

Jonathan Blagrove
Vulnerability and Consumer Policy
Ofgem
10 South Colonnade
Canary Wharf
London
E14 4PU

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Email: fayewiddowson@utilita.co.uk

Dear Jonathan,

RE: MICROBUSINESS STRATEGIC REVIEW

Thank you for the opportunity to comment on the above consultation. Utilita's submission comprises this letter, attached Appendix 1 and Confidential Appendix 2 which offer views on the detail of the proposed licence conditions and Impact Assessment. This letter and Appendix 1 are non-confidential.

Utilita Energy Limited (Utilita) is a smart prepayment energy supplier, specialising in providing an excellent smart service to a previously poorly served market sector. We have been installing smart meters for our customers since 2008, and SMETS meters since 2013. Our portfolio is around 95% prepay customers, and of those approximately 90% have smart meters operating in smart mode.

We have been supplying microbusiness customers since 2017 and have a growing portfolio of commercial accounts. We have faced challenges with the broker industry historically, but we now have a very good relationship with our chosen brokers.

We are very selective over our broker partners, and we follow strict onboarding procedures before they are accepted as a commercial partner. Once we are satisfied that the prospective broker has passed our strong compliance checks, we will grant them access to our price book and access to our commercial Portal.

The portal is for brokers to submit their customer referrals, we do not accept referrals that come to us outside of the broker Portal. Neither do we accept verbal contracts. The Portal ensures that the brokers submit compliant, formalised and written customer agreements.

As the portal is the only method to submit client referrals, we have tight controls over our brokers' conduct, and where we are unable to influence good broker behaviour we remove that broker from the Portal. We maintain very good relationships with our chosen brokers, and we work together to provide a good consumer experience.

We welcome the policy approach Ofgem is taking to provide additional protections for microbusiness consumers; however, we disagree with the stated intention to regulate brokers via Supply Licence Conditions. Suppliers lack direct control over broker and Third Party Intermediary (TPI) activity and it will be very difficult to ensure a consistent approach to compliance.

We support a number of the proposals set out in principle. However, the diverse range of proposals means the cost of implementing them would be significant and would add layers of complexity to energy supply processes increasing consumer costs and reducing

competition. We are concerned that the methods of implementation set out for the majority of proposals will not be workable in practice, and we believe more sustainable solutions can be found through this consultation. We believe a second consultation will be required – on a more refined set of proposals – to deliver benefits to microbusiness consumers economically and efficiently.

We do not support the proposal to implement regulation of the broker and TPI sector via suppliers. If brokers are to be regulated, then a bespoke framework should be designed and implemented which is fit for purpose. Regulation via a third-party is resource-intensive to implement and almost impossible to enforce effectively.

We disagree with the proposed licence drafting of the definition of “Broker” which currently seeks to apply to all brokers, regardless of whether the supplier has a valid commercial agreement or accepts referrals from them. We do not believe this is Ofgem’s intent and seek additional clarity on this.

Where brokers act on behalf of a supplier and receive commission for that referral, we agree that suppliers do have an obligation to ensure that the sale was carried out fairly and compliantly. We do not agree that suppliers should be held accountable for the conduct of brokers that they do not work with or accept referrals from. It will not be possible for a supplier to impose obligations on a broker they have no relationship or commercial agreement with.

There is also little penalty or incentive on a broker acting contrary to the supplier’s licence conditions to change their behaviour, other than the licensee may choose not to contract with them. This risks burdening suppliers with licence conditions that are beyond their ability to comply with. Where Ofgem seeks to impose such an obligation, there must be an element of acting “with all reasonable steps” to ensure suppliers are not unfairly penalised.

In the proposed amendments to SLC 0A, the language that refers to brokers is inconsistent. In SLC 0A.1 it refers to “All Brokers”, in SLC 0A.3 it refers to just “Brokers”. We suggest that the wording should refer to “the Brokers” and revise the definition of Brokers to just those that the supplier accepts referrals from, and pays commission to.

These amendments would ensure suppliers are not held accountable for the conduct of brokers with whom they have no direct relationship through a contract or other commercial arrangement, and whose behaviour they cannot influence.

We have significant concerns about the lack of clarity around how enforcement activity would be conducted. For example, whether Ofgem would seek to act against all suppliers who have dealt with the broker found in breach or only against the supplier who benefitted from the breach. We would request additional information on this aspect of the proposals, and would welcome approaches being set out in a further consultation for review.

Particularly concerning are the proposals which seek to require suppliers to apply retrospective changes to pre-existing commercial contracts with third parties. These contracts have been negotiated in good faith and have been agreed between both parties. Seeking to implement amendments to pre-existing terms by this route may certainly be subject to legal and could be expected to lead to significant financial and legal consequences for suppliers.

On this basis we do not believe that it is reasonable to seek to impose changes to existing contracts without the express consent of the contracted parties. It is also not clear where the legal basis or precedents for these proposals are found.

In addition to the points above, it is not apparent how an energy supplier can be expected to supervise and direct operating procedures of an independent business as is proposed. We also believe that imposing such a requirement would not result in improved outcomes for microbusiness customers as the additional complexity for the suppliers will ultimately be reflected in prices.

We would urge Ofgem to work closely with BEIS and consumer groups to design and implement a bespoke framework for regulation of the brokerage industry, independent of suppliers and with its own stand-alone enforcement provisions.

Our detailed representations on the proposals can be found in the attached appendices. We would welcome an opportunity to discuss the proposals and our submission in more detail and will be happy to answer any additional questions Ofgem may have.

Yours sincerely,

By email

Faye Widdowson
Senior Regulatory Manager