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Consultation Response:

Ofgem Microbusiness Strategic Review

Response by the Money Advice Trust

Date: October 2020

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Introduction

About the Money Advice Trust

The Money Advice Trust is a charity founded in 1991 to help people across the UK tackle their debts and manage their money with confidence.

The Trust's main activities are giving advice, supporting advisers and improving the UK's money and debt environment.

In 2019, our National Debtline and Business Debtline advisers provided help to more than 199,400 people by phone and webchat, with 1.97 million visits to our advice websites.

In addition to these frontline services, our Wiseradviser service provides training to free-to-client advice organisations across the UK and in 2019 we delivered this free training to over 981 organisations.

We use the intelligence and insight gained from these activities to improve the UK's money and debt environment by contributing to policy developments and public debate around these issues.

Find out more at www.moneyadvicetrust.org

Public disclosure

Please note that we consent to public disclosure of this response.

Introductory comment

We welcome the opportunity to respond to these proposals.

On this occasion we are not responding to every question individually. As a debt advice charity, our principal concerns relate to debt and financial difficulty, which do not feature prominently in the policy consultation.

Generally, from a consumer protection point of view, we are encouraged by Ofgem's proposals. We support the principle that government and regulators should intervene to safeguard the interests of consumers who are particularly at risk of detriment and where markets are not working well.

Written confirmation of contract terms, a post-contract cooling off period and the package of proposals relating to brokers are particularly welcome. These proposals, if agreed and implemented, would tackle a number of longstanding problems in the market and improve the general consumer experience for microbusinesses.

We are disappointed, however, by the absence of any specific proposals relating to debt management and fair treatment of customers in debt. In last year's Opening Statement, Ofgem noted that 'the absence of rules concerning debt management in this segment of the market is resulting in some microbusinesses struggling with debt being treated unfairly and not benefiting from customer-focused debt management policies and processes.

There is a body of evidence outlining the difficulties faced by small businesses (note our previous response to the Ofgem strategic review of the microbusiness retail market¹ and the PFRC review). As we write, small businesses face huge uncertainty due to the on-going impact of the Covid-19 pandemic and associated restrictions. In this context, a fair framework for debt management is more important than ever.

As we said in our response, there is a high incidence of personal vulnerability amongst small business owners. Personal vulnerability is particularly relevant to dialogue around debt management, but also has an impact across the customer journey. We would still welcome further exploration of these issues and their impact as part of Ofgem's on-going work.

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<http://www.moneyadvicetrust.org/SiteCollectionDocuments/Policy%20consultation%20responses/Unilateral%20responses/Money%20Advice%20Trust%20response%20to%20Ofgem%27s%20opening%20statement%20strategic%20review%20of%20the%20microbusiness%20retail%20market.pdf>

We also identified as key problem for our clients that suppliers often take an inflexible approach to dealing with arrears. It is common for suppliers to insist on up to 50% of the outstanding debt as an upfront payment before agreeing to an instalment plan. This represents a very significant hurdle for a business with cashflow problems, restricted access to credit or other debts. Where suppliers insist on upfront payments, they appear not to take account of individual circumstances – whether that is an issue of vulnerability or of affordability. Such an approach can result in negative outcomes for customer and a supplier alike. Disconnection typically means a microbusiness will have to cease trading. We would still welcome a discussion with Ofgem as to how these outcomes can potentially be avoided by suppliers (and other creditors) taking a flexible, tailored approach to debt recovery.

Responses to individual questions

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

Ofgem has mapped out the very worrying information gaps for small businesses across the full range of interactions with firms, from searching for deals, paying bills to complaints about suppliers. However, we are not convinced that Ofgem’s proposed solution to the lack of awareness of small businesses to effectively engage with the energy market is sufficient:

“to address them through improved awareness raising materials and information provision”.

We do not agree that consumers always benefit from “more choice” through price comparison websites or by the use of information remedies. In some circumstances, we believe that more choice can be detrimental as people can find markets too confusing and complicated to make sensible choices. This can be especially true for people in vulnerable circumstances.

We also believe that it is not reasonable to expect most consumers (including microbusinesses) to research or understand complex products and therefore regulatory protections should be of paramount importance to ensure people do not suffer detriment.

Indeed, whilst information is important, it is not a substitute for a well-designed, simple product and regulatory protections that ensure small businesses are adequately protected.

However, we warmly welcome the statement in the paper that Ofgem proposes to:

“work collaboratively with leading consumer groups to improve awareness raising materials and information provision”.

We would welcome further information about how this collaborative working would be put into place in practice. We are happy to discuss how the Trust can help through Business Debtline to raise awareness through its self-help information, its website, fact sheets and through the advice service. We would like to discuss how Ofgem envisages using technological developments to disseminate information and what the most effective channels would be in this context.

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

We very much welcome this proposal. We think this is an important and overdue protection. The small business owners we advise at Business Debtline often have limited understanding of the energy market, may not be aware that they can be bound by verbally-agreed contracts and have little time and resource to devote to business administration.

The current system of verbal contracts with no cooling off periods and few restrictions on broker activities creates a great deal of opportunity for consumer detriment and for small businesses to be treated unfairly.

We would like to see a requirement to present the principal terms in a common format using simple English and prescribed wording to ensure that the terms are presented in as straightforward a manner as possible.

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

We welcome these proposals which should go some way to increasing the level of transparency within the system in relation to broker fees and charges.

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

We strongly agree with this proposal to introduce a cooling-off period for microbusiness contracts. Again, as with the requirement for written confirmation of contract terms, this measure should increase fairness and transparency into the market.

We think a fourteen day cooling off period should be seen as a minimum requirement. We would favour an early review of this policy to ensure that fourteen days is the most appropriate length of time for the cooling off period.

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

We would strongly support the proposal for a mandated ADR scheme set out in the supply licence conditions. We agree that this should help to fill the existing consumer protection gap and provide a consistent approach to dealing with complaints.

We would agree with Ofgem’s conclusion that a voluntary scheme would not be adequate given the number of brokers in the market and the difficulties in ensuring they all sign up to a reputable ADR scheme. We would like to see the Energy Ombudsman take on this role as it is currently the sole provider of ADR services for small businesses.

We do not believe that consumers would be best served by establishing competing ADR schemes with different rules and remedies. We would suggest this undermines the goal of making it as easy as possible for consumers to complain. A plethora of schemes leads to confusion in the market for both consumers and firms, and could undermine best practice by encouraging the least committed firms to adopt the cheapest and least rigorous scheme available. For the “gold standard” to be reached, competing schemes do not make sense.

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

We agree that the termination notice requirements represent an unnecessary barrier to switching. We therefore agree that termination notice requirements should be prohibited. This prohibition should apply to both new and existing contracts. We see no reason why these should be treated differently.

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

The rules are currently extremely convoluted and confusing for consumers. Under the new proposals it would appear that suppliers should not be blocking switches routinely.

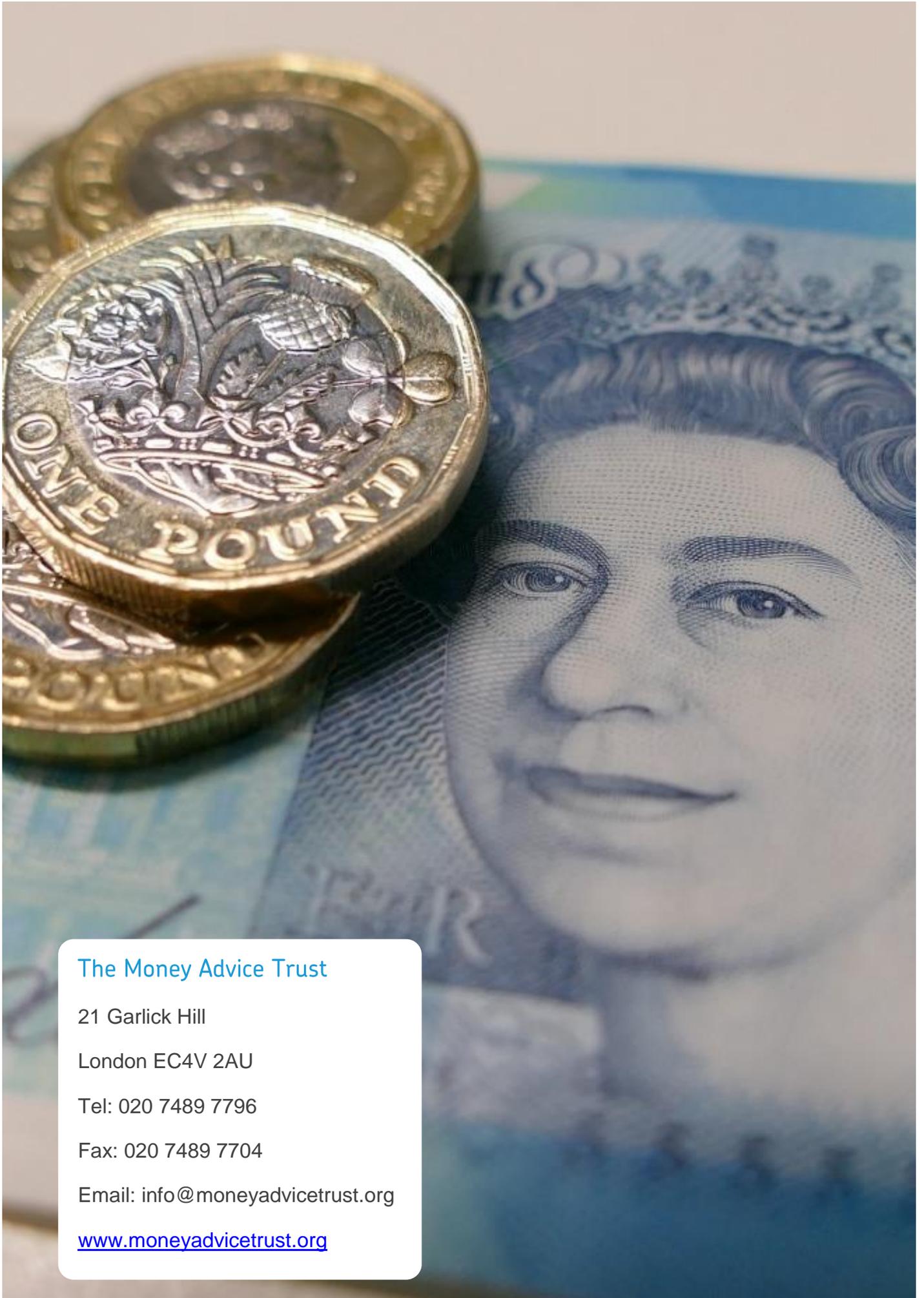
However, where this happens, suppliers should not be allowed to charge higher “out of contract” rates whilst the dispute is resolved. We do not see why this grace period should be limited to a 30 day time period. The grace period should last as long as it takes for the switch to take place. Otherwise there would appear to be a perverse incentive on suppliers to take even longer to act rather than to speedily resolve the issue.

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