Utilita Energy Limited
Microbusiness Strategic Review
Appendix 1

1. OPPORTUNITIES AND RISKS

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

We agree that improving the provision of information to provide clarity and better education for microbusiness consumers when interacting with their energy will allow for greater consumer engagement and we welcome Ofgem's move to address this. We also agree that the best method to provide this information is through trusted and recognised independent sources such as Citizens Advice.

As suppliers, we are not often best placed to deliver infographic material about wider industry matters, and it is welcomed that there is a move towards Ofgem working with other organisations to provide clear and independent advice that reaches a greater percentage of the population.

We would welcome improvements to industry communications around how to access meters and highlight the importance of meter readings, greater awareness of the switching process and consumer rights regarding objection to switches, and other contractual rights such as understanding key information about their contract. Whilst Utilita does already provide this information in their key communications with our customers, it should not fall just on suppliers to educate customers when there is a greater role that Brokers can play in helping consumers understand the industry.

2. BROWSING

a. 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 Principal Terms are a useful tool for the microbusiness customer to view the key terms of the microbusiness contract. As a supplier, we provide the Principal Terms to any customer who seeks a quote from Utilita, and we request that our Brokers do the same.

While we can monitor our own procedures to ensure that this is provided, we are unable to verify this for the brokers that we work with. We do not have the arrangements in place to oversee broker compliance during preliminary contract negotiations, particularly where this does not end up in a sale or referral to Utilita.

Our brokers offer energy products that span across multiple suppliers and are often commercially sensitive to those suppliers. Most of the negotiations, therefore, will be unrecorded. We would urge Ofgem to avoid any proposals that add additional layers of complexity and management to well-established processes and procedures.

We would only be able to monitor broker compliance where the customer has chosen Utilita as their provider and proceeds to enter a contract. At this point we would request all relevant documentation and evidence that the sale followed our strict procedures.

Furthermore, it is not clear how compliance with this proposal would be enforced by Ofgem, particularly where the potential breach by the broker has been involved with

multiple suppliers. Is it Ofgem's intention to undertake 'group' enforcement action with more than one supplier?

In considering the above, we consider that the draft licence condition 7A.4 might be amended to state:

Before the licensee enters into a Micro Business Consumer Contract, it must ***ensure that the Broker (if the sale was conducted via the Broker) or the licensee has provided*** *the following information to the attention of the Micro Business Consumer and ensure that the information is communicated in plain and intelligible language:*

(a) a statement to the effect that the licensee is seeking to enter into a legally binding Contract with the Micro Business Consumer; and

(b) the Principal Terms of the proposed Contract.

The current drafting as written would suggest that where a broker is used, the licensee and the broker must provide the Principal Terms, which would mean a duplication of effort which would only serve to confuse a customer and increase cost.

b. 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 agree that broker charges should be disclosed to allow for greater transparency however, we do not agree with Ofgem's approach to use suppliers as a vehicle to do so. The broker charges should be provided to microbusiness consumers in writing when brokers are recommending an energy contract, not for the customer to find out from their supplier once the contract is signed.

They should be presented directly to clients by brokers prior to the contracting stage, to allow for fully informed decision-making on the part of consumers when they assess whether their broker's recommendations are in their best interests. Where the customer wishes to receive additional copies of the broker charges, they can request this when needed from their broker.

Where the obligation is imposed upon the supplier to publish the broker charges, there is a consumer assumption that the supplier is responsible and/or accountable for the charges, and thus could result in customer contact and/or complaints which will create an additional administrative burden. Suppliers will not be best placed to deal with the customer contact and would be beholden to the broker to resolve the complaints.

In proposing that broker charges should be displayed via the Principal Terms and on bills, statements of account and upon request, suppliers would face additional development costs to update their customer account management systems and amend templates with additional variable fields.

We would need additional clarity on the exact requirements of the obligation to accurately calculate the costs of implementation. However, suppliers will face an up front cost for set up and an ongoing management cost.

The difficulties are further exacerbated when a customer uses one broker to negotiate their initial contract and another to renew. The potential for a 'cross-over' period where part of the energy consumed during a billing cycle is supplied through one contract and

another by a second, newer contract, would make displaying the information in a clear, intelligible way difficult and would potentially be confusing for customers.

These proposals would run contrary to the recent trend of simplifying bills and streamlining customer-facing information. By allowing the broker charges to remain between the broker and their client, and for suppliers to monitor this during their sales compliance checks, this will avoid additional costs on energy suppliers, and thus, have the effect of increasing consumer bills more generally.

A better place to illustrate broker charges might be in the welcome letter that all microbusiness consumers are sent upon agreeing a contract with a supplier. This would ensure the information is presented in a standardised format that is consistent.

We do not support further prescription or guidance on the presentation and format of broker costs on contractual and billing documentation. This would represent a divergence from Ofgem's move to principles-based regulatory framework.

We endorse Energy UK's suggestion for Ofgem to explore moving the industry toward a consultancy fee-type mode and away from the existing practice of suppliers being involved in the payment of commission.

3. CONTRACTING

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

We welcome Ofgem's move to introduce additional protections for microbusiness consumers, especially those which are designed to ensure fairness and transparency. However, we fundamentally disagree with the intention to regulate broker conduct via the supplier licence conditions.

As already explained, suppliers cannot monitor the early negotiation stage which is specific to the broker and client relationship due to commercial sensitivities and neither can a supplier be held responsible for the actions of a broker that they do not accept referrals from, or pay commission to.

There are parts of the Standards of Conduct that we would find impractical to monitor compliance with, specifically during the contract negotiation stage. For example, SLC 0A.3(b)(iii) would obligate suppliers to ensure that brokers offer products that are appropriate to the microbusiness consumer, we would not be able to know what products were offered, and therefore cannot know whether those products were appropriate.

If the customer is referred to us and we accept the customer contract, we could ask the customer whether they thought the products were appropriate via a survey or checklist as part of our sales checks. However, this may add inconvenience and delay to consumers who may be using a broker to avoid this.

Once a broker client has been referred to Utilita, we can then monitor the sale process to ensure that the customer was treated in line with the principles of fairness. Equally, where

the customer has any questions or complaints about their broker's conduct, we work with our brokers to resolve the issue.

We would be able to ensure (within reasonableness) that where a broker discusses Utilita's product offerings, that the material provided to the microbusiness customer is official Utilita-supplied material, i.e. marketing materials, tariff information, principal terms. This means that we can ensure that the broker will represent Utilita fairly and the information presented is complete, accurate, not misleading and is communicated in plain and intelligible language.

In respect of draft licence condition 0A.4A, we note that Ofgem also propose suppliers ensure brokers adhere to the Standards of Conduct Principles for all "Broker-Designated Activities", which are defined as anything under SLC 7A, 14, 14A, 21B, and "all written or oral communication or contract information". These are incredibly broad and difficult for suppliers to monitor.

Where a customer has any concerns about their broker conduct that are shared with us, we will work with the broker to resolve however, we would not have any method to monitor such behaviour on a continual basis.

The depth of monitoring and compliance proposed in this section, supports the approach of having a set licence and monitoring body independent of the supplier remit. Regulating brokers directly for their customer service arrangements will improve access for consumers when trying to resolve complaints or queries.

We would also welcome further clarity on the proposed enforcement regime and where penalties might be applied to brokers found in breach. It is possible that a breach might not be easily attributed to a single supplier, such as where a broker may opt to provide a wide range of options to clients as opposed to consumer-specific illustrations, which would constitute a breach of draft licence condition 0A.3(b)(iii). In this example enforcement might be undertaken against a number of suppliers but there is no practical way for those suppliers to ensure the broker has complied with the condition prior to the breach being identified.

There is a risk of varying levels of supplier enforcement on brokers which may lead to brokers pivoting toward a smaller number of suppliers, reducing competition and depressing consumer choice.

Energy UK's assessment of the risk of the creation of a tiered market as an unintended consequence of a broker conduct principle identifies the inherent challenges of this proposal: that flexibility for varying interpretations and applications of the standard risks a race to the bottom across the market.

This is an area where the need for genuine regulation of brokers through an appropriate mechanism is appropriate. Regulation through suppliers is costly and will only serve to drive up consumer bills.

b. 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?

Extending SLC 25 to include commercial consumers, particularly 25.3 and 25.5, will be very difficult in practice and may lead to suppliers forming more formal relationships with brokers through white label arrangements, which will ultimately lead to a reduction in the number of truly independent brokers. This will drive up costs for consumers, depress competition and exacerbate the same harms these measures are intended to relieve.

As with the other proposals set out in this consultation, suppliers are only able to monitor and manage specific requirements on third parties where there is a contractual relationship with that organisation. It is neither practical to leverage the existing Supplier Licence Conditions to impose back-door regulation on the wider supply chain, and any attempts to do so are likely to be vulnerable to challenge should enforcement be attempted.

Regardless, our brokers already operate under these principles, and we do not accept any customer referral where there may have been any high-pressure or misleading sales tactics. We very rarely receive customer complaints about our brokers, and in the few circumstances where we do, it is often as a result of genuine misunderstanding which is easily remedied. Should Ofgem chose to proceed with their proposals, the Licence should be amended to reflect an 'all reasonable steps' approach to monitoring broker compliance.

c. 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 oppose this suggestion due to the significant volume of work that would be required on the part of suppliers, increasing costs for a benefit that has no sound research of its merit. Introducing a mandatory cooling-off period would impose additional costs on suppliers and introduce a level of uncertainty into the onboarding process which would have a downstream impact on resourcing, cash flow projections and supplier-broker relationships which take time to cultivate.

The impact of faster switching on this proposal is unclear, as is how suppliers might comply with a cancellation notice once the switch has taken place; one method might be via the Erroneous Transfer protocols, although extending these would be resource-intensive and complex at the supplier level.

There are a number of existing issues within the brokerage community with a small minority of brokers who may find ways to switch customers who are subject to contract, often through false change of tenancy notifications. The opportunity for brokers to change contracts within a cooling-off period poses a significant risk to suppliers which would exacerbate ongoing problems.

Additionally, the draft licence conditions are confusing and overly complicated. In SLC 7A.13E.3, the drafting suggests the cooling off period starts on the day that the consumer enters a contract with the licensee and when they have been provided with the Principal Terms. Contrastingly, in SLC 7A.4, the Principal Terms must be provided before the contract is entered into. Where the Principal Terms are not supplied, this would constitute a breach of SLC 7A.4 and mean that the cooling-off period could never start until it has been provided.

The above the contradicts the next condition, SLC 7A.13E.4, that the cooling-off period would end on the latter of 14 days after the day on which the contract is entered into or 14 days after the day on which the consumer has been provided with the Principal Terms.

It is not clear what Ofgem's preferred approach would be where a supplier or broker doesn't provide the Principal Terms to the microbusiness consumer. For example, where COVID-19 restrictions prevented provision of the Principal Terms until more than 14 days after the contract is entered into, or where the first billing cycle has been completed, it would not be reasonable to arbitrarily begin a cooling-off period.

We would urge Ofgem to follow the existing licence conditions under SLC 14A.9, for consistency and clarity, where possible.

4. DIALOGUE

a. 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 support this proposal in principle, although we would require further clarity on the details of such a scheme before we can comment in any detail.

We would encourage Ofgem to consider running a pilot scheme to assess how this could work in practice. We would also seek information about where the costs of supporting such a scheme would sit. We would strongly oppose any suggestion that suppliers should fund this.

If the ADR scheme is introduced, would the ADR provider be able to impose charges and remediations on brokers following a proven breach? If so, would this authority extend to cover suppliers who received contracts from that broker? How would Ofgem see this working with the current OSE remedies for Microbusiness consumers, and would there be a situation where suppliers are penalised twice by the OSE and the broker ADR provider?

Further consideration and consultation on the proposed framework would be welcome.

5. EXITING

a. 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 do not agree that termination notices are a barrier to effective consumer outcomes. Termination notices are a useful mechanism which serves to tell suppliers that a customer has proactively chosen to end their fixed term contract. They help to protect consumers against poor switching practices and reduce the incidence of commercial erroneous transfers.

Suppliers are already obligated to acknowledge such termination notices and, in their acknowledgement, can explain about any termination fees, and what happens next. The acknowledgement also serves as a check back to the customer to confirm they accept the contract is ending.

We have experienced incidents where the customer has contacted us to say that they did not send a termination notice and wished to remain in contract with us. The termination notice allows the customer to leave supply within 30 days of the notice being received, this gives them the benefit of being on their fixed term prices for this period, thereafter they will be moved onto the out of contract prices.

If implemented this proposal is likely to lead to an increase in termination fees to account for the added risk of customers 'accidentally' leaving their fixed term contracts before the end of their term. Furthermore, commercial tariffs remain competitive because suppliers can predict the income of the fixed period of the contract; eliminating this predictability would require suppliers to factor the risk of no-notice switches which would likely lead to an increase in costs for consumers.

b. 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 do not understand the basis for this proposal. Where a commercial switch is blocked it is almost always due to the presence of a contract with the current supplier or due to outstanding debt. We would not alter the rates following a blocked switch as the contract rates would continue to apply. If there were no contract rates, then out-of-contract rates would already apply, and these would continue to remain in place until replaced by a new contract.