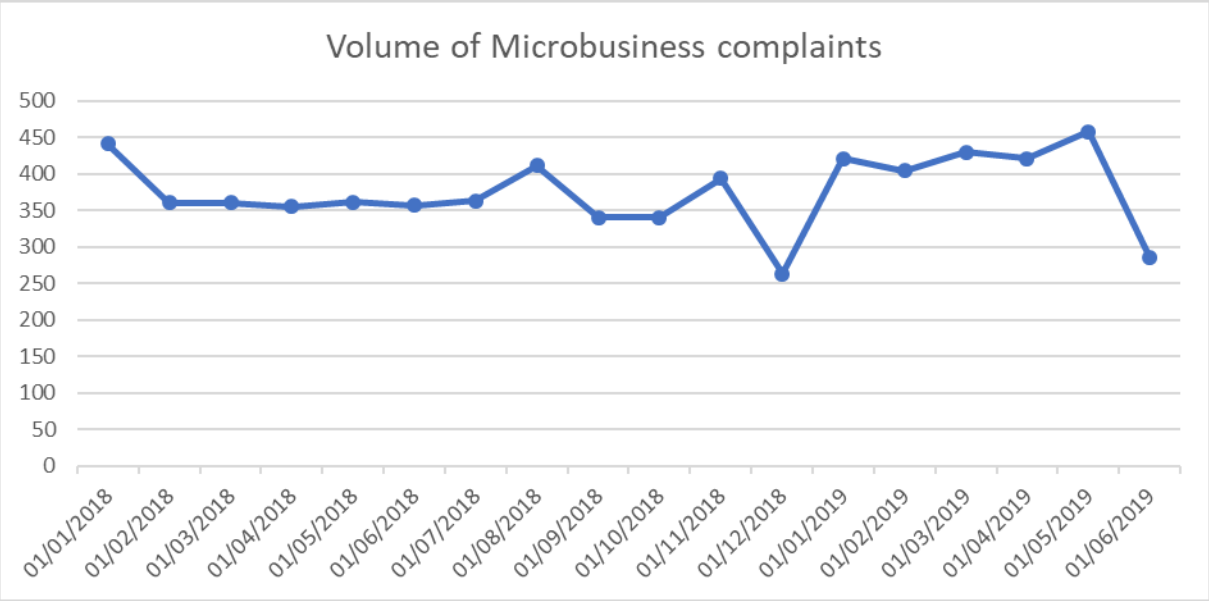
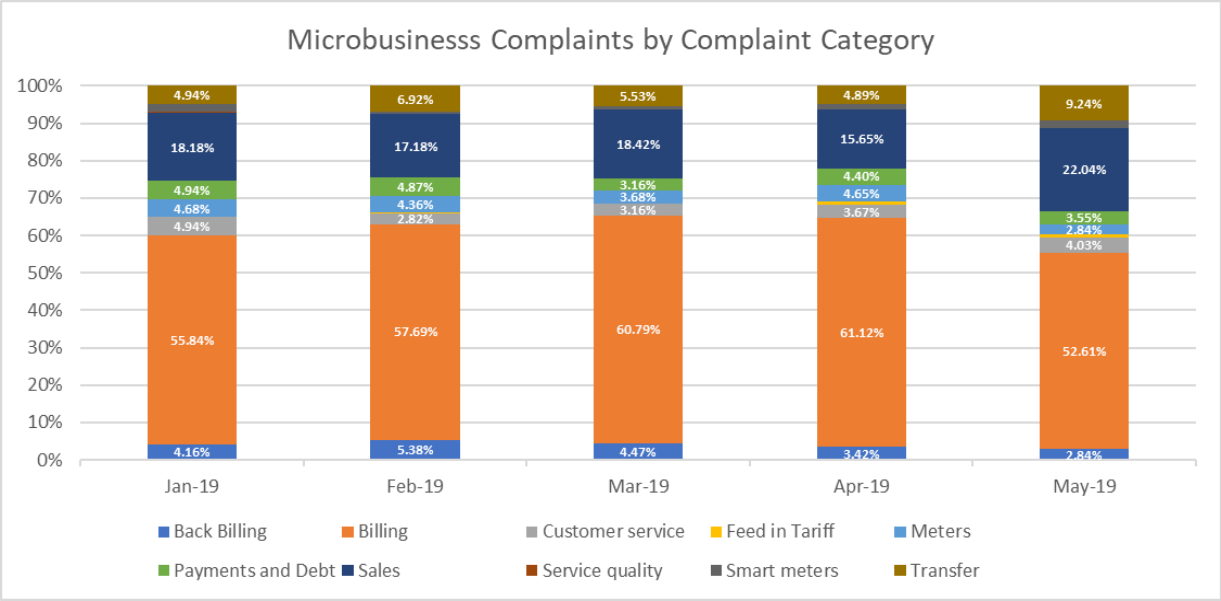
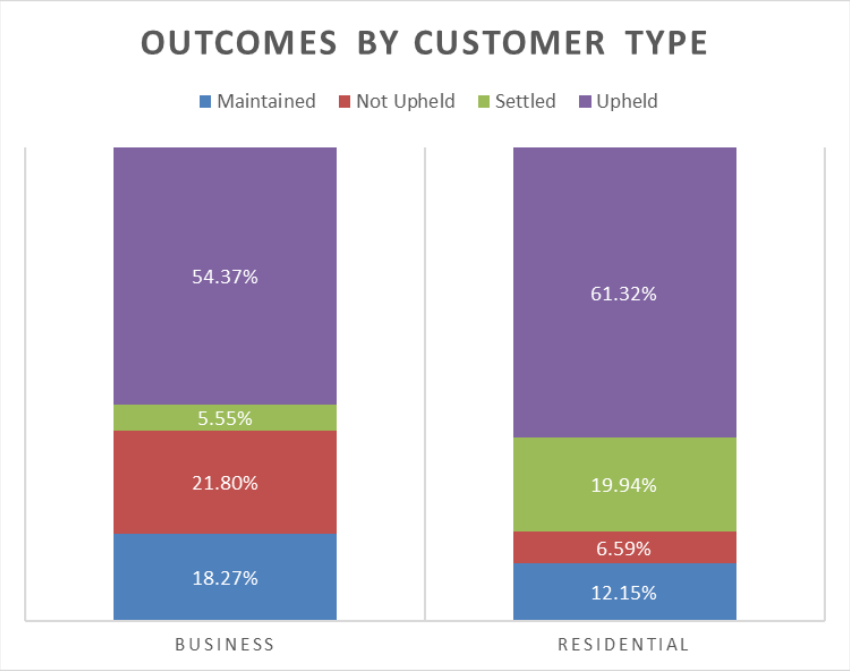
Annex A

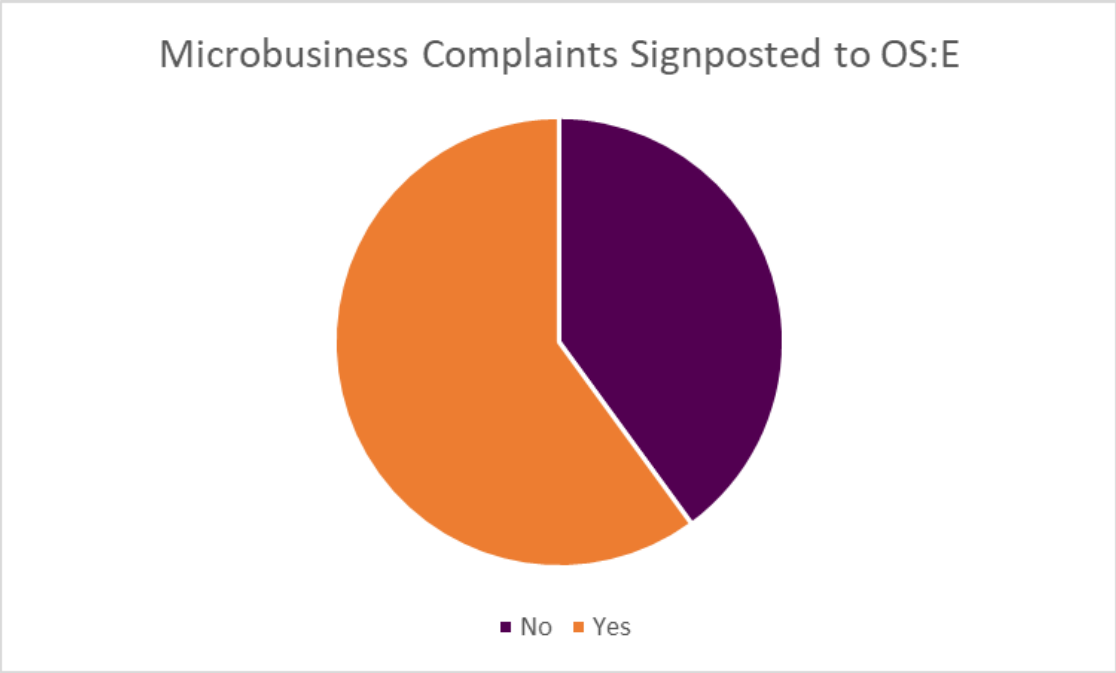
Strategic Review of the microbusiness retail market

Overview of Microbusiness Market









Ombudsman Services

Case study one – Lack of clarity during the sale leaves microbusiness feeling cheated

A microbusiness was persuaded by a sales broker to agree to a market tracker tariff. The broker explained that the tariff price would be “adjusted twice a year as the wholesale prices and other charges change accordingly”.

The microbusiness had limited knowledge of the energy market and as such they did not really know how to verify whether the supplier was tracking the market correctly. They became suspicious when prices only every seemed to increase. As such, they sought the assistance of an energy broker to help them understand whether they were being treated fairly.

The energy broker could see that when wholesale prices had fallen, the microbusiness’s tariff had not reduced. But whenever wholesale prices increased, the microbusiness’s tariff increased. The broker raised a complaint with the supplier on behalf of the microbusiness. The supplier accepted no wrongdoing so the broker escalated the complaint to Ombudsman Services.

The energy supplier told Ombudsman Services that it tracked against Ofgem’s supplier cost index. When we tracked the tariff movements against this index, we determined that the prices applied to the account were not unreasonable. We also accepted that Ofgem’s supplier cost index was a legitimate way to track the market.

However, the metric against which the market would be tracked was not made clear during the initial sale or in the supplier’s terms and conditions. Further, the price increase letters set out that the supplier was tracking the market against wholesale prices, transportation costs, and renewables levies – not specifying Ofgem’s supplier cost index. We could see why the microbusiness and subsequently the experienced broker perceived that the market was not being tracked correctly.

The Electricity Licence Conditions require that suppliers bring the principal terms of a contract to the attention of a microbusiness. We determined that the vague information provided during the sale and in the terms and conditions meant the supplier had not made a principal term sufficiently clear. Accordingly, we determined that the supplier should release the microbusiness from the contract.

This case study shows that microbusinesses can be easily led by brokers to agree contracts that they do not really understand. It also shows that communication and complaint handling from suppliers could be improved.

Case study 2 – broker failure leaves microbusiness paying higher prices

After shopping around to find the best available prices, a microbusiness agreed fixed term gas and electricity contracts with a broker. The microbusiness was satisfied with the deal it had agreed.

The contract negotiations took place on the telephone, following which the broker sent out e-contracts for the microbusiness to sign and return. The microbusiness provided an electronic signature for the electricity contract on the day it was received. They provided an electronic signature on the gas contract the following day.

The broker and electricity supplier used a portal to administer such contracts. As soon as each contract was returned the broker, they passed it to the supplier through the portal. A quirk of the portal meant that as soon as electricity contract was submitted, it was processed automatically and the portal option to process the gas contract closed. When the customer returned the signed gas contract, it was attached to the portal but not processed. This error was not discovered for a couple of months. During this period, wholesale prices had increased and the supplier was not willing to honour the prices the customer agreed with the broker. Further, the customer started paying expensive out of contract prices to the previous supplier.

The microbusiness complained to the supplier, which blamed the broker for not providing both contracts together. The microbusiness complained to the broker which said it had forwarded the contracts as per the process, and the supplier was at fault for not processing. The microbusiness was stuck between the two parties, while continuing to pay out of contract prices for their gas. Neither the broker nor the supplier was willing to offer a suitable solution.

The microbusiness had no route to independent redress against the broker. However, they were able to complain to Ombudsman Services in relation to the supplier.
The supplier's response to Ombudsman Services was to blame the broker. The supplier explained that with the prices available at the time it found out the problem, it would have making a loss to honour the agreed contract.

Our investigation found that the microbusiness had agreed a valid gas contract with the broker but the broker had not submitted the contract correctly. This was the primary reason the gas contract failed to process. However, the portal used to process the contracts belonged to the supplier. It was evident that the portal process was not sufficiently robust to identify that a contract had been added to a closed action.

Ultimately, the microbusiness had a valid contract and we decided that supplier should honour that contract. We also required the supplier to cover the difference in prices for the period of delay. We accepted that this might mean the supplier making a loss but we were of the view that supplier was in a stronger position to pursue any losses through the broker. The supplier had an ongoing relationship with the broker whereas the microbusiness had no ongoing relationship and no route to independent redress.

This case study shows how easy it is for a microbusiness to be stuck between a broker and supplier with neither taking responsibility. It also highlights that a microbusiness has no route to independent ADR against a broker.

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