Energy UK Response: Reforming Competition & Consumer Policy – Improving ADR Proposals

1st October 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 response to BEIS' Reforming Competition & Consumer Policy consultation. In our response, our concerns, asks and recommendations primarily focus on two areas: 1) the Government's proposals to reform Alternative Dispute Resolution (ADR) services and how these changes may impact the energy retail market; and 2) the Government's plans to introduce restrictions on the way subscription contracts are marketed and sold, particularly around the proposals for long-term inactive contracts. We would be happy to discuss any of the points made in further detail with BEIS or any other interested party if this is considered to be beneficial.

EXECUTIVE SUMMARY

Energy UK welcomes BEIS' commitment to reforming ADR services by improving consumer awareness of and signposting to ADR, through increasing the quality and oversight of ADR schemes, and by improving the take-up of ADR by businesses in non-regulated markets.

We are supportive of the Government's proposals to make business participation in ADR mandatory in sectors where consumer detriment is high. Indeed, to reduce malpractice, as well as the risk to consumers, we call for BEIS to extend regulation to encompass Third-Party Intermediaries (TPIs) operating within the energy sector, and welcome the opportunity to voice this ask in our response to *BEIS' Call for Evidence: Third-Party Intermediaries in the Retail Energy Market*.

Equally, we agree with the need to improve the transparency of ADR providers. To help Government achieve this aim, we would recommend that, where relevant, BEIS coordinates with the Energy Ombudsman (OS:E), Ofgem and Energy UK in helping to bring a greater degree of transparency to the Key Performance Indictors (KPIs) which the OS:E currently works towards.

However, whilst we are supportive of a number of Government's proposals, our overarching concern is that the proposals to speed-up consumer access to ADR could adversely impact the customer experience if introduced in the retail energy market. We note that it is also important for BEIS to consider

the proposed introduction of a broker ADR scheme via Ofgem's Strategic Review of the Microbusiness Sector. This is likely to be administered by the OS:E and increases in case load volumes, as a result of either, or both, changes to the rules around redress or its expansion to TPIs could lead to resourcing challenges for both suppliers and the OS:E, amongst other uncertainties.

Additionally, the complexity of complaints cases within energy, and the subsequent industry processes that must be followed, mean that many complaints cases simply cannot be expedited, without significant consequence. Whilst BEIS acknowledges this, we still question the practicalities and complexities of the Government's consideration as to whether exceptions could or should be made to allow more time to resolve particularly complex cases, and would ask that BEIS provides clarity about how this consideration would work in practice. For these reasons, we do not support the halving of the 8-week threshold, as we do not believe it will produce the benefits set out in the consultation.

We would also argue that the Government's proposals to introduce restrictions on the way subscription contracts are marketed and sold are inappropriate for the energy sector, and believe it is crucial that energy contracts for electricity and gas are specifically exempt from any new rules to avoid unnecessary and detrimental consequence to consumers.

ALTERNATIVE DISPUTE RESOLUTION

Improving Consumer Awareness and Signposting

Energy UK commends the Government's commitment to improve consumer awareness of and signposting to ADR by working with established advice providers to understand how it can help to improve consumers' understanding of their rights, and find and access relevant advice and redress, particularly for vulnerable consumers. Poor signposting to, and limited understanding of, ADR services and providers can, of course, dissuade customers from seeking private redress and enforcing their rights as consumers. We, therefore, support BEIS' aim of helping ADR to reach its full potential.

Speeding-up Access to ADR

While it seems a fair assumption that some complaints might be resolved more quickly if the 8-week threshold were halved, there are a large number of complaints cases that cannot be expedited. There are valid reasons for complaints cases in energy to be open for as long as they are, whether that is down to the complexities of the cases or the need for reconciliation runs and/or industry processes to be followed for issues to be resolved. A shortened timeframe would not give energy businesses enough time to properly investigate and resolve complicated complaints. In this context, we believe that it is important to consider some of the wider impacts that might arise from reducing the 8-week rule.

An earlier referral point, for example, could result in the OS:E becoming involved in more complaints where the issue is still in the process of being resolved between customer and supplier. We are concerned that the adverse impact of putting the role of the OS:E too early in the process could be that complex complaints are effectively outsourced to the Ombudsman. This would result in the OS:E's resource being diverted towards dealing with complaints that are in progress, rather than its traditional remit as a final referee between the complainant and the body being complained about.

Energy UK strongly believes suppliers' internal complaints procedure need to have been exhausted, prior to Ombudsman involvement. Given the time required to open and investigate an Ombudsman case, a greater volume of Ombudsman complaints would also be expected to increase the average length of the customer complaint journey in the energy sector

The speed of resolution once a complaint reaches the OS:E will also be influential in determining how far any change to the 8-week rule delivers a quicker and easier complaint journey. The customer benefit would only be realised if complaints referred to the OS:E at an earlier point were to be consistently resolved in a timeframe that meets customer expectations. Customers signposted to the OS:E at a point at which their complaint was close to resolution with their supplier could otherwise be frustrated to have found themselves steered towards a process that extends the length of their complaint and increases the effort required of them to reach a resolution.

In contrast to other sectors, such as telecommunications, there is currently only a single Ombudsman operating in the energy sector, which would need to pick-up any increase in demand resulting from

reform. Whilst the OS:E may, at present, have sufficient resource and capacity to deal with the current volume of complaints cases, reducing the threshold brings with it a risk of uncertainty, such as how any enduring influx in cases would be handled by both the OS:E and suppliers, and the subsequent effect this might have. We, therefore, question whether earlier access to ADR would, indeed, improve outcomes for customers in energy, and question what impacts these changes could have on a customer's experience and complaint journey, particularly if they were in a vulnerable circumstance or experiencing a period of stress. Adding complexity via multiple and variable avenues to redress could create additional stress and confusion, worsening the customer journey and experience through the complaints process.

To this end, we would note that ADR may not always be the best route for resolution for vulnerable consumers who perhaps need more engagement, and are unable to follow timelines and expectations in the expected, structured manner. For example, the ADR process may not allow for those customers who fall off the radar for personal issues.

We would add that we do not believe an ADR scheme should be a replacement route for independent advice services, particularly for vulnerable customers, and an earlier entry point to ADR may impact on this. If, for example, customers are encouraged to go to an ADR scheme earlier, they may not approach an advice provider. We believe this could be detrimental in terms of holistic support offered. Speeding-up access to ADR potentially moves ADR into a territory that these services were not fundamentally set-up to deliver.

Finally, we also question the complexities and practicalities around BEIS' considerations of whether exceptions could, or should, be made to allow more time to resolve complex cases. For example, we question how this would work in practice and which party would decide whether a case was more or sufficiently complex and was, therefore, allocated more time for the supplier to resolve. We would ask that BEIS clarifies whether it envisages this responsibility falling on either the OS:E, Ofgem or the supplier. Additionally, we question the complexities involved in offering differing timescales for different complaints cases and how fairness would be ensured across the supplier community and, indeed, across customers.

Quality and Oversight of ADR Services

Energy UK welcomes BEIS' proposals to improve the quality and oversight of ADR services by strengthening the minimum service expectations of all ADR providers, strengthening the accreditation process, improving transparency and requiring that all providers of consumer ADR are assessed and approved prior to offering this service.

On the theme of transparency, at present the OS:E adheres to a set of KPIs that have been agreed and set by the regulator Ofgem. These KPIs are not, however, currently visible within the public domain. The Ombudsman's performance against its KPIs, therefore, lacks the degree of transparency we would expect from a customer solution centric industry body. In our recent discussions with the OS:E, we have highlighted that we would like to see the Ombudsman working towards a set of KPIs which are fully visible within the public domain, and its performance against the KPIs open to public scrutiny. We believe this would help to ensure the best outcomes for customers, as well as the quality of service for consumers and suppliers alike. The OS:E, in agreement, has committed to working alongside industry and Ofgem in order to bring greater transparency to its current KPIs. To this end, we would ask that BEIS offers input and guidance into this process, where relevant, which would help enable Government to fulfil its aim to strengthen the minimum service expectations of all ADR providers by focusing on the four principles of neutrality, efficiency, accessibility, and transparency.

Whilst Energy UK is supportive of the proposal to have further regulations to improve the service provided to customers and suppliers, we are, however, concerned that any additional requirements placed upon the Ombudsman may result in increased costs for suppliers. We would, therefore, ask that BEIS weighs-up the details of any improvements to the regulations carefully against the risk, to ensure any additional costs for suppliers are kept to an absolute minimum.

We would also take this opportunity to ask that BEIS considers the wider scope of opening up the 2008 Complaints Handling Standards (CHS) to bring this regulation up to date, applying a more principles-based approach. We believe that a review of the current regulations surrounding customer complaints in energy would help foster innovation and competition amongst suppliers, and would lead to improved outcomes for consumers, as well as a better customer complaints journey experience overall. Prior to

the Coronavirus pandemic, Ofgem and BEIS committed to reopening the CHS work area based on the recommendations that were set out in our 2019 Improving the Customer Complaint Journey paper. Whilst we appreciate the unprecedented impacts and challenges brought about by Covid-19, the CHS regulation is over a decade old and remains in need of review. Energy UK and its members are committed, as always, to working with BEIS, Ofgem and industry stakeholders and would welcome the opportunity to offer input into what we believe is an important and outdated work area.

Improving the Take-up of ADR by Businesses in Non-Regulated Markets

We are supportive of the Government's proposals to make business participation in ADR mandatory in sectors where consumer detriment is high, and, indeed, call for the Government to extend regulation to encompass Third-Party Intermediaries (TPIs) operating within the energy sector to tackle consumer detriment.

In today's energy market, TPIs are playing an increasingly important role in heightening industry competition and consumer engagement; helping to simplify a complex market and the consumer participation process. However, the regulatory regime has not kept pace with the volume of TPIs now operating within the energy industry. The problems faced by both domestic consumers and microbusinesses when engaging with TPIs have not gone unnoticed, and, indeed, are well documented. Regulating TPIs would help limit malpractice within the energy sector, and, in turn, would reduce the number of consumers having to take a complaint to ADR.

Energy UK, therefore, believes that BEIS must prioritise this workstream. The Government must ensure that consumers are protected in their engagement with the energy market, and that consumer trust is maintained as new and innovative products are rolled-out that are fundamental to meeting the Net Zero target.

We, therefore, call for the Government to take a two-tracked approach to TPI regulation. It is clear that existing TPIs (PCWs, auto-switching services, non-domestic energy brokers) already pose the risk of consumer harm and require immediate and effective regulation, which, we believe, should be in the form of an Authorisation Regime, governed by Ofgem. To realise the full benefits of this type of change, the regime needs to be focused on supporting and fostering competition. At the same time, it also needs to be accompanied by strict Ofgem enforcement powers to ensure consumers are fully protected. However, as newer and innovative TPIs, such as aggregators, are only now just beginning to emerge, it is our belief that more detailed thinking about how best to regulate these TPIs in the future is needed.

Whilst we have no objections to the proposal to make ADR mandatory in the motor vehicles and home improvements sectors, we would, however, ask that BEIS provides clarity on how any new requirements on the home improvements sector would interact with existing process run by the likes of TrustMark and certification bodies and how new requirements would impact upon the delivery of the Government's Energy Company Obligation (ECO) scheme, including the risks to energy suppliers as a result. Furthermore, the introduction of any new rules should make it clear that for home improvements, such as electric vehicle charger installs and heat pump installation, businesses should have a choice of what ADR service they sign-up to. As these products are likely to be installed by organisations other than energy suppliers, we believe they should not automatically be covered by the Energy Ombudsman scheme.

Finally, we would also suggest that the heavy industries sector requires consideration of what consumer protections may be required as a result of Net Zero delivery.

SUBSCRIPTION CONTRACTS

Energy UK is concerned about the Government's plans to introduce restrictions on the way subscription contracts are marketed and sold, particularly around the proposals for long-term inactive contracts.

We strongly believe it is vital that energy contracts for electricity and gas are specifically exempt from any new rules. If implemented in the energy sector, we believe the proposals would be inappropriate, unnecessary and detrimental to consumers. In particular, we believe the proposals would: risk the health and welfare of consumers (in a similar way in which, the consultation also notes, could be detrimental to the supply of medicines and certain financial services); unnecessarily duplicate existing

and sufficient sectoral regulations which already address such harm; and contradict wider government policy, in particular the Universal Service Obligation in the domestic electricity supply market.

As background, in most sectors when a customer's contract with a business ends or is suspended, the business can stop supplying that customer. This is not, however, the case with energy companies. The default arrangements in the industry ensure that the electricity and gas supply to a property does not stop when a contract with a customer ends or is suspended. Suppliers also still continue to incur the cost of providing a live supply to the property even if energy is not actively used.

As such, the sector already has robust rules around the end of contracts in its Supply Licence Conditions (SLCs), which are set and enforced by Ofgem. These include:

- SLC 0 (The Standards of Conduct)
  Sets enforceable overarching principles to ensure suppliers treat each customer fairly. This includes behaving in a fair, honest, transparent, appropriate and professional manner, and providing information that is complete, accurate and not misleading.

- SLC 23 (Notification of Domestic Supply Contract Terms)
  Requires suppliers to take all reasonable steps to inform customers of the principal terms of their supply contracts, and communicate these principal terms in plain and intelligible language. It also requires suppliers to send a notice when they increase prices, or otherwise vary the terms of a contract in a way that disadvantages the customer, subject to certain exceptions.

- SLC 24 (Termination of Domestic Supply Contracts)
  Requires suppliers to include certain terms in their domestic supply contracts relating to the termination of those contracts. This includes restrictions on suppliers about terminating a contract, for example including ensuring that termination fees can only be charged on fixed-term contracts that customers have pro-actively selected.

- SLC 25 (Informed Choices)
  Requires suppliers to help customers make an informed choice about their energy supply, including their choice of tariff or supplier.

- SLC 22C (Fixed-Term Supply Contracts)
  Requires suppliers to send out a statement of renewal terms to customers on fixed-term contracts. The rules around this notice are in SLC 31. The rules also require suppliers to set out the contract options available if a customer takes no action at the end of a contract and is automatically rolled over to a default tariff.

- SLC 22D (Dead Tariffs)
  Sets out a general prohibition on suppliers creating new 'dead tariffs' (variable tariffs with no end date that are no longer open to new customers). Also, it specifically requires that where suppliers want to keep existing dead tariffs, they must check on an annual basis that each customer on a dead tariff is no worse off than if they were on the relevant cheapest evergreen tariff. If the customer would be worse off on the dead tariff then the supplier must transfer the customer to the relevant cheapest evergreen tariff.

- 31F (Encouraging and Enabling Engagement)
  Requires suppliers to ensure that each domestic customer is provided with information in a form and at a frequency that is sufficient to enable that domestic customer to understand that they can switch Tariff and Gas Supplier, and may benefit from doing so, including financially.

Significant efforts have also been made to encourage more customers to engage with the retail market, this includes Ofgem's Faster Switching Programme. We also note, in the domestic energy supply market, there is a Default Tariff Cap (DTC). The DTC ensures that all energy consumers pay a fair price for the energy they consume, by only allowing suppliers to recover efficiently incurred costs.

If you would like to discuss the above or any other related matters in further detail, please contact me directly at [redacted]@energy-uk.org.uk.