

Energy UK response to DESNZ Consultation on a new threshold for business accessing the Energy Ombudsman

Energy UK is supportive of enabling more non-domestic customers to access the redress scheme as part of Ofgem's broader Non-Domestic Market Review. There are cases and customers which will benefit from this expanded support, and we are committed to working with stakeholders to implement it as effectively as possible.

It is important and in customer's best interests, that as part of any expansion that costs are proportionate, criteria are clear and applicable, and service standards are high and consistent. While we are supportive of the introduction of a 'Small Business Consumer' threshold, we are concerned that elements of the proposed threshold criteria are unnecessarily complex, inconsistent and likely to result in practical challenges. Specifically:

- **Complexity of definition.** We are particularly concerned that more consideration needs to be made of the significant challenges and risks associated with expansion to a larger and more complex set of customers. We are concerned that such a mixed set of criteria will materially impact the ability of suppliers, customers and the Ombudsman to determine the standing of customers in respect to the Small Business classification. We believe it would be far simpler, and likely as effective, to implement criteria based on energy use only. While we appreciate other proposed elements of the proposed threshold may be easier for consumers to understand as they look at their own businesses, these are typically obscure to suppliers who can only identify qualifying consumers through consumption. We suggest that in the interest of universal understanding of a qualifying customer, it may be more practicable and useful to help consumers understand what the consumption element means for their ombudsman access rather than have supplier and consumer work with diverse metrics.
- **Visibility of threshold data.** Thresholds based on financial or headcount data are likely to present challenges in terms of energy suppliers' ability to accurately assess or verify them. While we understand that this has been suggested for consistency with FCA thresholds, the read-across is limited. Employee numbers, balance sheet, and turnover are external datapoints which are not naturally visible to energy suppliers in the same way they are for financial services providers. A consistent and efficient application of such criteria would therefore require the development of a systematic record of these data, which we do not consider realistic or proportionate. Further headcount and financial criteria are likely to be both volatile and more complex for larger businesses than for existing micro-business criteria. If these criteria were to be included then the clear emphasis should be on the customer to identify and verify that they apply to them, for example, enabling suppliers to rely on a declaration of status by the customer at point of sale.
- **Consistency of energy thresholds.** Further, we consider that the proposed threshold for electricity consumption is set too high. Consumption based thresholds should be set consistently with regard to micro-business thresholds which currently have a ratio of 2.93 : 1 (gas : electricity) which roughly accounts for the differences in typical usage/value for a given scale of customer. While we do not hold data required to assess the optimal level of threshold, we think there is a strong case for maintaining variable thresholds across fuel types.

Exempting criteria. Some of our members have raised the potential for consideration to be given to exclusionary criteria the offset any risk that thresholds result in inappropriate application of alternative dispute resolution. For example, businesses listed in the FTSE 100 or FTSE 250 Indexes or businesses that have contracted via a purchasing organisation or public sector procurement organisation may not be best served through additional regulatory protections. Consideration of this could be helpful in context of the 12-18 month review.

In our response to Ofgem's Policy Consultation on the Non-Domestic Market Review, we suggested that ahead of expanding the remit of the Ombudsman, a study should be performed covering how the current Ombudsman scheme operates as well as what that organisation believes would be required were their reach to be expanded. While the consultation contains scenario analysis and costings for increased case numbers, there is little evidence provided that either the Department or the Ombudsman have developed a full understanding of the likely challenges expansion will create.

Complaints encountered are likely to be significantly more complex. Contracts are more varied – flexible contracts or contracts undertaken at Group level rather than individual entity, are likely to create difficult judgements and edge cases. As will the prevalence of intermediaries and agents.

With this in mind, it is not clear that the Ombudsman yet has the technical skills to consider more complex B2B energy complaints. In principle, we believe there is a case for consideration to be given to the potential role for another, specialised, entity in providing dispute resolution to businesses. Given that expansion of the Ombudsman is likely seen as the fastest route to implementation and is likely to be preferred at this stage, we would urge a rigorous stress-testing of its capability including examination of case studies before the expansion is implemented. A similar consideration is required for Citizen's Advice before an expanded service is implemented.

We are committed to working with stakeholders towards a successful implementation, and to that end urge DESNZ and Ofgem to consider alignment and efficiency across implementation timelines of both the Small Business Consumer definition and Ombudsman expansion. Specifically before opening new services to customers we would expect the above feedback to have been duly considered and tested. This is a significant change to the industry, and is likely to have a variety of knock-on effects including contractual, legislative, customer service and IT system changes which come at an already challenging time for industry transitions.

We are happy to discuss any elements of this feedback and for it to be made public. We look forward to working with DESNZ towards a successful implementation of expanded dispute resolution accessibility.

Yours Faithfully,
Daniel Portis
Deputy Director, Customer Policy

About Energy UK

Energy UK is the trade association for the energy industry with over 100 members - from established FTSE 100 companies right through to new, growing suppliers, generators and service providers across energy, transport, heat, and technology. Our members deliver

nearly 80% of the UK's power generation and over 95% of the energy supply for 28 million UK homes as well as businesses.

The sector invests £13bn annually and delivers nearly £30bn in gross value - on top of the nearly £100bn in economic activity through its supply chain and interaction with other sectors. The energy industry is key to delivering growth and plans to invest £100bn over the course of this decade in new energy sources.

The energy sector supports 700,000 jobs in every corner of the country. Energy UK plays a key role in ensuring we attract and retain a diverse workforce. In addition to our Young Energy Professionals Forum, which has over 2,000 members representing over 350 organisations, we are a founding member of TIDE, an industry-wide task force to tackle Inclusion and Diversity across energy.