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Ofgem  
10 South Colonnade  
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E14 4PU

23 October 2020

Dear Sir/Madam,

### **Ofgem Microbusiness Strategic Review: Policy Consultation**

I write in response to Ofgem's Microbusiness Strategic Review: Policy Consultation. In our response we have:

- provided some general comments;
- focused on some key issues to consider; and
- at Appendix A included some information about Ombudsman Services.

#### **General Comments:**

In general, we are supportive of the package of proposals outlined in this strategic review to provide more measures so that the retail market works better for microbusiness customers. Indeed, many of the proposed measures outlined in the strategic review were identified in the initial consultation that Ofgem published in 2019. We responded to that initial consultation and provided information on the complaint types that we see and areas of difficulty for microbusiness customers. We have outlined below some of the key points that we would like to be considered as part of this strategic review.

#### **Key points:**

##### Extending the definition of microbusinesses

We also discussed in our response last year widening the current definition of microbusiness to include more small and medium sized enterprises (SMEs). We think that with the current situation with Covid-19 and the importance of SMEs in helping to build back the economy there is even more need and urgency to extend the definition so that a wider population of SMEs can benefit from the same protections as microbusinesses, including access to free redress when things go wrong. Supporting SMEs in this way would, in our view, be beneficial at any time but feel particularly crucial given the current challenges facing small businesses.



As we highlighted in our response last year, in the financial sector, the Financial Conduct Authority extended the definition of microbusiness from fewer than ten employees to fewer than 50 employees – so a wider definition that includes more SMEs. This was partly in recognition that SMEs act in a very similar way to domestic consumers and microbusiness customers in how they engage in markets.

Widening the definition in the financial sector has meant that a further 210,000 SMEs potentially could access free redress via the Financial Ombudsman Service when things went wrong. Essentially freeing themselves up to get on with running their business. This is even more crucial given the key role that SMEs will provide in helping the economy recover.

#### *Information and polling data about SMEs:*

Between 2000 and 2019, there has been a sustained growth of SMEs in the business population by 2.2 million. This represents growth of 63%. SMEs accounted for 99.3% of all private sector businesses at the start of 2018. SMEs are crucial for innovation and economic growth and have disproportionately driven job creation since 2010.

A survey commissioned by Ombudsman Services and conducted by Deltapoll in August 2019 highlighted that 41% of SMEs said that they would benefit from additional support when resolving disputes. While in May 2020, another Deltapoll survey of more than 1,000 small businesses found that the larger the SME, the more likely it is to want to take an energy or telecoms complaint to a third party for redress.

#### Debt Management

In our response to the consultation last year we outlined that, through the complaints that we receive, we often see a difference in how domestic and microbusiness consumers are treated in relation to debt management by energy suppliers. While we appreciate that the issue of debt recovery is not a focus within this package of proposals, we think, given the on-going effects of Covid-19, that there is a more urgent need to align more closely the measures and protections provided to domestic consumers and microbusinesses. For example, the licence conditions require energy suppliers to help domestic customers with debt issues, however such protections are not fully replicated for microbusinesses, with warrants and disconnections often being sought more quickly.

Indeed, there has been a recent announcement by Ofgem of a new licence condition on energy suppliers to provide more support to domestic customers struggling to pay their bills. Coupled with this, from 15 December 2020 Ofgem will introduce a licence condition to ensure that energy suppliers put domestic customers who are struggling with their bills, on realistic and sustainable repayment plans. We welcome these measures that are aimed at protecting the most vulnerable consumers. We do, however, particularly in light of Covid-19, wonder if similar measures might be appropriate for microbusinesses as well.

#### Proposal that energy suppliers can only work with brokers that are signed up to an alternative dispute resolution service

We support the proposal that microbusinesses should be able to complain directly to brokers when something has gone wrong and ultimately take their complaint to independent redress. Currently, there is no scope for Ombudsman Services, via the Energy Ombudsman, to consider a complaint from a microbusiness about a broker. Our data from August 2019 to July 2020 shows that complaints about brokers mis-selling raised against suppliers, accounts for around 12% of the total complaints from microbusinesses. If a contract has been mis-sold, then the remedy for the microbusiness is for the energy supplier to cancel the contract. However, there is no scope to engage the broker with remedies or for the Energy Ombudsman to work with brokers to improve their customer services.

We are pleased to be working with Ofgem in looking at putting in place effective redress provision that will help to raise standards in the broker sector and improve the customer journey for microbusinesses. We do have considerable experience of running independent redress – we have operated the Energy Ombudsman for 13 years and last year we

resolved over 58,000 cases in the energy sector. We have agreed with Ofgem that we will run a small pilot scheme to help inform Ofgem's policy development and any enduring redress scheme. We will continue to work with Ofgem, energy suppliers, brokers and other stakeholders as we progress the pilot, and will share our experiences.

### Broker Conduct Principle

We are supportive of the introduction a Broker Conduct Principle and extending Supply Licence Condition 0A to achieve this. We think this works well in conjunction with having a redress requirement on brokers. As mentioned in the strategic review, some energy suppliers and brokers do have quality assurance/standards in place for how brokers operate, however this will not be consistent across the whole sector. We think it makes sense for there to be consistency in terms of what is appropriate broker behavior.

### Informed Contract Choices and the Cooling- Off period

We support the introduction of specific requirements to improve sales and marketing practices for suppliers and the brokers they work with. We think the requirements for:

- clearer terms and conditions;
- recommending contracts that are appropriate to the customer; and
- maintaining records of information provided to microbusiness concerning their contract for a period of 2 years.

are all important for building confidence amongst microbusinesses that they will be treated fairly when they engage with the market.

In our response to the initial review last year we mentioned that one of the problems we have in investigating mis-selling complaints is that the complaint relates to a conversation during a telephone call, which has not been recorded. In most cases of mis-selling, we are presented with the sales call, but only the part of the call where the microbusiness is confirming that they agree to the contract. This is not the full sales conversation, when the new contract is offered and explained, and the microbusiness decides to proceed. We appreciate that Ofgem is looking at a principle-based approach with regards to ensuring informed contract choices and also to require brokers to 'maintain a record of information to microbusiness customers concerning a contract during face to face marketing activities or telesales activities for a period of 2 years'. We welcome this but do want to highlight again that we think it would be helpful to make it explicit in this requirement that brokers need to keep all recordings and activity which relate to the sales call.

### Banning notification requirements and Contract Extensions.

We are supportive of the proposal to ban notification requirements and think that the move to bring switching practices in line with those already afforded to domestic consumers is a positive step. We also agree with the proposal that negotiated Evergreen contracts should be exempt from this proposal so long as this has been communicated effectively and the microbusiness understands those terms.

Again, we are supportive of the measure to introduce contract extensions which mean suppliers must maintain the current tariff while sorting out blocked switches, and not move microbusinesses onto costlier out-of-contract rates. However, we would point out that often complaints come to us after the 30 days has already passed and a remedy is often put into place which requires a refund or for the microbusiness to be rebilled on the previous prices. We also think it may be worth considering what happens to those microbusinesses who have moved onto out-of-contract rates already, then attempt to switch and are blocked from doing so – this may need further clarity.

## Broker Commission Transparency

We think it is right that there should be more transparency in terms of the commercial arrangements between brokers and energy suppliers in terms of commission payments. This is important to enable microbusinesses to make an informed decision when agreeing a contract. Such transparency appears to work well in other markets where it is required.

Please do not hesitate to contact us if you would like further information regarding our response. Our response is not confidential.

Your sincerely,



Ed Dodman  
Director of Regulatory Affairs

### **For more information regarding this consultation please contact:**

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## **Appendix A**

### **About Ombudsman Services:**

Ombudsman Services is a not-for-profit private limited company established in 2002 which runs a range of discrete national ombudsman schemes across different sectors including energy, communications and an appeals service in private parking. Each scheme is funded by the companies under our jurisdiction and our service is free to consumers. In 2019 we received 157,808 initial contacts from complainants and resolved 88,840 complaints. In the energy sector we received 116,700 initial contacts and resolved 58,034 cases, and in the communications sector, we received 40,184 initial contacts and resolved 17,426 cases. We also received over 84,000 appeals in our private parking appeals service.

We are:

- to our consumers, the people they can turn to for impartial advice and solution that's fair;
- to our partners, the people they look to for knowledgeable and insightful ways to help them reduce complaints by enabling them to make the changes they need to deliver better customer services;
- to our regulators, champions in protecting rights as well as partners in information sharing, we share our analysis so that regulators and business partners can make improvements; and
- to our people, here to enable them to deliver clarity to consumers and partners through meaningful work.