

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

July 2021



Summary

Citizens Advice provides free, independent, confidential and impartial advice to everyone on their rights and responsibilities. We welcome the opportunity to respond to this consultation as part of our statutory role representing microbusiness energy consumers.

In line with our response to Ofgem's initial consultation¹ we are pleased to see that many of the proposals outlined are being taken forward. We are particularly supportive of proposals in relation to:

- **Broker cost transparency** - We agree that microbusinesses should be aware of the commission brokers are making over the life of the contract.
- **Alternative Dispute Resolution (ADR)** - We support the ADR scheme to allow microbusinesses to access redress, and tackle bad practice.
- **Awareness** - We're pleased to be working with Ofgem to improve awareness among microbusinesses about their rights, although we believe this outcome would be best supported by a requirement for suppliers to signpost microbusinesses to independent advice on bills and other communications.

We strongly support the principle of introducing a 14 day cooling-off period for all microbusinesses, which will give consumers the flexibility to change their mind and protect them from mis-selling or aggressive tactics. However, we have significant concerns about the detail of the proposals, particularly the cut-off at 28 days before the supply start date. This will mean that potentially a majority of switches have a cooling-off period shorter than 14 days, or no cooling-off period at all, creating significant confusion for consumers.

This could also contradict the intention of Ofgem's switching programme, which is seeking to reduce the switching time, by forcing consumers to choose between a faster switch and giving up their cooling-off rights.

This flawed approach is stacked against consumers, and we cannot support the proposal in its current form. In this response we suggest some immediate improvements Ofgem could make to its proposals which make use of the planned functionality of the new switching arrangements. These should enable many more consumers to benefit from a cooling-off period, and we don't expect them to incur significant system costs for suppliers.

¹ Citizens Advice (2020) [Citizens Advice response to Ofgem's Microbusiness Strategic Review Policy Consultation](#)

Even with these improvements, it will still be the case that microbusiness and domestic cooling-off rights operate differently. Our research has shown that microbusiness consumers often assume they have the same rights as domestic consumers, so this difference is likely to be confusing for consumers.

In the longer term we think the cooling-off process should be aligned with the domestic cooling-off rights, so that all microbusinesses that switch receive a full 14 day cooling-off period. In its decision Ofgem should set out clear next steps for how and when it will evaluate the costs of benefits of this reform, once the new switching arrangements are implemented.

We are also disappointed that two proposals have been dropped that we think would have had benefits for microbusinesses:

- **Broker conduct principle** - We were supportive of suppliers having to take greater responsibility for the conduct of the brokers they work with. We recognise the commitment by BEIS to issue a call for evidence on third parties intermediaries, although any changes flowing from this may require legislation, and remain a long way off.
- **30-day contract extensions following blocked switches** - We think Ofgem should proceed with this proposal to prevent out of contract rates applying in cases where it transpires there is not a valid reason to block the switch.

There were a number of important areas that we have highlighted from the inception of Ofgem's review, where no action has been taken.^{2,3} This is a missed opportunity. We think the risks to consumers in these areas have grown, as a result of the pandemic:

- **Debt and disconnection** - These are some of the most common issues that microbusinesses contact Citizens Advice about. There is a wide range of supplier practice, with some consumers receiving no support from their supplier. The review should have developed proposals to provide more support for microbusinesses, like repayment plans, where appropriate.
- **Supplier of Last Resort** - Currently, if microbusiness suppliers fail, consumers risk losing any credit balance and security deposit, through no fault of their own. We would still like to see Ofgem take steps to ensure appropriate credit balance management by suppliers, and protect customer credit balances if suppliers fail.

² Citizens Advice (2019) [Citizens Advice response to Ofgem's strategic review of the microbusiness retail market](#)

³ Citizens Advice (2020) [Citizens Advice response to Ofgem's Microbusiness Strategic Review Policy Consultation](#)

- **Vulnerability** - We continue to see cases of disconnection for people living in mixed-use premises on non-domestic contracts, and support changes to tackle this detriment. More broadly, we also see cases where, had a microbusiness consumer been on a domestic supply contract, they would have been classed as being in vulnerable circumstances. These consumers are at greater risk of debt and mis-selling.

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Response

1) Do you agree that 1 January 2022 represents an achievable start date for implementing a 14 day cooling-off period for microbusiness consumers?

Yes, we agree that 1 January 2022 is an achievable start date for implementing the cooling-off period. However, we have some serious concerns about the details of this proposal, which we set out in our response to Question 3.

2) Do you agree that 1 January 2022 represents an achievable start date for fully implementing both the proposed supply licence obligation and the associated scheme needed to introduce independent dispute resolution for microbusinesses in dispute with a broker?

Yes, we agree that 1 January 2022 is an achievable, if challenging, start date for independent dispute resolution for microbusiness brokers, and it may need to be kept under review. This is with the understanding that the provider of this service will need to ensure the relevant systems and sufficient guidance is in place so that brokers are aware of, and prepared to join the system ready for the launch date. This will require accessing brokers in the energy market to ensure they are aware of the requirements, which could be time-consuming. Suppliers will therefore need to take steps to communicate the changes to the brokers they work with and ensure their compliance with the scheme.

More widely in relation to redress, it is our preference that there should be a single redress provider, and that this should be the same provider as wider energy redress. This should make it easier to communicate the scheme to consumers, so they can easily find out where to complain. It should also ensure that cases in which both the supplier and broker bear some responsibility can be managed seamlessly.

From our experience in other sectors, competition between ADR providers can be a race to the bottom in terms of consumer outcomes, with incentives for companies to simply choose a provider based on lowest cost. To manage costs while maintaining the benefits of having a single provider, we have previously called for the ADR provider role to be subject to periodic competitive tenders.⁴

⁴ Citizens Advice (2018) [Response to open letter on Utilities ADR's application for certification as an ADR provider](#)

3) Do you have any other comments on our proposals?

Cooling-off period

While we are supportive of the proposal to introduce a cooling-off period for microbusinesses, we note that the approach being taken is significantly different from the approach for domestic customers, and could potentially mean that a majority of microbusiness consumers will not benefit from a full 14 day cooling-off period.

This arises because Ofgem has proposed that the cancellation period automatically ends at 28 calendar days before the energy supply is due to begin. This means that if a contract is entered into closer to the energy supply date (i.e. 30 days before), the cooling-off period could be significantly reduced (i.e. 2 days in this case), and if there are fewer than 28 days until the switch, there will be no cooling-off period at all.

This is wholly unsatisfactory and, based on Ofgem's own analysis and wider aims for switching, will deliver poor consumer outcomes. We have 3 key concerns:

1. *The cooling-off period is confusing*

The variation in timelines will be confusing for consumers and, as an advice provider, difficult to explain. The risk of confusion is made worse because the operation of the cooling-off period will be significantly different to the operation of the domestic energy cooling-off period, and to wider cooling-off rights.⁵ Our research has shown that some microbusinesses already mistakenly believe they have the same rights as a domestic consumer.⁶

2. *The cooling-off period leaves many with limited, or no, protection*

Ofgem's analysis of data from shows that in 2019 just over half of gas and electricity contracts were entered into with a supplier more than 28 days in advance of the Supply Start Date. This means almost half of switches entered into with suppliers would not benefit from a cooling-off period, with a further proportion of switches entered between 41 and 28 days in advance having a cooling-off period shorter than 14 days. Energy is often a relatively low priority among the many other challenges of running a microbusiness, and so a short cooling-off period of only a few days is

⁵Citizens Advice webpage: [Cancelling a service you've arranged](#)

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

unlikely to be long enough to consider documents like the Principal Terms and decide to cancel.

In the consultation Ofgem also relies on data from a single broker that shows switches were also across longer timelines. We're concerned that a wider range of data has not been collected to understand timescales for broker switches, and believe it is insufficient to rely on a single statement from a broker to support this analysis.

3. The cooling-off period contradicts the aims of faster switching

It is the aim of Ofgem's multi-million pound switching programme to reduce switching times. If successful, this will further reduce the proportion of microbusiness switches to which the cooling-off period applies, until potentially only a minority of switches get any cooling-off period at all. We're concerned that Ofgem's analysis of switching times is wholly based on current switching behaviours, rather than those we can expect under the new arrangements.

There is also a risk that designing cooling-off rights in this way directly counteracts the aim of faster switching, by making consumers give up their cooling-off rights in order to switch more quickly. When providing advice to consumers we may need to warn them of the risks related to choosing a faster switch, which complicates messaging about the new arrangements.

We understand that the reason for Ofgem's new proposals is to reduce the interaction between the switching programme and the new cooling-off rights, in order to minimise the risk of delays to the programme. We support the timely delivery of the programme, but think Ofgem could modify its proposals to enable more consumers to cool-off, making use of the design of the new arrangements.

The current framework assumes that suppliers will submit switches at the first opportunity within the 28 day window ahead of the Supply Start Date, and that once submitted these requests will not be cancelled. This does not make use of the capability of the switching arrangements, which enables suppliers to submit a microbusiness switch at any point up to 2 working days before the start date. We note that Ofgem has proposed a regulatory backstop of 5 working days as a timeframe for suppliers to deliver a reliable switch, with delays beyond this point only allowed with the customer's consent.⁷ We think this is the maximum appropriate cut off point for the cooling-off period. We think that any

⁷ Ofgem (2020) [Switching Programme and Retail Code Consolidation: Proposed licence modifications](#)

administrative changes by suppliers to manage this would be minimal, and proportionate given the benefit of many more microbusiness switches being eligible for a cooling-off period.

We also understand that switches that have been submitted can be withdrawn by the gaining supplier at any time up until 5pm the day before the Supply Start Date.⁸ If this functionality was used, the cooling-off period could run even closer to the Supply Start Date, with the gaining supplier withdrawing the switch if the consumer cooled-off. The cut off could be at a point in advance of the withdrawal deadline that provides sufficient administrative time for the supplier to receive a cool-off request and action the withdrawal of the switch.

In correspondence with Ofgem we understand that increased use of withdrawals would require more system changes by suppliers. This change results in relatively smaller improvement to either eligibility for, or length of, the cooling-off period, as compared to delaying the switch submission. As such, we think this modification could be delayed to a later date, after the new switching arrangements have been implemented.

However, even with these improvements, consumers who fully benefit from a faster switch would still not benefit from a cooling-off period, and many would still have a cooling-off period which is shorter than 14 days. The problems of confusion due to non-alignment with domestic cooling-off rights also persist.

Our longer term preference therefore is for a cooling-off period similar to that which is available to domestic consumers through the new switching arrangements, ensuring a full 14 day cooling-off period regardless of when the switch is completed.

We understand that Ofgem will be monitoring the effectiveness of its changes in general once they are implemented. However, we think a clearer plan for next steps is needed to avoid this issue being kicked into the long grass. Ofgem should commit to the publication of a full impact assessment of the costs of system changes and consumer benefits of aligning domestic and microbusiness cooling-off periods. This should be completed in late 2022, once the new switching arrangements have been delivered. Both the monitoring and delivery of the impact assessment could be supported by the Retail Energy Code. We will monitor consumer experience of the new rules and share our insights with Ofgem and other stakeholders.

In order to make use of the functionality within the switching system to withdraw switches or to cool-off after the switch has been completed, it would be necessary for the losing supplier to be aware of the consumer's decision to

⁸ Ofgem (2017) [Switching programme operational choreography](#)

switch during the cooling-off period. This would enable suppliers to conduct 'winback' activity, whereby they offer consumers who are leaving a better deal in order that they might cancel during the cooling-off period. In the consultation Ofgem suggests that is a negative outcome that will be minimised by the changes they have made to the cooling-off period.

In our previous engagement on winback activity, Ofgem has been focused on ensuring that companies avoid being a nuisance or using aggressive or misleading tactics, but has generally argued that it can also be positive for consumers who may be offered a better deal as a result. We'd welcome clarity on Ofgem's current view of the benefits and risks of winback activity, including how this would factor into any decisions to adjust the microbusiness cooling-off period in future.

Dispute resolution

We're concerned that there will continue to be a requirement to inform microbusiness consumers about their rights to access dispute resolution on all bills, without any similar requirement to provide information about free, independent advice that is available from the consumer service helpline.

In 2018, 50% of contacts to the Energy Ombudsman were about complaints which were outside its terms of reference.⁹ A significant number of these are due to consumers contacting the Ombudsman too early, in part because details of the Ombudsman service are readily available on energy bills.

At this stage, these consumers would benefit more from access to independent advice from the consumer service helpline to help them solve their complaint with their supplier. In cases where there is vulnerability or the problem is particularly complex, this also enables them to access the Extra Help Unit.

Ofgem has recognised this risk in its reforms to customer communication rules in 2019. These require suppliers to inform their customers about the Ombudsman service 'when appropriate to the circumstances', whereas information about advice must be provided in all circumstances. This enables suppliers to provide information about redress when most useful, such as in sign up materials for later reference, or at the point that a complaint is made.

We recognise that a similar principles-based framework for communications does not exist for microbusiness suppliers. However, we think that providing suitable signposting to statutory advice services on bills, alongside the information about redress, will at least ensure consumers have somewhere else

⁹ Ombudsman Services (2019) [Energy Sector Report 2018](#)

to turn, and are less likely to contact the redress service before it is able to help resolve their complaint. It will also help support Ofgem's goal of raising awareness about consumer rights among microbusinesses.

Awareness raising

We are pleased to be working with Ofgem to improve awareness among microbusinesses about their rights, and to provide them with improved guidance and advice. However, as mentioned in our last response, we think this outcome would be best supported by a requirement for suppliers to signpost microbusiness consumers to independent advice on bills and other communications.

In our report 'Getting through to business' we found that microbusinesses were unaware of their rights, or of impartial advice services such as Citizens Advice.¹⁰ We generally receive lower levels of contacts from microbusinesses to our consumer service, compared to those from the domestic sector. Alongside dissemination by consumer groups and others, we think Ofgem should also utilise customer communications from suppliers as an effective channel for disseminating information.

4) Do you have any comments on the draft supply licence conditions at Appendix 1 in this document?

Broker definition

As mentioned in our last response, the proposals will not protect microbusiness consumers using brokers who they pay directly, and advice and information provided to microbusinesses will need to reflect this. In addition, there is potential for future service provider models beyond those of a 'traditional' broker model (such as aggregator and auto-switcher services) to become more prevalent and take over more of the supplier role. These services remain outside the requirements for consumer protections as currently proposed.

¹⁰ Citizens Advice (2020) [Getting through to business](#)

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