

Citizens Advice response to Ofgem's Microbusiness Strategic Review: Policy Consultation

October 2020



Introduction

Citizens Advice provides free, independent, confidential and impartial advice to everyone on their rights and responsibilities. It values diversity, promotes equality and challenges discrimination. From 1 April 2014, Citizens Advice took on the powers of Consumer Futures to become the statutory representative for energy consumers across Great Britain.

The service aims:

- To provide the advice people need for the problems they face
- To improve the policies and practices that affect people's lives.

Citizens Advice is a network of nearly 300 independent advice centres that provide free, impartial advice from more than 2,900 locations in England and Wales, including GPs' surgeries, hospitals, community centres, county courts and magistrates courts, and mobile services both in rural areas and to serve particularly dispersed groups.

We give advice to people through our network of local Citizens Advice and through our national consumer service helpline. Between these 2 services, last year we advised over 130,000 people, solving 100,000 problems. Over 25,000 people saved money because of our advice. We also offer specialist support to the people who need our help most through the Extra Help Unit, where we dealt with over 15,000 cases.

Since April 2012 we have also operated the Citizens Advice consumer service, formerly run as Consumer Direct by the Office for Fair Trading (OFT). This telephone helpline covers Great Britain and provides free, confidential and impartial advice on all consumer issues.

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Summary

Citizens Advice welcomes the opportunity to respond to this consultation as part of its statutory role to represent microbusiness energy consumers in Great Britain.

We are pleased to see that many of the proposals outlined in this consultation are designed to tackle bad practice by brokers (alongside general improvements in relation customer rights during sales). This is a key area of concern in the sector and ranks 5th out of all contacts from microbusinesses to our consumer service. We are strongly supportive of proposals in relation to:

- **Broker transparency** - Microbusinesses should be aware of the commission that brokers are making in order to assess the value of the service before deciding whether to use them.
- **Cooling-off period** - We often see cases of microbusinesses being sold contracts that they later regret. The cooling-off period will give microbusinesses breathing space and allow them flexibility to change their mind.
- **Alternative Dispute Resolution (ADR)** - Microbusinesses currently have few options if they have complaints about brokers. The ADR scheme will allow customers to access redress, and tackle bad practice.
- **Broker conduct principle** - This will make suppliers take responsibility for the brokers they work with, and drive out bad practice.

Microbusinesses typically have lower levels of engagement than other non-domestic consumers. While the review's proposals should overcome some barriers, we don't think they go far enough. In particular:

- **Awareness** - Many microbusinesses are unaware of the third party support services or switching tools available to them. Alongside co-ordinated action by consumer groups, we think suppliers should be required to play a bigger role in improving the information they provide to their customers.
- **Enabling better engagement** - Research for Citizens Advice and Ofgem has shown that some microbusinesses would benefit from improved

digital tools to help choose and switch supplier.^{1,2} Ofgem should set out more clearly how it will work with industry to build on the CMA's price transparency remedy and enable microbusinesses to benefit from a smoother customer journey. To ensure progress is made, Ofgem should take powers to trial new approaches to engaging microbusinesses.

There were a number of areas that we mentioned in our initial response to the Microbusiness Strategic Review call for evidence³, which we do not think have been adequately addressed. These are issues which have been exacerbated by COVID-19, and where the situation in the market is likely to have significantly deteriorated since Ofgem began its review:

- **Debt and disconnection** - Debt and disconnections are some of the most common issues the Extra Help Unit (EHU) and consumer service deal with. Microbusinesses often contact us late in the debt process, when there are few options left to help them.
- **Supplier of Last Resort** - Currently, microbusinesses whose suppliers fail lose their credit balance and security deposit, through no fault of their own. To protect them, we think Ofgem should ensure appropriate credit balance management by suppliers, and protection of balances if suppliers fail. This is increasingly important given the rise in supplier failures in recent years, and ongoing financial pressures because of COVID-19.
- **Vulnerability** - We have previously called for more consideration of vulnerability in microbusinesses.¹ We continue to see a need for protection from disconnection for people living in mixed-use premises on non-domestic contracts. We also see cases where, had a microbusiness consumer been on a domestic supply contract they would have been classed as vulnerable. These microbusinesses are particularly at risk of debt and being mis-sold to by brokers, resulting in high levels of detriment.

Ofgem needs to give urgent attention to these issues ahead of the final proposals being made in early 2021.

In support of our responses, we have referenced case studies from the EHU and the consumer service, as well recent research. In addition to research, we

¹ Ofgem (2019) [How microbusinesses engage with energy: implications for the Price Transparency Remedy](#)

² Citizens Advice (2020) [Getting through to business](#)

³ Citizens Advice (2019) [Citizens Advice response to Ofgem's strategic review of the microbusiness retail market](#)

publish a non-domestic energy supplier complaints league table, updated quarterly.⁴

Relevant Citizens Advice work on microbusiness consumers

2016 [Microbusiness Contracts Factsheet](#)
[TPI Factsheet](#)

2017 [Smart choices \(microbusinesses and smart meters\)](#)

2018 [Micro and Small Business Engagement in the Energy Market](#)
[Small businesses have been let down by the energy industry for too long](#)
[Good Practice Guide - Recovering energy debt from the smallest businesses](#)
[When brokers go rogue](#)

2019 [Response to consultation on improving non-domestic smart metering awareness and data access](#)
[Closing the Protection Gap](#)
[Response to Ofgem's strategic review of the microbusiness retail market](#)

2020 [Stuck in the Middle](#)
[Getting through to business](#)
[Supporting microbusiness consumers - Good Practice Guide](#)

⁴ Citizens Advice, [How does your non-domestic supplier stack up?](#), 2019

Response

1) Awareness - What are the most effective ways to ensure that microbusinesses can access key information about the retail energy market?

Increasing awareness amongst microbusiness consumers remains a key issue. Research from both Ofgem⁵ and Citizens Advice⁶ has identified low levels of engagement, and a lack of awareness of the rights of microbusinesses in the energy market. Ofgem's 2019 'State of the Energy Market' report found that around a quarter of microbusinesses have not actively chosen their contract, with many of them incurring a large cost for not engaging with the market and, as a result, ending up on expensive deemed contracts.

In our report 'Getting through to business'⁵ we found that microbusinesses were unaware of their rights, or of impartial advice service such as Citizens Advice. We currently receive lower levels of contacts to our consumer service, compared to those from the domestic sector, with only around 4% being from microbusinesses between October 2019 and September 2020.

The review proposes that Ofgem will work with consumer groups to improve awareness raising materials and improve dissemination of information. As we highlighted in our response to the 2019 call for evidence⁷, there is already a lot of useful information, on issues including debt and switching, available on the websites of Citizens Advice, Ofgem and Business Debtline⁸. We would be happy to work with Ofgem and other groups on raising awareness in the sector further.

However, we don't think this approach is likely to be successful in isolation. Alongside dissemination by consumer groups and others, we think Ofgem should also utilise customer communications from suppliers as an effective channel for disseminating information.

While our research suggests engagement with communications is currently low, it tested new information and identified a number of areas where improvements could be made. This includes information about switching (which we discuss in

⁵ Ofgem (2019) [State of the energy market](#)

⁶ Citizens Advice (2020) [Getting through to business](#)

⁷ Citizens Advice (2019) [Citizens Advice response to Ofgem's strategic review of the microbusiness retail market](#)

⁸ Ofgem, [Understand energy contracts for business](#), [Business Debtline](#); Citizens Advice, [Your small business can't afford its energy bills](#); Citizens Advice, [Switching your small business to a new energy supplier](#)

question 7), improvements in debt communications and at the end of contracts. It also includes signposting to bodies like Citizens Advice, which could overcome issues of low awareness of the availability of free advice.

Provision of information by suppliers also has the benefit that it can be done in a timely way. For example, information about switching can be provided at the end of a contract, and support for debt offered when customers fall behind on their bills. Further work on how customer communications could be used draw on the experience of these requirements in the domestic sector and on the research by Ofgem's Behavioural Insights Unit.

We understand that new communication rules are also under consideration as part of the government's implementation of the Electricity Directive. Ofgem should set out in its next consultation how these changes and those proposed in the strategic review will align.

2) Browsing - Do you agree with our proposal to strengthen the requirements to present a written version of the Principal Terms to customers?

Yes, we agree that a written version of the Principle Terms should be presented to customers. Confusing contracting information was highlighted by respondents in our communications research. ⁶

It is important that customers have a chance to review Principal Terms and that they are aware of what they are agreeing to. This is especially important for verbal contracts. We believe it is also important to provide the key terms through the preferred communication channel, whether that be on a call or face to face, as our research found that engagement with written communications in the microbusiness market is low for some consumers.⁶ The case study below demonstrates the lack of engagement with written communications:

Case study from communications research⁶

January - February 2020

Jo recently bought another premises with a single supplier providing the gas and electricity. Bills were paid by direct debit. The supplier sent bailiffs in because the direct debit only covered one of the fuels. Jo had to pay the arrears on the spot and additional charges. She had not engaged with written communications from the supplier because of her assumption that everything was covered by the existing direct debit payment.

3) Browsing - 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?

Yes, we agree with this proposal. In our 'Getting through to business report'⁶ we found that microbusinesses want more information about how their bill is made up, which would help assess the value of a broker's service. Transparency on broker charges, as highlighted in our report, 'Closing the protection gap'⁹, may encourage more engagement with the market to find a better deal.

However, we are aware from our 'Getting through to business report'⁶, that more information on bills could be confusing, and that some customers may not engage with it in any case. We believe that, as well as disclosing broker charges, it is important that suppliers make key information clear and accessible for consumers.

4) Browsing - Do you think that further prescription or guidance on the presentation and format of broker costs on contractual and billing documentation would be beneficial? If so, how should broker costs be presented?

Our research, 'Getting through to Business'⁶, found that microbusinesses vary in how they engage with information and their bills. Therefore, allowing for some flexibility in how this information is presented is welcomed. We think that using principles similar to those in the domestic sector, such as for SLC 31H and I, could achieve this outcome. We also recommend some specific improvements to the current drafting in response to question 6.

5) Browsing - What challenges do you think suppliers and brokers may face implementing these proposals?

There may be initial challenges for suppliers in ensuring that brokers are providing information on costs up front to customers. This is particularly important in complex arrangements, for instance where a broker is working through a sub-broker and the supplier does not have a direct relationship. During interviews for our Microbusiness Good Practice Guide,¹⁰ suppliers told us they have trouble auditing brokers currently, with some providing false information, such as misleading recordings of verbal contracts with customers

⁹ Citizens Advice (2019) [Closing the protection gap](#)

¹⁰ Citizens Advice (2020) [Supporting microbusiness customers Good Practice Guide](#)

and fraudulent Letters of Authority on the customers' behalf. Despite these difficulties, we think it is incumbent on suppliers to find contractual arrangements with brokers that meet the requirements. This may require brokers to strengthen their oversight of sub-brokers, which should ultimately improve consumer outcomes.

Other challenges could arise when the goals of the supplier and the broker are not aligned. For example, displaying broker costs could push customers to negotiate their contract directly with a supplier rather than via a broker. This isn't necessarily a problem but it could incentivise brokers to hide their commission, for example through "consultancy fees", or other services with a supplier. It is imperative that all fees are captured by the new rules and provided to customers to prevent this outcome.

6) Browsing - Do you have any comments on the associated draft supply licence conditions in Appendix 1 of this document?

The drafting in this area needs to be as clear as possible in order to avoid arrangements in which fees or commission are hidden from consumers. Where there are arrangements which are not specific to the customer, but a general relationship between the supplier and broker (for example, a flat rate retainer and/or payments for meeting certain sales levels) this should be clearly explained in the Principal Terms and expressed in a per contract cost on bills where possible.

Regardless, it is important that commissions must be clearly presented so microbusinesses understand what they are paying for. To ensure this outcome we think the drafting could be changed to require suppliers take steps that customers 'easily understand' these fees, reflecting language used in the 'informed contract choices' drafting.

Furthermore, it is important that the definition of the services Ofgem intends to include is clear. The proposed definition of 'brokers' is an organisation which 'provides information and/or advice to a Micro Business Customer about the licensee's Charges and/or other terms and conditions and whose payment for doing so is made or processed by the licensee'. This description covers services which go wider than traditional brokers, including price comparison sites, aggregator and autoswitcher services, where these are paid for by commission. As such, for the avoidance of confusion we think it is more appropriate to refer to 'commission-based intermediaries' or 'commission-based microbusiness TPIs'.

The proposals will not protect consumers using brokers who they pay directly. While we think these represent a lower risk currently, these models could become more prevalent in future and take over more of the supplier role. In the longer term, we think there is a case for direct regulation of intermediaries in both the domestic and non-domestic sectors, but recognise this will require action by government.¹¹ In the absence of such action, we think the framework of regulation set out by Ofgem in the non-domestic sphere could be a model to improve consumer protection for domestic consumers using TPIs, especially in relation to enabling access to redress.

7) Browsing - Do you think there are other changes which would better address the consumer harm that has been identified?

In our response to the 2019 call for evidence⁶ and our report, 'Closing the Protection Gap'⁹, we highlighted a need for a mandatory code of conduct for TPIs and brokers. While we understand that the measures proposed in this review seek to achieve the same outcomes as a code of conduct, there are a number of advantages that a code can offer which complement the new proposals.

A code would enable both microbusinesses and suppliers to be able to easily identify and avoid brokers that are not signed up to it. This would also avoid suppliers having to police the brokers they work with, which could be difficult, due to the number of brokers and sub-brokers in operation. This would reduce the risk of poorly behaving brokers moving from supplier to supplier.

Furthermore, in our report 'Stuck in the Middle'¹¹ we found that the majority of consumers believe that TPIs should be directly regulated. While this report was primarily focused on the domestic market, we believe that, in the longer term, authorisation of TPIs by Ofgem, similar to the insurance market, would increase protections for customers by ensuring that all TPIs were covered, including those where customers, rather than suppliers, pay the TPI. While we think these services are generally less common, and are lower risk, they may increase in future and take on more of the traditional supplier role.

The review has identified flaws with the CMA Price Transparency remedy in fostering better online comparison, a service the review (and our research) has also identified as being desirable for many customers. Some of the new rules on transparency of broker costs may further increase customer appetite for online alternatives. Better access to data for TPIs could make these services easier to

¹¹ Citizens Advice (2020) [Stuck in the Middle](#)

operate. However, none of the proposals will directly overcome some of the challenges that exist in relation to the CMA remedy, and directly facilitate growth of these services.

An ambitious proposal to tackle this issue would be for Ofgem to expand its powers to run trials (SLC 32A) - which have been successful in gaining important insights about domestic customers - to cover microbusiness customers. These could be used to design and test prompts that signpost customers to a simple online comparison process, or a telephone alternative. We tested the domestic engagement letters used in trials by Ofgem with participants in our communications research and found generally positive responses to the information⁶.

Our communications research also identified some 'quick wins' that could improve the browsing experience - for example, prompts on bills to switch and information about annual energy consumption to make the process easier⁶. While these steps are unlikely to be transformative, they could be helpful for some consumers, as they are in the domestic sphere.

8) Contracting - 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 agree with the need to introduce principles to improve broker conduct in the microbusiness market. Between October 2019 - September 2020 cases related to brokers and third party intermediaries, were the fifth most common issue for microbusinesses contacting our consumer service, accounting for 5% of microbusiness contacts. These cases often related to bad practice by brokers including misleading and misinforming customers. In some cases, microbusinesses were not aware they agreed a contract over the phone.

Whilst we support the need to introduce principles, we are concerned that some suppliers may use looser interpretations of the principles. This could attract less scrupulous brokers to those suppliers, resulting in poorer outcomes for those microbusiness customers. It will therefore be important to closely monitor broker performance and share best practice among brokers and suppliers. A code of conduct to demonstrate compliance could be complementary to the principle, as discussed in response to question 7.

Case study - EHU - Brokers and issues with verbal contracts

April 2019

Sally received a cold call from a broker who claimed there would be charges of £800 in emergency rates because she hadn't registered the new business with a supplier, and that she could get a cheaper rate. She felt pressured into agreeing a contract and the broker then went through a very fast verbal contract. On the recording, parts of the call were missing including where the broker told her about the emergency rates.

Sally found out that her current supplier rates were cheaper and wanted to cancel the contract. The supplier refused because they did not have a recording of the presale conversation. The EHU challenged this and her supplier released her from the contract, waiving a penalty fee of over £1,600. They also held her current rate for a month allowing time to arrange a transfer.

9) Contracting - 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?

We strongly support these requirements, which we think have had positive outcomes for domestic customers. We think there is a risk that the requirements could be open to interpretation by suppliers and brokers. As the rules on sales activity mirror those in the domestic market, Ofgem could share compliance or enforcement insight around cases with domestic supply where they have identified problems, in order to aid understanding on how the rules should be interpreted. While we see a low volume of face-to-face sales cases through our advice services, we agree that they should be covered for completeness.

10) Contracting - 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?

Yes, we strongly agree that a cooling-off period would help protect consumers during the contracting process. We also believe 14 days is a sufficient time

period. As mentioned above, we see a number of cases where customers do not realise they are entering into a contract, especially over the phone. This proposal would enable microbusinesses to consider a contract in their own time and make sure they are aware of what they are agreeing to. To ensure that this is done fairly, we would recommend that customers are clearly notified when the cooling-off period will start and the end.

It is also important to consider how this may affect customers during the switching process, to ensure that the customer journey is not cumbersome. As part of this, we expect that microbusiness customers should get the same cooling-off rights as domestic customers under the faster switching arrangements. These mean that cooling-off is post-switch, and allow customers that invoke their right to cool-off to return to their previous supplier on equivalent terms or to switch to a new supplier.

Below is a case study from the consumer service of a customer that was facing detriment due to poor broker behaviour and would have benefitted from a cooling-off period.

Case study - consumer service - Brokers and issues with verbal contracts

June 2020

Tariq took over a shop 2 years ago and received lots of calls from brokers. One claimed he had agreed to a contract. The supplier played Tariq a copy of the call, which Tariq did not think included him agreeing, but he did not have time to dispute it, so he stayed in the contract and agreed to the electricity supply. One year later he received a letter from his supplier telling him he had agreed to a gas contract as well, but Tariq disputed this.

He sent the supplier a copy of his signature which the supplier agreed was totally different and agreed to cancel the contract. The supplier then decided to not end the contract after hearing a copy of a phone call, which Tariq has not been able to get access to.

11) Contracting - What challenges do you think suppliers and brokers may face implementing these proposals?

A potential challenge for suppliers and brokers with the broker conduct principle will be defining what is 'appropriate' and what isn't. As discussed, this could create a system where brokers who are prone to poor behaviour go to the supplier with the lowest standards. Ofgem will therefore need to develop appropriate monitoring to ensure this activity does not happen.

Under the faster switching arrangements, customers could potentially switch multiple times during the 14 day period. This could incentivise brokers to contact consumers frequently during this period, which may lead to customers feeling hassled and pressured - although it could also lead to customers being offered a better deal. The new sales and marketing principles will be important to avoid this outcome, and to prevent customers feeling hassled.

12) Contracting - Do you have any comments on the associated draft supply licence conditions in Appendix 1 of this document?

We would suggest adding that the microbusiness must confirm any request to cool-off. This is to mitigate the risk that an unscrupulous broker could cool-off on a customer's behalf, without their consent.

13) Contracting - Do you think there are other changes which would better address the consumer harm that has been identified?

As discussed in our answer to question 7 we believe that a code of practice could be an effective way of improving broker standards and to act as an assurance mechanism for suppliers. This would place less burden on the supplier to police its brokers. Below is a case study from the consumer service, of a microbusiness customer who felt pressured into a contract by a broker.

Case studies - consumer service - Broker sales tactics

March 2020

Pete claims he was mis-sold an energy contract by a broker and asked for the recording. However, the recording was only for the contract part of the conversation. This does not include the presale conversation where he was told this was the "best deal going". Pete disputes the prices and believes this was misrepresented.

June 2020

Ewan owns a hotel. Last year, while he was unwell, his broker put him under a lot of pressure to extend his contract. Ewan noticed that the prices are far higher than before and the contract is for two years. Ewan's supplier has said that he cannot leave the contract as he allowed the broker to act on his behalf, and signed a document allowing the broker to do so. Ewan cannot complain to the broker as they have now been made insolvent.

14) Dialogue - 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?

Yes, we strongly agree that a mandated ADR scheme could provide protection for microbusiness consumers. For this measure to have an impact, consumers must be aware of their rights. As outlined in our 'Stuck in the Middle'¹¹ report, we believe that there should be one ADR provider in order to avoid confusion. The Energy Ombudsman taking on this role would have the added benefit of its expertise in energy, and ability to manage cases where there are issues related to both the broker and the supplier. We understand that the Energy Ombudsman is planning to run a pilot, which we believe will be a valuable step in understanding how a broker ADR scheme will work in practice.

While we support a single ADR provider in energy due to the consumer benefits this brings, we have previously set out our concerns that there should be a better framework for managing costs and the quality of service by the monopoly ADR provider¹². This could include periodically re-tendering the service, or some form of price control by Ofgem.

15) Dialogue - What challenges do you think suppliers and brokers may face implementing our proposal regarding dispute resolution?

One challenge will be when there are cases brought to the ADR where it is not clear, to the consumer or to the ADR, whether the complaint is against the supplier or the broker. This will be especially challenging if there is a separate ADR scheme to the one for energy suppliers.

In addition, if there is no open information about how many cases are being taken against different brokers, it will be challenging for suppliers to identify those brokers that are less likely to be acting in accordance with the new rules. This information should be made openly available to suppliers and consumers.

We have remaining concerns over the appropriate customer journey and how long it will take to resolve a complaint, but we understand that the Energy Ombudsman will run a pilot scheme which should identify any potential issues.

¹² Citizens Advice (2018) [Response to open letter on Utilities ADR's application for certification as an ADR provider](#)

It is important that consumers are able to get advice in order to understand their rights under the new rules, ahead of taking a complaint to their broker or escalating this to the Ombudsman. As before, we think requirements for appropriate signposting to Citizens Advice by suppliers is vital to achieve this.

16) Dialogue - Do you have any comments on the associated draft supply licence conditions in Appendix 1 of this document?

We would suggest ensuring that details of how to contact Citizens Advice is provided on each bill, and information about ADR is provided at the appropriate point (eg at the start of a contract, and when a complaint about the broker is discussed with the supplier). This is in line with the framework for domestic customers set out in the domestic customer communications rules, and should ensure an appropriate customer journey to help direct microbusinesses to the ADR when appropriate.

The EHU supports vulnerable microbusiness consumers with complaints¹³, and is able to intercede on their behalf with suppliers. This is an important part of the complaints handling framework, and the solutions they reach for customers can replace the need for ADR.

It is important that there is clarity about how the EHU should support consumers with complaints about brokers under the proposed new rules, to protect the experience of the EHU's users and provide them with appropriate support. This should include considering whether suppliers should be held responsible for resolving issues caused by the broker (in line with their obligations under the new broker conduct principle and other rules), or whether brokers themselves should be required (via licence obligations on suppliers) to cooperate with the EHU in resolving these issues.

17) Dialogue - Do you think there are other changes which would better address the consumer harm that has been identified?

As we highlighted in our response to the call for evidence⁷, and in the data presented above, debt and disconnection is the most frequent issue that the EHU sees from microbusinesses.

¹³ Under the Consumers Estate Agents and Redress Act 2007 that sets out the role of the EHU< a person is considered vulnerable if it is not reasonable to expect that person to pursue the complaint themselves.

We recognise that some of the proposals will reduce the risk of customers getting into debt, for example by avoiding high broker commission. However, we would have liked to see measures which sought to address debt more specifically. We think that the economic situation caused by the COVID-19 pandemic and the likely increased microbusiness debt as a result, means this is even more urgent. The pandemic also means that the information provided to Ofgem on debt during its call for inputs in 2019 does not represent the current experience of consumers and suppliers.

Microbusinesses who come to Citizens Advice with debt issues are usually quite far along in the process, where issues become more complicated to resolve. These microbusinesses would often have benefitted from engaging with us sooner. These issues can be exacerbated by a lack of engagement in communication with the suppliers.

Our 'Getting through to business' research⁶ found that customers did not realise that they could talk through options with their energy supplier, such as repayment plans and payment holidays, and that better signposting to Citizens Advice and Business Debtline on debt communications could help engage customers in the process of dealing with their debt issues.

Alongside better signposting, there are other steps that Ofgem could make in this area. This could include more guidance for suppliers around what 'treating customers fairly' means in relation to debt and disconnections, particularly during the pandemic. It could also change rules to ensure that fees related to debt and disconnection, like disconnection and reconnection fees, are cost reflective. It could also work with suppliers to consider how smart metering can support microbusinesses struggling to pay their bills, and explore what role prepayment could play to enable companies in poor financial situations the ability to continue to access energy. We're aware that expanding payment methods for microbusinesses is one area under consideration as part of the Electricity Directive.

18) Exiting - 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 agree with the proposals that customers should not be penalised for failing to give notice, and as a result go onto deemed contract rates. Switching should

be as easy as possible for customers. Below is a case study which shows the difficulty of switching for customers with a notification requirement.

Case study - consumer service - Issues with blocked transfers

April 2020

Alan has attempted to switch energy supplier but says his existing supplier has blocked the transfer. His contract ended on 31 March 2020 and he tried to switch supplier the following day. His existing supplier has stated they blocked the transfer as he did not give them 30 days notice of a transfer.

One concern we have is there could be a risk of unauthorised switches being actioned by a broker in order to switch a customer. We currently see cases where brokers have falsified Letters of Authority to sign up for a contract without the customer's consent, there is an example case study below.

Case study - consumer service - Broker signing contract without consent

August 2020

Lucy works for a church and received a number of cold calls by brokers to switch her energy contract. Without a valid letter of authority the church was signed up for a 3 year energy contract, which she did not consent to.

Therefore we believe this proposal will help rectify the issues raised in the cases presented above.

19) Exiting - 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 agree in principle with the proposal to extend contract rates for up to 30 days of a blocked switch. Deemed rates can be extremely high and customers should not be financially penalised for a blocked switch. Below is an example case that we received to the consumer service.

Case study - consumer service - Issues with blocked transfer

August 2020

Dean took over a microbusiness and tried to switch supplier. The supplier blocked the switch and has now moved him onto high out of contract rates.

We think microbusinesses should be notified when the 30 days is coming to an end so they can act before rolling on to out of contract rates. Furthermore, if a further switch request is blocked during the period this should restart the 30 day window.

We have heard that this may not apply to customers whose switch has been blocked due to debt issues. Suppliers have expressed that this would be appropriate as the microbusiness will have been supported through the debt process, and that it would be unfair to keep offering contract rates when support has already been offered. We have concerns about this, as we cannot be sure of the details of what support was offered, and whether it was appropriate to the circumstances. We are therefore worried that this could be used as an excuse to put customers on high out of contract rates, which will further exacerbate their situation. Therefore, Ofgem should clarify that this protection would be in place for all blocked switches.

20) Exiting - What challenges do you think suppliers and brokers may face implementing our proposals regarding improving the switching experience?

We are not aware of any challenges that suppliers and brokers may face. We agree with the proposal and believe it will mitigate detriment to consumers from rolling on to high deemed contract rates.

21) Exiting - Do you have any comments on the associated draft supply licence conditions in Appendix 1 of this document?

We have no further comments beyond what is outlined above.

22) Exiting - Do you think there are other changes which would better address the consumer harm that has been identified?

We believe that rules around the final bill timeline, and an extension of the domestic Guaranteed Standard on credit balance refunds, would help enable

quicker return of account credit and security deposits, which may be a barrier to switching.

Below is an example where a microbusiness has been waiting for considerable time for a credit refund.

Case study - consumer service - Delay to returning security deposit

July 2020

Chiara entered a 3 year contract with her supplier and paid a £500 security deposit. She was told this would be refunded at the end of her contract. Her contract has now come to an end and she has been contacting her supplier requesting the refund. Months have passed and Chiara has still not received her refund despite contacting her supplier.

The impact of these delays may be more keenly felt by businesses during COVID-19, and act as a larger barrier to switching. Once faster switching is implemented alongside smart metering, it is imperative that the end-to-end switching experience - including final billing and credit balance refunds - is also shorter and less complex to provide a better consumer experience throughout.

Additional issues not covered in review

As we mentioned in the summary, there are a number of areas we have previously identified as key areas of detriment for microbusinesses that are not addressed in the review. These are regarding debt and disconnection, microbusiness vulnerability and SoLR protections.

Disconnection of mixed-use premises

Some microbusinesses have domestic properties attached to their business premises, with both sharing a single meter. The lack of protections against disconnection of non-domestic premises means that people living in these homes are at greater risk of being disconnected than if they were on a domestic energy contract. This is exacerbated by the lack of requirements for non-domestic suppliers to consider vulnerability.

We think that anyone who lives in a mixed-use premises should receive the same protection from disconnection, regardless of whether they are on a domestic or microbusiness contract. This could mean offering prepayment as an alternative payment method and agreeing fair repayment plans. Smart metering may also offer opportunities for suppliers to provide sufficient energy for the domestic component.

Case study - EHU - Disconnection

November - January 2019

The consumer ran a pub and lived at the premises with his 15 year old daughter. He signed up his supplier through a broker. He built up a debt of £7,000 and the electricity supply had been disconnected. He disputed the electricity usage as it seemed very high. The supplier said they had not received any dispute over the usage prior to disconnection and that the tariff rates were as agreed. It is unclear whether the consumer had raised these concerns with the broker rather than the supplier directly. The supplier did then agree to reconnect.

Vulnerability

In the domestic sector there are requirements on suppliers to identify potential vulnerabilities and treat those customers differently. This is not the case in the microbusiness sector, and vulnerability remains a topic which has not been well explored. Research has found that people who run small businesses can experience vulnerable circumstances, such as financial difficulties, poor mental and physical health, caring responsibilities and other vulnerabilities.¹⁴ Research with Business Debtline clients found that 67% of the clients described themselves as being in a vulnerable situation when they contacted Business Debtline.¹⁵

As highlighted in our response to the call for evidence⁶, we believe that these customers are at greatest risk of being mis-sold to or getting into debt, and are likely to face higher levels of detriment. Some microbusinesses experiencing these kinds of situations would receive greater support under a domestic licence.

We think that work should be done to better understand vulnerability in the non-domestic sector and how to support vulnerable microbusinesses. This is likely to become more urgent given the impacts of COVID-19, which will increase the pressure on small businesses and impact the mental health of people running these businesses. The case studies below are indicative of the type of cases we see where vulnerability impacting consumers.

¹⁴ Lending Standards Board & Money Advice Trust (2018) [Supporting Business Customers in Vulnerable Customers](#)

¹⁵ Money Advice Trust (2018) [Taking Care of Business](#)

Case study - consumer service - Debt and vulnerability

August 2020

Rhys owns a pub and lives above it with his family, including his son who has learning difficulties. He has been paying back a £4,000 energy debt with an arranged payment plan with the supplier. Rhys has closed the pub due to illness and licence issues, so currently has no income.

Rhys told the supplier that he was unable to pay and received a text message threatening a warrant to recover the money. Someone came to his property and requested the remainder of the payment. Rhys can afford to pay again in 2 weeks once business is open and wants to arrange a new repayment plan.

Case study - EHU - Vulnerable microbusiness at risk of disconnection with domestic property attached

August - September 2019

The consumer suffered from severe depression. She ran a cake decorating business and lived in the flat upstairs from the business. A balance of £20,000 had accrued between the gas and electricity accounts over a number of years due to affordability issues and she was struggling to cope. The gas had already been disconnected and she had no heating or hot water as the flat was supplied by the same meter. A court date for warrant was pending for the electricity supply.

After she contacted the EHU, the supplier agreed to hold off on the pending warrant for electricity and she managed to apply for a loan which would clear the balance for both fuels if successful.

Case study - EHU - Vulnerable microbusiness blocked switch

November 2019 - January 2020

The consumer took over the tenancy of a pub. She had tried to switch electricity supplier but this had been objected to and the billing was on deemed rates. She lived at the premises and had fibromyalgia and the issue was causing her stress.

The supplier explained the account had still been in the previous tenant's name at the time of the transfer request and it had needed additional approval due to a balance outstanding on the previous tenant's account. The change of ownership was subsequently actioned and the supply transferred.

Supplier of Last Resort protections

In the domestic sector, if an energy supplier fails a customers' account credit is protected by the new supplier. In the non-domestic sector this is not the case, although in a minority of cases they have been provided voluntarily (for example, in the SoLR with Extra Energy, ScottishPower voluntarily agreed to protect microbusiness account credits⁷).

The added financial pressure on suppliers due to COVID-19 means we would not expect suppliers taking on customers of failed suppliers to repeat this type of action. Meanwhile, we expect COVID-19 to increase the risk of supplier failures, and the financial pressure on the microbusinesses that are affected.

More than ever, the loss of credit balances and security deposits could be the last straw for struggling small businesses. Joining the queue of creditors of the failed supplier means waiting upwards of 12 months to receive money back, and our research has shown that there is generally only around 10p in every pound is likely to be returned.¹⁶

We continue to believe that these account credits should be protected in SoLR processes for microbusiness customers, as they are in the domestic sector. This support should be paid by suppliers based on non-domestic accounts to avoid domestic customers paying for this support.

Case study - consumer service - Supplier failure unable to obtain credit owed

April 2020

Natalie owns a microbusiness and her supplier failed and entered the Supplier of Last Resort process. She sold business and gave final readings to the new supplier, and found that she was over £5,000 in credit. Her new supplier agreed the reads were wrong and that they should be in credit but has been unable to get her refund from the new supplier, because the credit was with her old supplier.

Microbusinesses could also be given more tools to mitigate the risks of supplier failure. The new changes to switching should make it easier to switch away, for example if a supplier is offering poor service or there is public information available that suggests they are at risk of failure. However, for customers who are unable to leave, we think they should be able to limit the risk by having a right to request credit balance refunds (similar to SLC 27.16 for domestic customers). In our recent response to Ofgem's supplier licensing review, we also

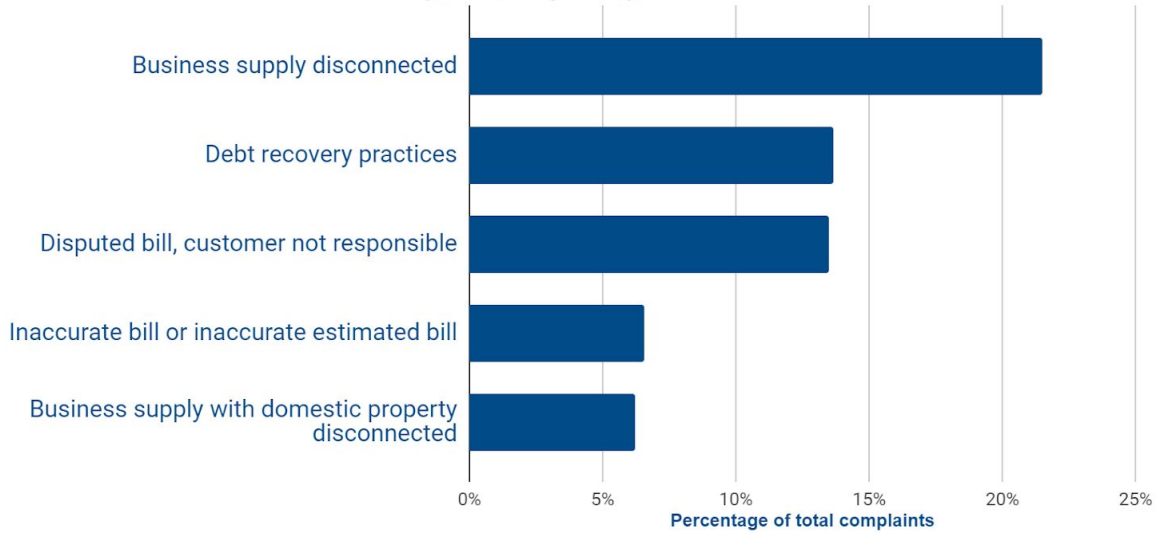
¹⁶ Citizens Advice (2019) [Picking up the pieces](#)

highlighted that we think the new monitoring powers should be used to ensure prudent management of microbusiness credit balances.¹⁷

¹⁷ Citizens Advice (2020) [Citizens Advice Response to Ofgem's Statutory Consultation – Supplier Licensing Review: Ongoing requirements and exit arrangements](#)

Annex

**Top 5 non-domestic complaints categories Oct 2019- Sept 2020
(Extra Help Unit)**



**Top 5 non-domestic complaints categories Oct 2019- Sept 2020
(consumer service)**



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