

Energy UK Response: Microbusiness Strategic Review Statutory Consultation

9 July 2021

Introduction

Energy UK is the trade association for the energy industry with over 100 members spanning every aspect of the energy sector – from established FTSE 100 companies right through to new, growing suppliers and generators, which now make up over half of our membership.

We represent the diverse nature of the UK's energy industry with our members delivering over 80% of both the UK's power generation and energy supply for the 28 million UK homes as well as businesses. The energy industry invests £13bn annually, delivers £31bn in gross value added on top of the £95bn in economic activity through its supply chain and interaction with other sectors, and supports 738,000 jobs in every corner of the country.

This is a high-level industry view; Energy UK's members may hold different views on particular aspects of the consultation. We would be happy to discuss any of the points made in further detail with Ofgem or any other interested party if this is considered to be beneficial.

Executive Summary

Energy UK supports actions being taken to better protect microbusiness consumers, particularly from poor practices by unregulated energy brokers. We agree with the principles behind many of the measures put forward by Ofgem in this consultation and fully support the intention to improve outcomes for microbusiness consumers where Ofgem has identified detriment, and ensure that they have a better customer experience when engaging in the market via brokers.

We welcome many of the changes that Ofgem has made to the licence drafting that takes into account many of the concerns raised by Energy UK and suppliers through the policy consultation exercise. We have outlined below a number of remaining concerns that we believe Ofgem should address before reaching its final decision.

One major concern that we would urge Ofgem to consider carefully is its intended implementation timelines to ensure they are realistic and achievable. As Energy UK has highlighted in previous consultation responses to Ofgem, there are a number of major industry programmes in-flight (Faster Switching, Market-wide HHS and the Targeted Charging Review) – in many cases, resource required to implement the microbusiness changes will already be dedicated to implementing changes associated with these programmes, so there are limitations to what can be delivered in these timescales.

We do not currently believe that the 1 January 2022 date for implementing the broker ADR requirement and cooling-off period would be achievable, given the lack of detail regarding the specifics of any ADR scheme/s and the complexities involved in making the required systems changes for the cooling-off period requirement. In addition, potentially thousands of brokers of varying sizes and administrative resources will need to be engaged and registered with any ADR scheme prior to go-live – a burdensome administrative undertaking for brokers and the ADR scheme that should not be underestimated. We would urge Ofgem to ensure that all implementation timescales are achievable for the level of complexity required of supplier system changes, and take into account concurrent industry change programmes being progressed, such as Faster Switching. Ofgem should also consider whether it would be more beneficial for consumers if the entire package of proposals were implemented as one, rather than piecemeal. This would allow consumers to benefit from a suite of connected protections: price

disclosure, a chance to change their mind via the cooling-off period, and a means to redress if things do not go to plan via the broker ADR scheme.

Feedback on Ofgem's Proposals

Awareness

Improving Awareness Levels and Information Provision for Microbusiness

Energy UK welcomes Ofgem working collaboratively with leading consumer groups to improve awareness levels amongst microbusiness customers. However, the proposal in the consultation lacks sufficient detail on exact measures to provide greater feedback at this stage.

We would urge Ofgem to ensure it seeks input from suppliers when exploring how best to plug awareness gaps to ensure that any approach taken forward learns from suppliers' experience of engaging with their customers, and that the level of information is relevant and accurate. We would also welcome Ofgem to specify any expectations it would have of suppliers in relation to this work, such as through signposting.

Browsing

Principal Terms

While Energy UK supports the intention behind Ofgem's requirement to provide Principal Terms, we have a number of concerns with the current licence drafting which should be addressed by Ofgem prior to implementation.

The current proposed requirement to provide the Principal Terms no later than 1 day after contract agreement may not be achievable in all circumstances, for example if the supplier is reliant on a third party providing information in a timely manner and in a fashion that can be utilised in suppliers' systems in a short time scale (e.g. for estimating brokerage costs), or where the contract is agreed late in the day leaving little time for the requirement to be met, or where suppliers are completing essential validation checks to ensure the contract is Valid (thereby preventing ETs) ensuring that the information contained in the Principal Terms is accurate. There are instances where brokers will use admin days to bulk upload information, so considerable time will need to be spent changing current working practices. In addition, where the Principal Terms are provided via email, there might be an error if the customer has provided incorrect information, or where the email goes in the spam filter, etc. These are issues beyond suppliers' control in which they would not be able to provide the information within one working day, as they would need to receive the bounce back and successfully get in touch with the customer to fix any mistakes in the information provided.

We would, therefore, welcome Ofgem's reconsideration of the current timing requirement, such as making it an "all reasonable steps" requirement to provide the Principal Terms within one working day, or extending the timing to two working days. We would also welcome clarity as to whether the obligation would be considered met if the terms are emailed to the address provided by the customer, regardless of whether the email is received.

In addition, Ofgem should consider amending the licence condition drafting for SLC 7A.4 in order to both clarify that suppliers take all reasonable steps to ensure brokers comply with this condition (as suppliers will only have visibility of broker activity that is part of the introduction process), and prevent unintended introduction of an undue requirement for Principal Terms to be provided in writing ahead of verbal contracts being entered into (where SLC 7A.9 requires that Principal Terms are 'set out in Writing' and that this must occur where the licensee is required to provide these 'pursuant to paragraphs 7A.4...'). As such we'd suggest the SLC drafting as follows:

"7A.4 Before the licensee enters into a Micro Business Consumer Contract, it must ~~ensure~~ bring, or it must take all reasonable steps to ensure that the relevant Broker brings, the following information to the attention of the Micro Business Consumer and ensure that the information is communicated in plain and intelligible language:"

Transparency Around Brokerage Costs

Energy UK supports the intention to increase transparency for microbusiness customers in the commission being paid to brokers for their energy contracts. We welcome Ofgem's consideration of the concerns previously raised with the policy consultation proposals, and the changes made with the licence drafting as a result. In particular, we support the removal of the requirement to place brokerage costs on every bill.

Clarity would be welcome in regards to the requirements to respond to a customer's request for brokerage costs mid-contract, and what information suppliers will be required to provide. We would also welcome clarity as to whether a supplier will be expected to inform a customer if there is a material change in brokerage costs compared to the original estimate.

As stated in our response to the policy consultation, Ofgem should ensure that within any final licence condition drafting there is clarity that when provided as part of the Principal Terms it applies only to the total financial remuneration linked to the sale of the contract, and of which the supplier is aware at that time. There is a concern that the term "benefit of any kind" introduces a level of vagueness that could lead to different interpretations of the requirement by suppliers. In order to avoid this vagueness Ofgem should, as a minimum, define key terms including 'commission' and 'benefit in kind'.

As with all of its proposals, we would urge Ofgem to ensure that its implementation timelines are realistic and take into account suppliers' available resources to enact the required systems changes. Seeking implementation 56 days after decision could mean that this change needs to be implemented by October/November this year which could be extremely challenging for suppliers given the system and process changes required, and the number of different broker commission arrangements that would need to be translated into Ofgem's prescribed format.

Contracting

Broker Conduct Principle & Informed Contract Choices

Energy UK supports Ofgem's decision to not pursue these proposals, and welcomes the consideration it has given to the concerns raised through the policy consultation and its reference to BEIS' commitment to consult on direct TPI regulation across the whole retail energy market, which we believe is the most appropriate way to provide customer protection.

Cooling-off Period

Energy UK believes that the proposed implementation date of 1 January 2022 would be unfeasible, particularly given that there will also be changes going on concurrently for faster switching, and the complexities within the proposals that will have to be built into supplier systems. For example, a customer contracting long in advance would be relatively straight forward, however those contract 30 days before the supply start date would only receive a two-day cooling off period (or one day with provision of Principal Terms within one day), and those contracting within 28 days of the supply start date would receive none. There are additional complexities as the cooling-off period begins when the customer enters the contract with the licensee, but ends 14 calendar days after the contract and Principal Terms have been provided. This could, in practice, be an 18-day cooling-off period (Principal Terms required within one working day) where weekends and bank holidays are present. We would urge Ofgem to ensure that all implementation timescales are achievable for the level of complexity required of supplier system changes, and our members are best placed to provide more detail on what would constitute a more achievable timeline.

Energy UK is concerned that the variable nature of the cool-off period will be very confusing for customers and not what they will expect, as it does not match with what they'll have experienced as domestic energy supply customers or with general product/sales terms that have a universal 14-day cooling-off period (e.g. online retail). This could negatively impact consumer trust in the industry, and Ofgem should consider changes to its policy or implementation plan to ensure that the improvement in microbusiness customer protections do not have unintended consequences or undue costs for suppliers and consumers.

Some members have proposed potential solutions to this issue and ways to simplify the proposal for the benefit of consumers' experience and suppliers' implementation. For example, it may be clearer for microbusiness customers, and simpler for suppliers to implement a cooling-off period after the go-live of the Faster Switching programme, currently planned for Summer 2022. At this point the new market rules will better allow for microbusinesses to benefit from accessing the market and switching suppliers more easily than today, which goes hand in hand with the ability for consumers to change their mind via the cooling-off process. It could be both confusing for consumers and costly for industry participants to implement cooling-off on one set of market rules, for example on 1 January 2022, and then to change again within a short space of time once the faster switching regime is implemented. Ultimately, whatever the final go live date is, as suppliers will need to implement complex system changes Ofgem must give sufficient notice of its decision, as it will not be cost effective for suppliers to begin to make complex system changes until the final policy is certain.

If the remedy is introduced earlier, a 14-day cooling-off period could be implemented ahead of Faster Switching go-live by moving the cut-off for a cooling-off period from the currently proposed 28 days to 42 days. Alternatively, to protect as many customers as possible, Ofgem could amend its proposals to rule out very short cooling-off periods of one or two days and introduce a minimum period that is applicable (e.g five days). These options could better align with what consumers expect of a 14-day cooling-off period, be less confusing to understand and utilise, and be more workable for suppliers to implement and operate.

Ofgem could also simplify the proposal by removing the link with the provision of written Principal Terms, whereby the 14-day cooling-off period starts on the date the contract was entered into, and ends after 14 days (or 28 days before the supply start date if earlier). Suppliers would still be required to send the Principal Terms in writing, but the variable cooling-off period would not be delayed by third parties not providing information in a timely manner, and the calculation would be cleaner to assess and describe to customers. We anticipate that Energy UK members will expand upon these potential changes in their individual responses to Ofgem.

We also note that whilst domestic suppliers will already have some of the technical capability to put in place a cooling-off period, non-domestic only suppliers will not and will need to build this from scratch, therefore they will need time to adjust systems and processes in a way that domestic suppliers do not. If Ofgem does not take steps to simplify the proposal or agree to implementation post-Faster Switching go-live then we would argue that the proposal's current drafting, which was not impacted as part of the February 2021 RFI, makes a 1 January 2022 implementation timeline unfeasible.

We also believe that it would be prudent for Ofgem to consider the communication to customers of these complexities within its proposal to work with consumer bodies to increase microbusiness customers' awareness levels with regards to their rights and responsibilities.

In addition, greater clarity is needed on the formats through which a cancellation notice can be sent by a customer, as draft SLC 7A13E.2 refers to "any communication by the microbusiness consumer". For example, suppliers have seen examples of a renew letter being returned to a supplier with a handwritten message to cancel, or through social media posts, and having processes in place for any possible contact format of a termination notices would be an unnecessary administrative burden. It might, therefore, be more prudent for Ofgem to prescribe minimum mandatory routes for cancellation notices to ensure that customers and suppliers are clear on the required processes, while not ruling out other contact methods that a supplier may choose to implement for its customers.

Dialogue

Broker Alternative Dispute Resolution

We note the discussions on a suitable ADR scheme to involve brokers are currently at a very early stage and there should be sufficient time allowed for the scheme design to be completed and for brokers to prepare and commit to the arrangements. Energy UK believes that a greater level of clarity is required on the details of a broker ADR scheme to allow stakeholders to provide meaningful feedback into the scheme development process. While Ofgem has acknowledged concerns raised by Energy UK and suppliers in the statutory consultation, a large number of important questions remain unanswered that would have impacts on an achievable implementation timeline. In particular, there are unanswered

questions as to the impact of ADR decisions upon suppliers and their contracts with customers, the concerns regarding multiple ADR schemes (and potentially different systems and processes for each scheme), and the requirements on suppliers to keep track or be notified of broker membership of a relevant ADR scheme/s.

Currently, we do not believe that a 1 January 2022 implementation date would be feasible, given the lack of clarity as to what exact changes suppliers would need to make to systems to be compliant with the licence requirement, and the level of engagement required for any ADR scheme with a large number of brokers to be registered ahead of any go-live date. Potentially thousands of brokers, of varying sizes and administrative resources, will need to be engaged, become compliant with a scheme's requirements, and become registered with the scheme. The implementation timeline needs to take account of this large administrative undertaking by numerous parties to ensure that customers' ability to access the broker market is not unduly restricted by an overambitious go-live date.

Exiting

Termination Notices

We welcome some of the changes in licence drafting that Ofgem has made in response to stakeholder responses to the policy consultation proposals. However, SLC 7A.10B(c)(i) still requires licensees to include a right to terminate their contract despite it pertaining to a fixed contract. Whilst we acknowledge that this is only a statement that allows the customer to send a termination notice, we believe that this is unnecessary and an administrative burden. There seems to be little benefit of allowing customers to terminate in this scenario.

Contract Extension Period

Energy UK supports Ofgem's decision to not pursue this policy proposal further, and welcomes its thoughtful consideration of the concerns raised by suppliers through the policy consultation exercise.

For further information or to discuss our response in more detail please contact Steve Kirkwood on 0207 747 2931 or Steve.Kirkwood@Energy-UK.org.uk.