

**OFGEM CONSULTATION:
“MICROBUSINESS STRATEGIC REVIEW: POLICY CONSULTATION”**

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NORTHERN GAS & POWER RESPONSE

For the Attention of:

Jonathan Blagrove, “Microbusiness Strategic Review, Vulnerability and Consumer Policy”

By Email: cdconsultations@ofgem.gov.uk



Ofgem Consultation on Microbusinesses Strategic Review: Policy Consultation

Northern Gas and Power Response

We are pleased to see Ofgem's Microbusiness Strategic Review Policy Consultation process currently underway. We welcome the opportunity to help further develop and refine good practice in the industry.

Who we are

We are Global Procurement Group Limited, a multi-national provider of professional business energy services and technology and procurement services. We are the largest energy consultancy by customer volume and managed TWhs and we work with tens of thousands of customers across three continents.

In the UK, over the last 8 years, we have been providing professional energy service solutions to businesses of all sizes, trading as Northern Gas and Power and are one of the largest employers in the North East of England. We serve primarily mid-sized customers and our exposure to other business segments has been increasing.

Our Servicing offerings include Procurement services (Northern Gas and Power) Micro SME Price Comparison Websites (Business Energy Quotes.com) and energy Technology solutions and innovations (Clear Vue Systems.com).

Our Core Services consist of:

Energy procurement services

Northern Gas and Power proactively reaches out to businesses about their energy requirements and then engages with businesses to provide solutions that range from simple energy procurement to providing complex energy solutions and strategies. Routes to market are broken down into direct desk-based sales agents, focusing on Mid-Size & Large Businesses, and Price Comparison Websites (PCW), focusing on Micro SME & SME Businesses.

Micro SME & SME Businesses

Traditionally, these types of businesses require a cost effective, convenient and easy solution to procure lower energy prices. Our PCW offering provides a fast and convenient platform for businesses to compare a broad range of energy suppliers and their tariffs, and the ability to easily review those offerings and agree an energy tariff of their choice. Our margins are low, fixed and transparent. Providing Micro SME customers with full transparency and fairness.

Mid-Size & Large Businesses

The solutions needed for these types of customers are more complex and are growing in complexity. The product sets for these types of customer are far more sophisticated than those available for Micro SME & SME customers. Changes to the regulatory landscape, introduction to new taxes, complex changes to Duos & Transmission mechanisms and charging has led to an increased gap between customers and the knowledge and expertise required for those customers to successfully procure the correct energy contracts without professional help. Brokers provide a much-needed lifeline to these businesses. Without the professional help offered by brokers these types of businesses would find themselves in a much worse position than if they were to try to understand and negotiate these contracts on their own behalf.

Energy brokers provide an invaluable single point gateway for customers to access all major and small suppliers and their product sets, our account managers are specially trained to understand all the different types of product sets available and are trained to understand customers usage patterns and behavior and then successfully marry them with the correct solutions, a process that can take up to several weeks. The market is ever increasing in complexity so much so that universities and colleges now offer courses in energy management leading to an energy management profession. If you are a business of a certain size an energy manager is something you can afford, but for the majority of businesses in the Mid-Size sector this is a resource that is costly and not readily

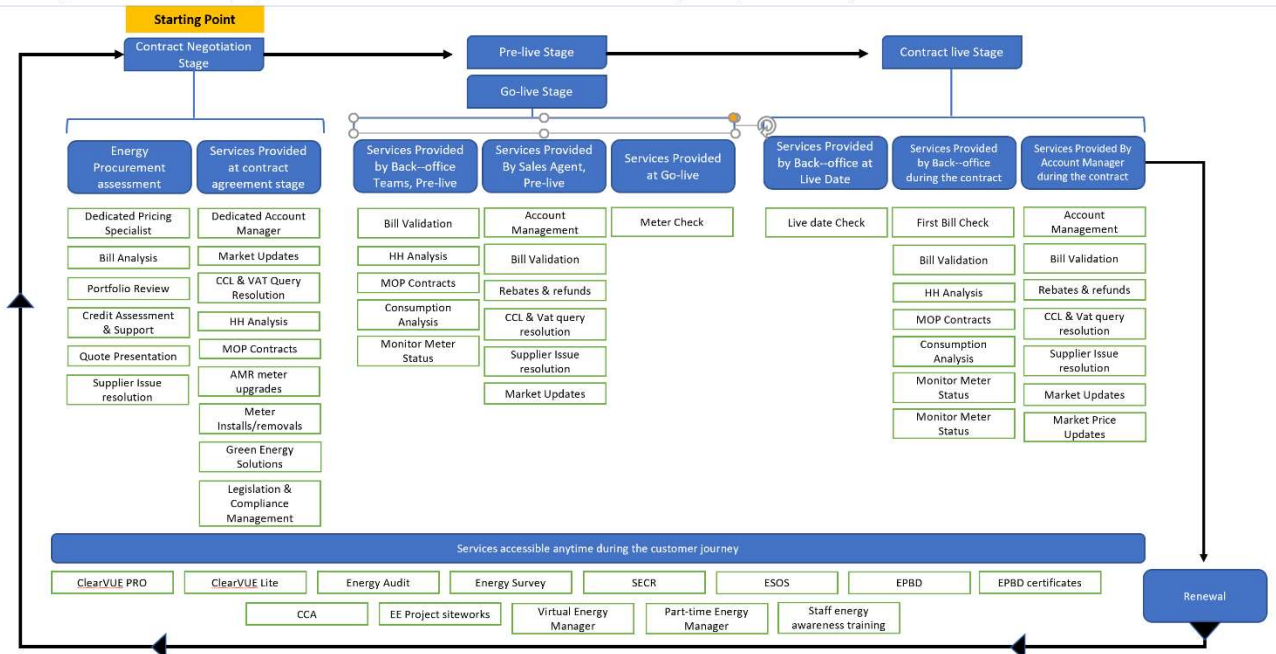
available. However, the knowledge and expertise of an energy manager can be accessed through energy brokers, who provide the essential support that businesses now need.

Energy management & Bureau services

Energy procurement provides only one part of the services offered by energy brokers, as well as procurement the following services are also provided, which is not an exhaustive list:

Services Lifecycle

This diagram shows the services lifecycle provided & offered to a GPG client from first contact to renewal. Including services provided and meter/contract status checks made on behalf of the customer



Energy management technologies (ClearVUE)

ClearVue Systems provides cutting edge, cloud-based energy management software. Our products are unique and innovative within the energy market. Over the last 8 years we have invested over 6 million pounds on R&D into cutting edge technological innovations in the energy sector, aimed to help mid-sized businesses reduce cost, carbon and consumption.

Our value

We are valuable to our customers, the energy industry, and the local and national economy.

In today's complex market, the role of an energy manager is an increasingly valuable one. Universities across the UK now offer degrees¹, post-graduate courses² and MBAs³ in energy management. Individuals with these professional qualifications can command salaries of up to £128,000 per year. Most consumers, particularly in the Mid-Size market, need but cannot afford this cost. For these customers, we are the professional energy manager filling the skills gap, allowing consumers to access these expert services for a fraction of the cost (on our analysis the average cost is £8,000 per annum).

Our account managers are trained to understand usage patterns, energy consumptions and provide technical advice on how to manage these, both at the procurement stage and throughout the duration of the contract.

¹ <https://www.rgu.ac.uk/study/courses/856-pgcert-pgdip-msc-energy-management>

² <https://www.strath.ac.uk/courses/postgraduatetaught/globalenergymanagement/>

³ <https://www.abdn.ac.uk/study/postgraduate-taught/degree-programmes/69/energy-management/>

At Northern Gas and Power, we provide gateway to customers to access 104 suppliers across the group. Each supplier has a product set and our account managers are trained to have detailed knowledge of each supplier's offering, to understand the consumer's usage patterns and consumptions and to ensure that they match up with the most appropriate offerings. This is not trivial. It will typically take two weeks to procure a contract; including the analysis of energy consumption and negotiation of prices. Some contracts can take up to 6 months. Through this process, we save our customers large amounts of money on their contracts. If they could not afford an energy manager, they would pay higher bills. We have no doubt that without our services, many of our customers would have gone out of business due to the increased cost of energy, especially in the manufacturing sector.

We invest large amounts of money into research and development to create new products and services for customers. These products reduce prices, increase efficiency, and reduce carbon. We also assist new suppliers entering the market by providing access to customers they would not otherwise be able to reach with their limited salesforce, which strengthens supplier competition and further reduces prices.

We employ around 500 people in the UK, the majority of these in the North East, which has the highest rate of unemployment in the UK⁴. We are one of the highest employers in Gateshead. We train our employees to provide specialist energy services as well as employing a significant number of professional and support staff. We also export our products abroad and our investment in R&D assists the UK economy to compete internationally with the EU, US, and China.

Opinion

We consider that Ofgem misunderstands how the broker market works. Specifically, Ofgem's concerns have wrongly centered around the uplift in the contract and the amount of commission that brokers make. We believe that this is because Ofgem has placed too great a reliance on the occasional instances of malpractice and on the views of those stakeholders with vested interests in highlighting these issues. In so doing, it has failed to take a proper account of the input of brokers and their satisfied customers.

The word 'broker' has been used by Ofgem as a homogenous term for all energy consultants. In the process, it has been tarnished and trivialised, detracting from all that we do. Brokers can and do provide excellent service to consumers. Northern Gas and Power exists and has grown because it provides something of value. As can be seen above, our value extends far beyond procurement. The value we add supports consumers, advances the industry, and benefits the economy as a whole.

In our view, the harm to consumers is being caused by a very small proportion of new brokers who do not provide a fair market comparison but falsely represent to consumers that they do. The whole market is not the problem. Consumers do not mind paying for brokers, but they do mind that they are not getting a full market review, in essence not getting what they paid for.

The recommendations we set out in this response to address this harm focuses on a properly developed framework for brokers. We know this would work, because we have been working with suppliers to self-regulate for a long period of time. We have already been through the process. As a result, our compliance is the best in the industry.

However, the rules proposed by Ofgem will stifle those brokers like us who are making investments in customer focused products. This will stifle innovation and set the UK behind its competitors in the EU, the US and China, where we already lag. This is crucial to the growth of the UK economy.

We also believe that Ofgem does not fully understand the consumer market and the nature and needs of the businesses it is seeking to protect. The definition of Microbusiness used is so wide that it can include organisations with many hundreds of employees. These are not unsophisticated consumers and are a very different proposition from 'true' microbusinesses, i.e. those with less than 10 employees⁵. As we set out above, these 'true'

⁴ <https://www.business-live.co.uk/economic-development/north-east-uks-highest-rate-18752185>

⁵ Using the definition taken by Ofgem from the House of Commons Library (2019), <https://researchbriefings.files.parliament.uk/documents/SN06152/SN06152.pdf>

microbusinesses, or Micro SMEs, and some SMEs want access to PCWs, but businesses in the Mid-Size market and above require much more than this; they genuinely want and need the energy procurement and management services that we provide.

Market complexity and consumer engagement

The market today is complex and microbusinesses lacking expertise in energy management can face challenges in identifying suitable deals. Energy consultants can provide a number of valuable services to these microbusinesses, comprising not just procurement but evolving and complementary energy management services and access to technical innovations, enabling consumers to use energy more efficiently and to budget effectively.

It is our clear view that energy consultants are an integral part of the solution that ensures consumers have the tools at their disposal to enable them to navigate the market successfully.

Awareness and transparency

Concerns have been raised by Ofgem as to consumer awareness of opportunities in the market. We would add that there is a lack of awareness as to the extent of the role that energy consultants play and the value they can provide. Moreover, a fair and competitive broker market has the potential to drive consumer-focussed innovation, energy efficiency and energy cost savings.

Proposals intended to prevent detriment to consumers should not have unintended consequences that are ultimately just as harmful to the very same consumers, or worse. Overregulation has the potential to force suppliers away from the microbusiness market, reduce competition and increase prices. We expand upon this concern in our answers to the consultation questions below.

Transparency of commissions is an important issue and we agree that balanced and proportionate further protections should be introduced to ensure that microbusiness consumers are provided appropriate information at the appropriate time to allow for a proper valuation of the consultancy advice they are receiving. We address this further in our answers below.

We also recognise that not all businesses want or need an energy consultant. We offer a market comparison website where microbusinesses can quickly and easily obtain and evaluate deals (<https://businessenergyquotes.com/>). Nevertheless, we have discovered that many consumers continue to favour a direct and personal relationship with an energy consultant.

Broker conduct framework

We strongly believe that there should be a mandatory code of conduct framework for brokers, developed with and policed by suppliers, which raises the barrier to entry.

Properly implemented and enforced, this will remove from the market the worst brokers (principally those who engage only in procurement, with no capability to assist customers with their energy management and efficiency and no intention in investing in industry-advancing products) and it will incentivise other brokers to improve.

This will eliminate sharp practice, improve the switching process, and build consumer trust and engagement. We set out our detailed views in our answers below.

Further comments

We are keen to engage collaboratively and constructively with the objective of shaping the industry for the better in order to minimise harm to consumers.

However, we would add a final note of concern that Ofgem's research focus appears to have been directed towards allegations of instances of sharp practice by a "minority of brokers" and that full and proper account has not been taken of the many satisfied customers who value energy consultancy services. We consider that heavy reliance

on reports from claims companies could lead to a jaundiced and misleading view of the entirety of the energy consultancy industry. The motives behind the reporting of certain instances are also open to question.

Section 1: Awareness – Knowing opportunity and risk

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

It is fundamental to note, when answering this question, that the definition of microbusiness for the purpose of electricity and gas supply licence conditions (and by extension this consultation) is very wide. In practice this definition would categorise for example a single subway branch (which is part of a larger chain) as a microbusiness.

Falling within the parameters of the Micro SME definition are a broad range of businesses in terms of size, energy consumption, companies that are large enough to have their own resources available to deal with energy management and procurement are also caught with the parameters of Micro SME definition, These are large businesses but have been categorised as Micro SME. The information they consider key to their decision-making process varies accordingly. At one end, small microbusinesses are truly analogous to domestic consumers, many of whom simply want a comparison of the market and who may be more likely to seek information about PCWs such as businessenergyquotes.com and their consumer rights from groups such as the Citizens Advice Bureau and through online research.

At the other end, sophisticated microbusinesses will more readily rely on expert advice in all areas of their business. These types of microbusinesses will innately understand the advantages and costs of holistic and specialist energy consultancy services. In these cases, an awareness of the range of offerings provided by energy consultants is key. However, in our view this is a commercial matter outside the domain of a regulator.

Between the two ends of the spectrum, we consider that it is important that consumers are aware of their options, and in particular the option of engaging an energy consultant and the pros and cons of doing so. We must add here however, that Ofgem's evidence as to the proportion of microbusiness that do not realise how much they pay via their energy bill goes to their chosen broker appears to be taken from Citizen's Advice CFI response from 5/6 years ago. We believe that the market has moved on considerably since 2014 and that in 2020 the significant majority of microbusinesses are aware that energy consultants are paid for their services by the suppliers.

Our recommendation

In order to ensure microbusiness consumers across the spectrum are provided with a broader understanding of the opportunities presented by the energy retail market, as well as their options and their rights, we believe they should be sent key information by their suppliers in quarterly or biannual newsletters. Such information should be harmonised across the industry and approved by Ofgem.

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

We agree that the presentation of a written version of the Principal Terms to customers (including, where a broker fee is included within the charges, notification of that fact) is a sensible, appropriate and proportionate way of ensuring consumers are aware when a broker is receiving commission from the supplier. This reflects the well-established duties of a broker imposed by the common law and will ensure that suppliers take a role in policing broker conduct to the standards expected by the existing law and that such standards are met by responsible and diligent brokers. This should be mandated also for verbal contracts, which have the greatest scope for consumer misinterpretation (which is why we do not as a rule use verbal contracts) and require the most protection.

We do not agree that the Principal Terms should include details of the broker fee. The law requires that the customer understands that the unit rate comprises the wholesale cost of the energy, the energy provider's overheads and profits and the commission to be paid; but not a detailed breakdown of these individual elements, unless the customer asks about the rate of commission in which case it must be shared.

We consider that lessons can be learned from those financial sectors that have already navigated through this process where the solution was to make it clear to the consumer that a broker fee is paid, and how it is paid, but does not require a breakdown of the fee unless requested by the customer. Under ICOBS (the Conduct of Business Sourcebook for insurance brokers), insurance brokers need only disclose commissions if the commercial customer requests. Under MCOBS, mortgage brokers must disclose to the customer whether they will get commission and whether this commission will be offset against any other fees, but not the commission amount (unless a MCD regulated mortgage). In this respect, the financial industry offers a credible and tested solution.

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 consider that giving the detail of broker charges upon every bill or statement of account will add an unnecessary and prohibitive administrative burden which will cause many suppliers to retreat from the microbusiness market.

There is such a vast difference in the capability and service delivery between a broker such as Northern Gas and Power (which offers many sophisticated services and support) and a low functioning broker (which offers no sophisticated services or support), that the simple displaying of a 'broker fee' per bill, without a detailed breakdown of how that 'broker fee' relates to procurement, account management and energy management systems, would be grossly unfair and ultimately drive customers to low functioning brokers, therefore in the longer term further damaging market reputation and increasing costs for business customers.

We think the likely impact of this would be for brokers to step away from investing in energy management systems and sophisticated account management for customers and instead focus on purely procurement. Such a change in dynamics within the industry would be devastating for microbusinesses and would leave them exposed to little or no support with their energy accounts. It would effectively end any appetite for brokers to innovate energy management solutions for microbusinesses.

Further, it could be the cause of significant disputes. We recognise that disputes can be avoided if consumers are made aware, at the time they are deciding whether or not to enter into a contract, that a broker is being paid by the customer and collected via the supplier bill, and that they are entitled to full details of the commission if they wish. However, we can see no practical or theoretical benefit of including charges on bills *after* they have entered into a legally binding contract. Moreover, there is no associated proposal that the bills must also explain what the consumer is receiving in consideration for broker charges and we consider that such piecemeal information will only add to consumer confusion, whilst doing nothing to reduce harm. This will only create further reason for suppliers to exit the microbusiness market.

Furthermore, we believe that including broker charges on bills will be problematic for the industry and have a detrimental effect on competition. If a customer sends their bills or contracts to another broker, then the competing broker can easily just reduce their margins, for example, by 0.1p simply to win business. There will be constant battling for custom in this way, until commission is effectively defeated. This will result in a race to the bottom, incentivising brokers to reduce their offerings and in turn their customer services. This may also lead to mis-selling tactics. There are hundreds if not thousands of brokers, at various levels of skill and service. Consumers can obtain different value for money wherever they go. However, we consider that it may encourage unscrupulous brokers to overstate the services they can offer, and once the contract is effective, and these services never come to fruition.

Do you think that further prescription or guidance on the presentation and format of broker costs on contractual and billing documentation would be beneficial? If so, how should broker costs be presented?

The consumer should be given the opportunity to understand the charges at the time that it enters the contract. Presenting the data each month on the bill is an abstract concept removed from the brokering and energy management services and will not help consumer engagement within the industry.

As explained above, such a decision would trigger a 'race to the bottom' mentality, where a clear misunderstanding of the broker rates would create unnecessary confusion with customers and enable unscrupulous brokers the opportunity to exploit such confusion. Low functioning brokers will then coerce customers into contracts with an unrealistically low fee and proceed to offer no further help or support.

Many energy brokers would cease providing any added value energy management services. These services actively assist consumers and are a vital tool in driving energy efficiency and carbon reductions. Although the consumer might initially seem to benefit from a small reduction in the cost of their energy contract, the overall costs of energy to the consumers would ultimately increase, as they will be required to manage their own usage, with little or no support.

Furthermore, with a huge increase in the demands on suppliers to fill the 'support void' left by the brokers moving away from energy management services, energy suppliers will be forced to invest in more comprehensive customer service teams to support microbusinesses, resulting in higher energy prices. The alternative would be (and we have heard this is already under consideration) suppliers withdrawing completely from the microbusiness market.

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

It is our understanding that suppliers lack the ability to break their costs down in every bill. It is far more practical and achievable to explain to the customer about the charges at the time the contract is agreed.

From a technical standpoint, we do not believe there is an easy way for suppliers to completely change their entire operating process to facilitate adding in a broker charge to all bills. To redevelop the entire billing system would be an onerous undertaking for suppliers, who may decide to withdraw from the market. We also have recent experience of situations in which certain suppliers have updated their systems in order to improve and streamline their processes, and in doing so have caused incorrect bills to be issued, and in one case almost cause the supplier to have to release customers due to the difficulties caused. There was a disproportionate use of man hours involved in resolving this issue, for all parties involved. We can foresee similar issues arising from the implementation of any new billing process. Many microbusinesses do not have the time or the resources to take time away from their day to day business operations. Time spent and delays arising from these issues risks increased complaints, disputes, and consumer disillusionment with the industry.

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

The policy intent confirms that suppliers are already required to provide microbusinesses with the Principal Terms. It then requires that commission payments be identified on all bills, statements of account and at the request of the business. As we discuss above, this is not practical, and it is abstract from the performance of the services.

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

We consider that the objective of achieving full transparency simply by disclosing details of the broker fee is a chimera in a market where there is little consumer awareness of the extremely wide disparity in service provided between basic brokers and energy management specialists. The proposals set out in the consultation do nothing to address this fundamental issue. A better way of addressing this issue will be to implement a framework or code of conduct for brokers to raise the barrier for entry, so that energy suppliers only work with brokers who add real value, both to consumers and to the wider and urgent issues of energy efficiency and carbon reductions.

It is also unclear if Ofgem has undertaken any market research on satisfied microbusiness dealings with brokers and what best practice looks like on the ground in the broker market. We consider that this would be illuminating. We have full compliance processes in place in an attempt to ensure that consumers are treated fairly, they make the most of the opportunities presented by the market and that their custom is retained. Lessons can and should be learned from the processes that brokers like Northern Gas and Power already implement.

For example, our energy management services include green procurement options, the provision of technical teams to work on renewable projects (at any time throughout the contract) and the improvement of go live rates by actively dealing with any objections, reducing the risk of a customer landing on out of contract rates. We would be happy to discuss the extent and variety of these value-added services with Ofgem further.

Our recommendation

It is important for microbusinesses to understand clearly that there is a fee being paid to their broker prior to any contract being agreed. Principal Terms should therefore be presented to customers in writing, including a statement confirming to the consumer that the contract has been brokered by an energy broker and their fee is included within the agreed rate. Such a document would be signed by the consumer pre-contract and form part of the supplier contract, which could therefore be managed and reviewed by Ofgem. This will enhance transparency and increase compliance with existing legal protections, without imposing undue burdens on suppliers.

This simple process is in line with the financial sector and would address Ofgem's concerns about transparency by ensuring that microbusinesses are aware of the broker fee.

Together with a properly implemented and policed code of conduct for brokers, which is addressed further below, this provides a reasonable and proportionate level of protection for customers.

However, we cannot recommend further prescription either contractually or within billing documentation as we believe that would lead to the customers suffering unnecessary harm.

Section 3: Contracting – signing up to a new contract

What do you think the impact of our proposal to introduce a broker conduct principal will be? Are there any particular reasons why suppliers / brokers couldn't achieve the broker conduct principal?

We are strongly in favour of introducing a code of conduct or ethics for brokers to adhere to, in order to raise the barrier for entry into the market and ensure that brokers are treating customers fairly, by charging fair prices for their services and not engaging in fraudulent practices and misrepresentation.

However, we are not optimistic that the introduction of the broker conduct principal as proposed will make much of an impact. Responsible brokers are already compliant, and we believe those who are not are unlikely to change when the onus is on the supplier.

The effectiveness of the broker conduct principal will therefore depend entirely on the sanctions imposed on suppliers for failure to ensure brokers comply and, in turn, the sanctions imposed by suppliers on brokers. The key to the introduction of any broker conduct principle is the implementation of effective penalties for brokers who are identified as being in breach of the expectations set and for suppliers who fail to impose those penalties. This should include an obligation on suppliers to share with Ofgem the details of brokers who are in material or repeated breach and, after appropriate inquiry, Ofgem mandating to all suppliers that they must not work with those brokers.

Additionally, the Standards of Conduct are open to interpretation and we consider that a clearer and measurable set of standards could be developed collaboratively between Ofgem, suppliers and reputable brokers. We would be happy to take part in any such process. Northern Gas and Power designed and implemented its own compliance framework internally over 4 years ago and we have been operating successfully with significant growth and job creation in that time. We are now dynamic within the industry and have taken a leading role in the challenging of unethical behaviours. Prior to COVID19, we had established an effective resolution to the issue of fraudulent COT's industry wide. This included liaison with suppliers, other brokers, the DNO and Citizen's Advice, with a summit proposed whereby the project would be discussed and initiated.

We are aware of other brokers, such as Inenco and Inspire, who operate similar successful models of compliance. If all brokers operated in the same way consumer harm would be dramatically reduced if not eliminated. We consider that it is these responsible brokers who Ofgem should use as a model for broker best practice and minimum standards going forwards.

Do you agree that our proposal to introduce specific sales and marketing requirements on suppliers and the brokers they work with is important to help customers make more informed choices and increase trust in and effectiveness of the market? If so, do you agree that face to face marketing and sales activity should be covered alongside telesales activity under these proposals?

The standards proposed are those that we apply already. We present the contract terms (albeit the energy provider may introduce a key facts statement), we do not mislead, we recommend the contract that represents best value and we retain records for the prescribed period.

Telesales is already governed by TPS / CTPS. This already has a regulatory body, the ICO. If the customer is not aware of how the TPS / CTPS works / doesn't know what their rights are with regards to this, it is a wider issue than energy procurement and beyond the remit of Ofgem, the supplier or the broker.

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 believe that introducing a cooling off period would cause more harm than good and will lead to a general increase in pricing across all supplier price offers for microbusiness consumers as well as brokers using the period as a tool to undercut one another. Whilst this may appear superficially attractive, the consequence is likely to be

that customers will receive more calls and brokers will scale down their services to consumers, which may only become apparent following the point of contract, leaving microbusinesses in a worse position in terms of customer service.

We understand the reasoning behind wanting to introduce a cooling off period to ensure customers fully understand what they are committing to. However, we consider that this can be addressed by our proposal that principal terms be provided to customers immediately prior to agreeing contracts, so consumers are fully aware of the main terms of their contract, together with appropriate forms of ADR and increased awareness of consumer rights.

It is also apparent, from our discussions with suppliers; that any introduction of a cooling off period will involve the suppliers immediately increasing the cost of any contract presented in order to cover their 'risk'.

Therefore, were a cooling off period to be introduced tomorrow, the impact for consumers can be illustrated by the following potential scenario:

1. The consumer is initially presented a higher energy price than the true current cost that day (to cover 14 days of risk).
2. The initial broker includes a fee which covers the procurement, account management and energy management services.
3. The contract (and proposed Principle Terms) is exposed to 14 days of uncertainty, in which period another broker may offer to negotiate the same contract, for a lower fee. This might be a much lower functioning broker that has little or no support functions.
4. The customer activates their cancellation option, renegotiates the 'broker' fee and another 14 days begin.
5. Eventually (and perhaps after several rounds of this process) a contract will begin.
6. However, even though the broker fee may have been reduced by this process, the overall cost of the contract is significantly higher than it would be today as a result of the supplier having to factor in risk and the customer is left with little or no level of account management and support.
7. The customer is now on a much higher rate than they should be on and they have no level of sophisticated energy management support.
8. Further, the potential for many switches in a short space of time is likely to detract from the customer experience and increases the risk of the customer landing on out of contract rates

This realistic summary demonstrates the very real risk that microbusinesses will face with the introduction of a cooling off period. We strongly believe that these consequences can be avoided if Ofgem instead focus on the increased transparency in Principle Terms and the proper development and implementation of a broker code of conduct.

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

The cooling off period is likely to pose problems for the supplier, who quotes a price based on the daily wholesale price. Either it buys the energy with the risk that it could lose the contract up to 14 days later or it must delay the energy purchase. The price offered to consumers will inevitably increase to factor in risk that the market price may increase and/or that the contract will be cancelled.

In practice the 14-day cooling off period would introduce a new element of lost revenue/contracts to the brokers portfolio, forcing brokers to cover those losses by increasing margin on the remaining customer portfolio, driving prices and margins higher.

Section 4: Dialogue – two-way communication with service providers

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?

Any form of ADR is to be preferred to immediately seeking formal dispute resolution at court. Creating a cost-effective alternative to mediation is also to be supported.

However, it requires a voluntary solution that starts from an objective and independent position as between the parties; not one that requires the broker to justify its position.

We also have concerns that although the ADR is mandated, the use of the wording “fair, effective and transparent” in the definition of Qualifying Dispute Settlement Scheme is open to interpretation and therefore abuse. The ADR mechanism must be cost effective and not open to abuse so as not to further add extra costs onto the service.

What challenges do you think suppliers and brokers may face implementing our proposal regarding dispute resolution?

Dispute resolution should start with a direct complaint to the relevant energy provider and/or broker. Only if the matter cannot be resolved without external intervention should matters escalate to formal dispute resolution.

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

Our recommendation

It is our view that the Broker Conduct Principle be fortified into a code of conduct for brokers with suppliers and other responsible stakeholders collaborating to define specific and quantifiable targets for compliance, designed at ensuring consumers are treated fairly. The code should have teeth, and Ofgem should mandate that suppliers must not deal with brokers who are in material or repeated breach.

Section 5: Switching Away from an old contract

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?

Yes, and yes. The customer's risk is not realising when its current contract will end. This is of course an energy management service that a broker provides to its customers; ensuring that their next contract is in place before its current contract expires and ensuring that the transition between the two runs smoothly. Any barriers to this should be removed.

Termination notices across suppliers do not marry up, they have different time frames and conditions which are difficult for both customers and brokers to track. For TPI's who deal with a myriad of suppliers, it is difficult and therefore potentially costly to keep track of the different conditions and ensure they are all done correctly. Having industry wide terms for termination would be likely to reduce costs and increase protection for customers.

It would be preferable to impose any restrictions on new and existing contracts, so that all information readily available to customers is coherent, and that TPIs and suppliers alike can provide information easily and quickly, without having to investigate the difference between contracts and when certain contracts were signed or started.

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

We believe that requiring an energy provider to guarantee an extra 30 days at the existing rates, which energy they have to purchase at present rates would be unreasonable. For example if a contract is brokered 2020 for a 2021 start date with a 2023 end date, the energy provider has purchased the energy at 2020 rates but would have to purchase the additional 30 days at 2023 rates whilst guaranteeing the customer 2020 rates. Requiring suppliers to charge the additional 30 days at the current market rate plus the same uplifts as originally applied is fairer to the energy provider, as they would not be insuring (or factoring in the risk) that those 30 days could apply at a loss to them.

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

Regarding notices to terminate an existing contract at its end, the mischief of which we are aware is auto-renewal provisions that are associated with specific and difficult termination notice periods. For example, a contract that says it will auto-renew for another year or two if the customer does not terminate by written notice between three and six months before the end date. Such technical windows of opportunity inevitably cause a certain percentage of customers to miss their opportunity. Cancellation windows should be cancelled.

This is particularly important for microbusinesses who do not employ the use of a broker. They cannot get market information and assistance to ensure they are getting the best deal available, particularly when suppliers auto-roll them onto new contracts where the terms and prices are changed with no notification. We believe more should be done from suppliers to ensure that their microbusiness customers are notified 1-3 months before the end of their contracts, with an offer of an extension.

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

Our recommendation

A termination notice can act as a vital notification to suppliers that a new contract has been agreed on the supply. A centralised termination notice process that could feed into ECOES/Xoserve may be a better solution. In this way a duplicate contract could be defeated, because it would not be allowed to proceed if a contract is already logged and recorded as existing and meeting the criteria required for it to be loaded onto the national database.

However, this is just one suggestion. *Any* formalisation of contracts agreed in the future which provides the contracts some element of security would be extremely beneficial to microbusinesses. Currently microbusinesses are susceptible to agreeing duplicate contracts and suppliers are not fully equipped (or not motivated) to interrogate their termination notice systems to prevent duplicate contracts occurring. This exposes microbusinesses to termination fees which could be entirely prevented.

The removal of technically challenging cancellation notice periods and auto-roll-over of contracts should therefore be stopped. The removal of illegitimate COT's and direct renewals after notification of contracts should also be stopped and information to the market about the customer's options generally should be encouraged.