers will choose to cancel their contracts may lead to energy suppliers increasing their prices to factor in an additional margin for the risk of this cancelled energy, if they have already forward bought the energy (or if this means they cannot forward buy and have to buy at spot rate). This concern has been reiterated to us by many of the suppliers we have consulted with and was also highlighted within the Ofgem stakeholder events. Therefore, we would ask Ofgem to consider this with energy suppliers, and whether the benefit of a cooling off period for customers would far outweigh any potential harm that could be produced as a by-product, such as increased energy base prices for our customers.
- **Standard Licence Conditions** – In the wording of the draft Standard Licence Conditions there is no requirement placed upon the customer or the supplier to notify the TPI of the cancellation prior to the request being actioned. Sometimes cancellations within the cooling off period can occur due to a misunderstanding or a gap in knowledge/ information, both of which would could be resolved with simple explanations from the TPI – allowing them the opportunity to keep the customer engaged in the market. Furthermore, the cooling off period is being introduced by Ofgem to combat poor sales practices, by allowing customers the relevant breathing space to ensure they have digested the information, however, the customer is not required within the draft wording of the Standard Licence Conditions to have a reason for cancelling the contract. Therefore, this could give rise to cancellations from customers who have simply been able to find a cheaper price elsewhere as the market has taken a temporary dip. In addition, In 7A.13E.3 / 7A.13E, more work is needed to understand the date of the cancellation period begins and ends (given the 4.5 month time period between contract signing and start date as mentioned). There would need to be unambiguous information as to when the Principal Terms of this contract had been entered into or when the contract had been entered. In 7A.13E.5, this should also cover Gas as well as Electricity, and we note that TPIs should be remunerated by suppliers for any proportion of energy used under the original contract if it has been arranged by them. It should also be applied to all market participants. Other than this, the overall proposed wording of the cooling off period is fair and the restrictions suggested around supplier conduct once a customer has given notice during cooling off period are reasonable.



## Dialogue: Two-way communication with service providers

### Broker Dispute Resolution

#### Overview

We understand why Ofgem have proposed this measure - occasionally things do go wrong for customers, and there needs to be effective measures in place to resolve any customer dis-satisfaction swiftly and easily. At Love Energy Savings, we have our complaints process displayed on our website and have an internal team dedicated on preventing, monitoring and resolving issues, working closely with suppliers.<sup>21</sup> However, we appreciate there may be other TPIs within the market which do not have these processes in place. As part of our commitment to ensuring our customers always receive a fair resolution to their complaint, upon the Energy Ombudsman Services approaching us regarding a pilot for a broker ADR scheme, we opted to join to help the collective understanding of how a scheme like this may run. We are supportive of an ADR scheme via one provider, to provide consistency across the market. However, from liaising with the Energy Ombudsman and attending the Ofgem stakeholder events, we are still not certain how an ADR scheme will be able to navigate the complexities of this market and the relationships between brokers and suppliers, but also brokers and their sub-brokers. There is also the potential for significant costs, market disruption and unintended consequences if this results in the entrance of CMCs to the market, if not managed carefully. This has potential to severely impact the correct functioning of the TPI market and attractiveness to new entrants.

#### Challenges

- **Potential to flood the market with Claims Management Companies (CMCs)** - the concept of an ADR scheme potentially creates an incentive for CMCs to become more active in relation to energy sales. Whilst CMCs should drive positive behaviours in terms of identifying bad broker or supplier behaviour, there are significant examples of the behaviour of CMCs in a marketplace being negative overall, with businesses flooded with complaints that they settle regardless of the validity of the claim simply due to the cost of defending a claim. We would draw Ofgem's attention to the FCA's reviews of the CMC sector in financial services sector having inherited regulatory oversight by the Ministry of Justice.<sup>22</sup> We believe any process that encourages CMC entrants in any material form will both reduce informed consumer choice and potentially lead to base price/commission increases as energy suppliers and TPIs have an additional cost burden to support mass claim volume from CMC 'factories'. We strongly feel there must be controls in place to avoid the risk of invalid CMC complaints and the damage this could do to TPIs (and suppliers) – both in the cost of referrals to an ADR scheme but the resource required to handle these complaints. Invalid CMC complaints are often raised as a means to immobilising a business both in terms of resource and overwhelming with the costs associated with each referral to an ADR scheme.
- **CMC Vested Interest** - it is of serious concern to Love Energy that BEC, whose business model focuses on reclaiming non-disclosed broker commission earned on business energy contracts, are referenced numerous times in the policy consultation and potentially influencing Ofgem to drive the requirement for an ADR

<sup>21</sup> <https://www.loveenergysavings.com/about-us/customer-promise/complaints-policy/>

<sup>22</sup> Financial Conduct Authority, FCA sets out plans for regulation of claims management companies (2018), <https://www.fca.org.uk/news/press-releases/fca-sets-out-plans-regulation-claims-management-companies>



scheme. We are concerned they have potential for commercial gain and therefore a conflict of interest (considering the points we have raised) in this aspect of the consultation and less weight should be placed on their 'advice' and more advice sought from truly independent third parties on this matter. This is a viewpoint shared by other energy suppliers and TPIs with whom we have liaised with on this consultation.

- **Prohibitive costs of an ADR Scheme** - the Ombudsman confirmed in an Ofgem stakeholder event the cost of the pilot scheme were to match the case referral fees suppliers are required to pay, however, the cost of the scheme beyond this has yet to be decided. However it is important to highlight the current membership and case referral fees charged of members of the Ombudsman scheme are not feasible within the TPI industry. Any fee charged would need to be proportionate and manageable for TPIs in respect of the fees they earn from the sale of the contract being disputed. Whilst Love Energy Savings are a larger business and have a small number of complaints to manage, without proportionate and manageable costs, this could be prohibitive. Newer and smaller TPIs may prefer to resolve a complaint by paying the customer an amount above and beyond what is reasonable, to avoid the cost of an Ombudsman referral. Based on the £340 case fee the Ombudsman is charging for the pilot and the average commission Love Energy Savings receive per sale, the potential cost of an Ombudsman case referral would constitute 70% of the fees earned for an individual sale (despite the claim not being proven).<sup>23</sup> This percentage is uneconomical when the case referral is charged irrespective of the validity of the complaint, and would need to be passed on or spread across all customers, increasing the cost of their energy contract.
- **The process requires supplier involvement** – We also believe there is an oversight in the mechanics of the process in terms of the lack of supplier involvement. Where a customer is complaining about a contract agreed, the supplier can cancel the contract, which the TPI cannot, as the contract is held directly between the customer and the supplier. This means it is crucial for the supplier to be involved in any complaint which relates to the sale (including processing and potentially switching) of a contract via a TPI, as it will allow the supplier to provide any supporting evidence which may prove the validity of the contract or absence of an error. This importance of supplier involvement will become more pertinent if the proposal is implemented for suppliers to be responsible for TPIs they work with at the risk of losing their supply licence.
- **Lack of clarity around complaint responsibility** – Further to the above, there are complexities surrounding who is responsible for the error the customer is complaining about. Within the sales process, there are actions/errors which are attributable to a TPI, however, there are processes which are controlled by suppliers. From the Ofgem stakeholder event, the Energy Ombudsman representatives were clear in reiterating that any process implemented must be clear and free of complexities to enable the scheme to work effectively and provide the customer with a quick resolution. During our conversations with the Energy Ombudsman, they confirmed there are uncertainties as to how would the process work for TPIs who have sub-broker operations and who would ultimately be responsible for the case and fee for these complaints, in conjunction with who the complaint would be logged against.
- **Lack of consistent approach and scheme** – one of the key themes which underpins customer harm is a lack of a consistent approach within the market for microbusinesses. Within the Standard Licence Conditions there is no clarification around one ADR scheme provider, to ensure a consistent approach to complaint handling and resolutions. Having multiple schemes will likely cause more confusion for the customer who may struggle to

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<sup>23</sup> Based on sales completed via Love Energy Savings' internal sales channel for business energy 01/09/2020 to 29/09/2020, on average of £489 commission earned per contract sold.



find which ADR scheme a supplier is signed up to. If it is overly cumbersome for a customer to locate this information and the complaint process varies for each ADR scheme, this may dissuade a customer from raising their concerns.

- **Lack of clarity in the scope of ADR Scheme** – the purpose of the proposal is to provide customers with a form of recourse where they are dis-satisfied with the sale completed by a TPI, which has caused them financial loss or inconvenience. There is a lack of clarity within the wording of the Standard Licence Conditions to cover the scope of an ADR scheme and what complaints are covered within this process – for example, staff attitude.
- **Standard Licence Conditions** – under 20.5 it states that suppliers would have an obligation to promote the broker ADR scheme on or alongside any promotional material<sup>24</sup>, bills or statement of accounts. Within this suggested wording, there is no consistency in the presentation of this information. There is no mandated consistency in the delivery or prominence of this information and a lack of controls in place to prevent it being used as a tool to promote direct sales or encourage customers to complain about their broker. If the complaints are to be logged against the TPI and the cost borne by the TPI, then the TPI would be better placed to relay this information within their own promotional material to a customer.

### Love Energy Savings recommendations

We propose, to prevent an unnecessarily complex process in relation to complaint logging, if a customer is complaining about a contract agreed, then the complaint would need to be against the supplier. This would tie in well with the proposal for suppliers to monitor TPI behaviour via the Supply Licence Conditions and prevent any unnecessary complexities or disagreements around who the complaint should be raised against, as ultimately the customer is disputing the contract, which is held directly between them and the supplier.

In addition, we would instead propose paying an annual subscription fee for an ADR scheme, rather than an individual case fee referral. The amount is something which we are open to discussing with Ofgem, the Energy Ombudsman or an alternative ADR scheme provider.

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<sup>24</sup> Condition 1, Standard Licence Conditions, Electricity Act 1989 – Promotional material means documents, other than newspapers and magazines, that are handed out or sent directly to consumers and are intended to promote the sale of electricity



## Exiting: Switching away from an old contract

### Banning Notification Requirements and Contract Extensions

#### Overview

We strongly agree with Ofgem's aim of eradicating any unnecessary contractual barriers that prevent customers from switching suppliers, particularly if this results in the customer going onto costly out of contract rates as the switch is delayed. This is particularly important for those customers who are in debt and unable to switch; as rather than worsening their financial situation, the added reprieve may allow them to afford to pay off their outstanding balance and avoid a vicious cycle.

Overall, the changes will allow TPIs/suppliers to switch customers more efficiently and smoothly, which will promote the benefits of switching to the customers – encouraging them to browse the market and consider switching to find the best deal for their business. However, we consider there are multiple scenarios, tariffs and processes to consider in order to prevent outcomes such as unnecessary objections, lack of consistency in processes and 'workarounds' being made by market participants. All of these would add cost and reduce transparency for the customer. We have considered these and made some recommendations below.

#### Challenges

- **Lack of consistency in supplier SLAs / processes and response times** - As outlined in a previous response, one of the challenges here is a lack of consistency / standardisation across suppliers in their approach and timeliness of notifications, objections, switch processing, retentions and indebted customers. This will make it challenging to manage for both customers and TPIs and could result in increased costs and complexities in handling the administration of the notifications processes and/or late cancellation of policies. For example, if a new contract is agreed more than 30 days before the existing contract is due to terminate then it should be considered what is a reasonable timeframe for the new supplier to inform the old supplier. If there is then another switch back within that time period, then this may introduce additional complexities. There should therefore be some consideration / inclusion of suppliers' communication, notification and information provision procedures in the Supplier Licence to ensure a timely switch and appropriate provisioning can be made by the losing supplier. Further, if the existing TPI is not facilitating the new sale but losing an existing customer (especially one who is still in contract or in rollover), they will also need to be notified by the gaining supplier as their ongoing commissions will be affected. This all needs working through to ensure it is practical and that it will not add increased cost and complexity to offset the rate saving for the customer.
- **Financial impacts for suppliers may result in increased prices or poor behaviour** – The proposal will result in lost revenue and costs incurred for suppliers if they find themselves losing a customer without notice, and seeing reductions in OOC rates / exit fees (amongst others). Suppliers have expressed concern that when additional energy is purchased for those customers who are attempting to leave, but are under objection, this energy is purchased at a higher wholesale rate, often recouped via out of contract rates. We are concerned that suppliers may look to increase their prices in general to account for any additional energy they may need to purchase during this period. Further, from a supplier perspective, the inability to place indebted customers on OOC rates will possibly make these not financially viable and it is unclear what the



options will then be for these customers given there are not many switching options for indebted / poor credit customers that no suppliers find attractive. This could exacerbate the product availability issues being seen currently due to COVID.

- **Time period for blocked switch may need to be longer than 30 days** – We believe the time period may need to be longer than 30 days in order to dissuade suppliers from blocking a switch for longer than is necessary or blocking multiple times in a row, and to allow for the current service level agreements (it can often take up to 5 working days for Suppliers to respond to one objection query from a TPI). This means that the 30 days could easily pass with minimal interactions/responses from the supplier in relation to resolving the blocked switch. Either a longer time period or a compensation (rebate) scheme may be required for OOC rates, however we note that the delay could be due to delays on the gaining supplier side.
- **Lack of supplier consistency** - whilst it is unreasonable to expect all suppliers to operate in the same way, the implementation of this proposal would have minimal impact if there is a lack of consistency/ standardisation across suppliers in their approach and timeliness of notifications, objections, switch processing, retentions and indebted customers. This will make it challenging to manage for both customers and TPIs, which may result in customers choosing not to switch in future as a renewal would be perceived as the 'easier' option.

#### Love Energy Savings recommendations

- **Definition of what is a valid switch needs considering** - If the customer applied for a switch, and the supplier rejected the switch, they are only obliged to pay standard rates for 30 days, and can then revert to OOC rates if any fixed term period has come to an end. This could encourage multiple objections with significant delays in responding between each. The definition of what constitutes a valid switch will be very important. In 14.3(b) it is not clear in Ofgem's proposal what constitutes a valid block and whether debt on the account is a valid reason for suppliers to block and avoid the 30-day contract extension. If so, the definition of this would need reviewing as each supplier would have a different interpretation of "debt" / "missed payment" and also it would need to be explained why it is fair to put this customer on OOC rates but not one who has managed to pay their bills. If not, then there is limited incentive for suppliers to retain poorer-credit customers and given the product restrictions in new business their options appear fairly limited.
- **Better supplier dialogue and offering for challenged customers** - More proactive discussions and visibility around customer missed payments and debt throughout the life of the contract may avoid issues at switch date and allow TPIs to find suitable options for customers in advance. Standardised and fair processes and communications around debt management will mitigate reduce the issue. In addition, encouraging regular meter reading or implementation of smart meters will assist with reducing bill shock and missed payments. Customers have significant knowledge gaps on their rights and obligations, therefore awareness of these changes should be prioritised as much as the changes themselves. Given the current climate, it has become more challenging to find options for customers with poor credit, even with incumbent suppliers on occasions refusing to offer the customer a contract. This can result in customers with poor credit, who are often in debt, being forced into a detrimental cycle of having to pay high out of contract rates for their current usage whilst simultaneously trying to clear an existing debt.



- Additional consideration needed in scope of the caps** - The document also mentions in 7A.12B (b) that a roll over contract can still be enforced; typically we note that when a roll over contract is initiated its generally similar prices to those out of contract rates that a customer would see if they are in a 30 day rolling contract. Perhaps Ofgem should therefore consider similar to the 30-day extension here where there enforcing the same contracted prices or a cap on percentage increase on those old contracted rates. Similarly, in 7A.13B, out of contract customers maybe should have some form of protection on charges as well as the base rate. In contrast, we note that the existence of termination fees is very low in the non-domestic market; in practise suppliers tend to block the switch citing the reason as being in contract, so the problem may not be as significant as Ofgem believe it to be. There is also concern that microbusinesses who are on fixed contracts with roll over clauses still require a notification of termination and this may drive suppliers to switch their business model to begin offering these contracts to maintain the notification requirement. Notification requirements are a key process which can underpin a supplier's retention strategy and so they may try to find workarounds. We also note that the proposal also needs to capture Change of Tenancy contracts. Lastly, careful consideration needs to be given to SOLR processes, to balance customer freedom to switch with practicalities and ensure the feasibility of transferring customer books.
- Increased standardisation in suppliers' switching processes** - across all suppliers to make switch smooth for customer and less hassle – especially given microbusiness time constraints. For example, there are instances of a supplier only applying for meters in line with a specific schedule; therefore, if a delay occurs which knocks the customer's application out of sync with this schedule, this can result in the customer's contract being delayed even further and increasing the out of contract rates they are paying.
- Contract End Date Communication** - We believe this proposal should apply to both new and existing contracts, but for existing customers the customer notifications regarding the changes would need to be clearly articulated without exception and without delay. If there is currently a supplier-customer communication at 30 days before expiry, this would need to be maintained so as to avoid customers forgetting about it altogether. A third party such as a TPI could undertake this role if needed.
- Clarity required on the potential miscommunication around mid-contract switching** - Lastly, we request Ofgem provide clarity on the purpose of the proposal to remove the requirement of notification of termination, stipulating clearly it is not a mechanism to be used to allow a customer to leave a contract part-way through a fixed term. This is clearly a concern for suppliers, which would require a significant increase in their risk margin within their prices to counteract – this would ultimately result in customers paying more for their energy and disengaging them even further from the market. Given the concern suppliers have shown in this area and the potential for them to factor in additional risk margins into their prices to counter customers who may wish to use this to exit their contract early, please can Ofgem's position be clarified and this clarity reflected within the Supply Licence Conditions.



## Additional Comments – definition of microbusinesses

Whilst we are understanding of Ofgem’s logic to treat all customers the same, this is a key contributing factor to many of the challenges outlined in this document. Based on the current (very wide) definition, the volume of customers impacted by these proposals will include businesses that by standard definition are not SME’s, therefore increasing the costs associated with implementing the change and the potential for additional risk margins being included in all microbusiness prices.

Ofgem have stated within their consultation that the “ability to browse the market easily is crucial for microbusinesses who have little time to spare on activities outside of their core business”. Similar definitions have also been used by other stakeholders.<sup>25</sup>

We would suggest therefore, as a starting point, that Ofgem reference the definition of a micro SME as defined by central government’s own definition of micro entities which are companies which meet 2 of the following 3 criteria:

- a) Less than 10 employees;
- b) A turnover of less than £316,000
- c) Balance sheet assets of less than £632,000

These are true micro SME’s and businesses that potentially do not have the time, expertise or manpower to carry out their own internal energy review and those businesses which are most at risk by an unfair behaviour which this consultation is designed to tackle. Given this is one of the very key challenges in achieving Ofgem’s aims, we would suggest reconsidering the current definition.<sup>26</sup> A narrower definition could not only focus change on protecting the smaller business customers who are most at risk of harm, but also reduce costs / obstacles to implementation and allow for change to happen more quickly.

The definition we have provided above covers 96% of all UK businesses based on UK parliament documentation filed in 2019.

As mentioned in our meeting with Ofgem, we are able to assist Ofgem in arriving at these definitions, perhaps by establishing a test-and-rollout methodology to ascertain which customers behave like domestic consumers and those which do not – this could work on incremental bandings until there is a clear distinction between the two.

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<sup>25</sup> FSB, Time and Energy (2020) – ‘A small business will typically have relatively low requirements for products and services that are not directly linked to its core trade: they simply want their heating to work and lights to be on. Small businesses often do not think they will benefit significantly by spending time choosing their ideal energy supplier.’

<https://www.fsb.org.uk/resource-report/time-and-energy.html>

Government definition of micro-entities

<https://www.gov.uk/annual-accounts/microentities-small-and-dormant-companies#:~:text=Micro%2Dentities%20are%20very%20small,10%20employees%20or%20less>

<sup>26</sup> <http://researchbriefings.files.parliament.uk/documents/SN06152/SN06152.pdf>



## Summary

We are highly supportive of Ofgem's overarching aim which is:

*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.*

This is strongly aligned with our own strategy to improve the customer's experience of switching their energy, making the process as simple and transparent as possible. We are really encouraged by the efforts and ambition in the proposal however as outlined, we do believe there is potential for customer and market harm in certain of the proposals if they are implanted as drafted.

- In particular, we believe (through discussions with energy suppliers about this consultation) that most energy suppliers will be required to increase their base prices as a consequence of the additional administration burden that this consultation would create for them. Inevitably, the investment in people and systems required to implement the proposals will result in a higher operating cost for both suppliers and TPIs. The increased cost to serve microbusinesses should be kept at a manageable level to ensure an efficient operating market and ensure a sustainable level of reinvestment.
- Overall, we believe as currently drafted that the implementation of the consultation will potentially lead to higher customer prices driven by both the energy supplier and TPIs who are currently pricing competitively. In addition, these changes could potentially reduce (independent) customer advice and therefore choice.
- Finally, the consultation, by reducing independent customer choice, could create further barriers to new energy suppliers in the market by reducing a potential (lower cost) route to market for that new entrant.
- We would also need to avoid unintended consequences such as suppliers increasing retail prices or and TPIs profitability being impacted so much that it dissuades participants from participating in the market altogether. Investment and innovation are critical for the future performance of this market from a customer perspective.

### Love Energy Savings' Key recommendations:

- 1. Creation of a code of conduct by a working party of suppliers, TPIs and other market participants (with possible management by an independent third party).**

We consider that one of the key threats to the aims is a lack of consistency in how principles are applied in the market currently, and a lack of standardisation in how supplier processes work which adds to the complexity and opacity of the switching process. Certain of Ofgem's proposals are also inconsistent in practice and also in how they apply to TPIs / suppliers in the market which has significant potential to add further disruption and cost. Therefore, the proposals need some refining and discussion between Ofgem and market participants in order to arrive at a sensible conclusion which will not cause harm to the customer or overall effective functioning of the market.

A framework approach would deal with some of the challenges suppliers and brokers have in implementing the proposal, whilst also avoiding a number of the pitfalls of regulation via the supplier licence.

A code of conduct approach (instead of supplier licence) would reduce harm in the following areas:

- Competition issues posed by TPIs being regulated directly by competitors



- Potential for suppliers to use the increased authority for competitive gain
- Increased costs as a result of suppliers shouldering the burden, which will be passed on to customers
- Risk premium attached to working in the TPI market resulting in a shrinking of the indirect channel
- Lack of consistency in application of the rules across the market
- Reduced attractiveness of the market to new entrants

Other benefits a framework approach would bring include:

- Solves the complexity for Ofgem in the different scenarios on an ongoing basis as the market changes
- Drives increased consistency and comparability for customers
- Reduces the risk of a two-tier and/or biased application of rules in the market
- Reduces the risk of suppliers driving TPIs out of the market
- Provides commercial and customer incentive to improve standards, as well as regulatory
- Quicker, easier and cheaper to implement
- Benefit from expertise in all parts of the market to compensate for suppliers' lack of knowledge

## 2. Review the presentation, communication and method of implementation of Fee Disclosure

We agree that disclosure of fees by market participants is required in order to avoid customer harm and empower a customer to make an informed decision as to the service received.

However, as drafted the Supplier Licence presents the following potential customer and market harms:

- Potential for anti-competitive practices and reduced competition in the market
- Impact on customer choice and
- Increased costs and pricing for customers
- Reduced/ lack of consistent and meaningful transparency
- Higher barriers of entry and reduced attractiveness for new entrants (TPIs or suppliers)

To alleviate this, we recommend the following

- Fee disclosure at point of sale only
- Fee disclosure by the party earning the fees
- Fee disclosure managed according to a voluntary code of conduct/informed contract choices, rather than via supplier licence (managed by a working party to ensure best practise and consistency)
- Fee disclosure by any market participant earning fees (i.e. all suppliers and TPIs)
- Fee disclosure based on the principle of proportionality

### Additional suggestions:

1. **Review the Definition of Microbusinesses** - By reconsidering who the proposals apply to, some of the unintended consequences may not manifest to a significant degree or at all. This will allow Ofgem to achieve its aims by removing many of the challenges associated with increased costs (as it would be spread across a smaller number of businesses), whilst protecting the market and the customer from further unnecessary harm. This is something Love Energy Savings can assist Ofgem in reviewing and shaping.



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2. **Greater controls in the ADR Scheme** – these are required before this proposal is implemented, to address the risk increased costs and market disruption caused by CMCs, promote consistent complaint handling and a clean complaint process for the customer. Failure to do so, would result in high costs to TPIs, increased fees to cover/offset this risk and the customer disengaging from an ADR scheme as overly complex.
3. **Require full price transparency** – The key issue preventing microbusinesses accessing and browsing key contract information is the lack of prices being shown online. Requiring this price transparency, along with continuing to provide both online and offline support is crucial in encouraging further customer engagement.
4. **Consistency in the content of Principal Terms** - If this is not tackled, the customer transparency may only marginally be improved by presenting a written copy of the Principal Terms during the contracting stage.
5. **De-prioritise implementation of the Cooling-Off Period** – given contracts can be agreed up to 12 months in advance, the marginal benefit of an extra 14 days is limited, however the costs and complexities around the win back market it may create, and supplier financial impact from forward buying, means we would recommend that Ofgem focus on the point-of-sale measures first (Code of Conduct).
6. **Further work on contract notification and 30 day extensions** – given the range of tariffs/contracts in the market and lack of standardisation in supplier processes, this needs much more working through to ensure that loopholes cannot be found and the most vulnerable customers obtain the protection they need.

In summary, we fully support changes to improve the industry and are keen to continue our work with Ofgem, suppliers and other key stakeholders to take these concepts into workable solutions in order to protect customers from harm. We look forward to hearing from you on this.



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