



Department for  
Energy Security  
& Net Zero

# A new threshold for businesses accessing the Energy Ombudsman

Consultation on the introduction of a new threshold for bringing cases to the Energy Ombudsman to include small business consumers

Closing date: Midday on Wednesday 31 January 2024



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Any enquiries regarding this publication should be sent to us at: [redressconsultation@energysecurity.gov.uk](mailto:redressconsultation@energysecurity.gov.uk)

# Introduction

The Government has an ambition to ensure that all businesses who need, and would benefit from, have access to redress against their energy supplier without having to rely on the courts. We want access to redress to be fair, effective and ensure that those businesses who have more limited resources are not in a disadvantaged position when resolving disputes with their energy supplier. As such, we are setting out in this consultation what we think, based on evidence and the experience of other sectors, a sensible expansion of access to redress could look like at this stage. However, we will also commit to reviewing any change after implementation to ensure that access is at the right level and if necessary, would be expanded further in the future.

This document seeks views on a proposal to amend The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 by introducing a new threshold which would allow businesses and organisations larger than a microbusiness with a non-domestic energy contract to access redress through the Energy Ombudsman.

As set out in [Delivering a better energy retail market](#), the Government's vision for the energy retail market is one that works better for consumers, is more resilient and investable, and supports wider energy system transformation. Our vision rightly puts the interest of consumers right at the heart of our plans for the market.

We have already undertaken a substantial programme of work in line with these objectives – not least by providing unprecedented support of nearly £40 billion for domestic consumers and businesses throughout the global energy crisis and taking steps with Ofgem to increase the resilience of energy suppliers. However, we recognise that much remains to do to deliver on our vision.

Though the non-domestic market has worked well for consumers in the past, with customers being able to secure good deals from their providers, the energy crisis demonstrated that some improvements could be made to provide business consumers with more clarity and access to redress. Ofgem, as the independent energy regulator, conducted a review into the non-domestic market and explored whether market-related issues were temporary or isolated to specific suppliers, or if systemic problems demonstrated that changes in regulation were needed. The review found that wholesale reform is not required; however, smaller changes can be enacted to ensure the market works better for consumers.

One of Ofgem's recommendations to Government was to expand redress for businesses larger than microbusinesses with their suppliers to access dispute resolution services provided by the Energy Ombudsman. We have been working closely with Ofgem on this recommendation and, in addition, their related reforms that they consulted on over the summer. We believe that this work is a tangible step to support business consumers and enhance their protection, whilst also improving their experiences of the energy market.

We welcome feedback on how to make these changes so that they are clear, effective and improve the energy retail market experience for more consumers.

# Contents

Introduction	3
Contents	4
General information	5
Why we are consulting	5
Consultation details	5
How to respond	5
Confidentiality and data protection	6
Quality assurance	6
Executive Summary	7
The Proposal	8
Background	8
The issue	10
Proposed solution	10
Consultation questions	17
Next steps	18
Annex	19

# General information

## Why we are consulting

This consultation document seeks views on a proposal to amend the Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 (SI 2008/2268) by expanding access to redress to include small businesses that are larger than microbusinesses. We are consulting to gather feedback, particularly from those stakeholders who would be directly impacted from any proposed change, and ensure that our proposed expansion is sensible, the language is clear, and the new threshold is set at the right level.

## Consultation details

**Issued:** 9:30 am Thursday 7 December 2023

**Respond by:** Midday Wednesday 31 January 2024

**Enquiries to:**

Retail Energy Markets and Consumers Team  
Department for Energy Security and Net Zero  
3-8 Whitehall Place  
SW1A 2EG London

**Audiences:**

This consultation will be of particular interest to the following parties:

- Energy suppliers
- Consumer groups
- Business organisation representatives
- Industry bodies
- Thinktanks

**Territorial extent:**

This consultation applies to gas and electricity supply markets in Great Britain. Responsibility for the gas and electricity supply market in Northern Ireland lies with the Northern Ireland Executive's Department for the Economy.

## How to respond

Your response will be most useful if it is framed in direct response to the questions posed, and with evidence in support wherever possible. Further comments and wider evidence are also welcome. When responding, please state whether you are responding as an individual or representing the views of an organisation.

We encourage respondents to make use of the online e-consultation wherever possible when submitting responses, as this is the Government's preferred method of receiving responses. However, responses in writing or via email will also be accepted. Should you wish to submit your main response via the e-consultation platform and provide supporting information via hard copy or email, please be clear that this is part of the same consultation response.

**Respond online at:** <https://energygovuk.citizenspace.com/energy-markets/new-threshold-business-access-energy-ombudsman/>

or

**Email to:** [redressconsultation@energysecurity.gov.uk](mailto:redressconsultation@energysecurity.gov.uk)

or

**Write to:**

Retail Energy Markets and Consumers Team  
Department for Energy Security and Net Zero  
3-8 Whitehall Place  
SW1A 2EG London

## Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

We will summarise all responses and publish this summary on [GOV.UK](#). The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

## Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#).

If you have any complaints about the way this consultation has been conducted, please email: [bru@energysecurity.gov.uk](mailto:bru@energysecurity.gov.uk).

# Executive Summary

At present, only those customers who meet the definition of a 'relevant consumer' (as set out in article 2(1) of The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 (S.I. 2008/2268)) ("the Order") can access the Energy Ombudsman to acquire dispute resolution assistance between them as a business and their energy supplier. This description of a 'relevant consumer' includes the following criteria:

*an annual consumption of—*

*(aa) electricity of not more than 100,000 kWh; or*

*(bb) gas of not more than 293,000 kWh; or*

*(aa) fewer than 10 employees (or their full time equivalent); and*

*(bb) an annual turnover or annual balance sheet total not exceeding Euros 2 million*

For the purpose of this consultation, any references to 'business' refer to part (b) of the definition of 'relevant consumer' in the Order, **"a person supplied or requiring to be supplied with gas or electricity at premises other than domestic premises", that meets one or more of the new threshold criteria explained on page 11 of this document.** This covers businesses and not for profit organisations such as schools and charities.

Ofgem links this definition of a relevant consumer to their microbusiness definition in their Supply Licence Conditions. Following its non-domestic energy market review,<sup>1</sup> Ofgem concluded that more businesses would benefit from the opportunity to access dispute resolution. It found that non-microbusiness customers face lengthy delays in resolving complaints or do not accept resolution offered by the suppliers. Although pursuing legal action through the courts is available to all businesses, many of them don't have the necessary resources to use this, especially small businesses. The Legal Services Board Survey 2021 highlighted how only half of small businesses sought to resolve their legal issues entirely on their own or took no action at all.

The purpose of this consultation is to seek and gather views on expanding access to redress above microbusiness customer size, through amending the Order.

Introducing a new threshold to access and seek redress through the Energy Ombudsman to include small businesses (as defined in this consultation) would encompass a further 4% of the UK business population. Combined with microbusinesses this would bring the total percentage of businesses who can seek redress to 99%<sup>2</sup> which represents at least an additional 200,000 businesses in the UK.

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<sup>1</sup> <https://www.ofgem.gov.uk/publications/non-domestic-market-review-findings-and-policy-consultation>

<sup>2</sup> <https://www.gov.uk/government/statistics/business-population-estimates-2023/business-population-estimates-for-the-uk-and-regions-2023-statistical-release>

# The Proposal

## Background

In July, Ofgem published its final report into its review of the non-domestic retail market.<sup>3</sup> The review's recommendations aim to improve the non-domestic retail energy market in a way that works in the interests of all consumers and have at the core the idea that businesses must get good service and support from their energy suppliers and third-party providers. In their document, Ofgem made three recommendations to the Government. One of these is to widen access to redress that currently only applies to microbusiness consumers and allow businesses larger than microbusinesses to approach the Energy Ombudsman for assistance when in dispute with their supplier.

This consultation takes place in the context of the Government's ongoing support of Ofgem's efforts to ensure a well-functioning market for non-domestic customers, including working with them to ensure their recommendations are implemented at pace.

## Which businesses and organisations can currently access the Energy Ombudsman?

At present, only organisations with a non-domestic energy contract that meet the definition of a 'relevant consumer' (which Ofgem has defined as microbusinesses) can access the Energy Ombudsman to acquire dispute resolution assistance between them and their energy supplier. From its non-domestic energy market review released in July 2023, Ofgem concluded that more businesses would benefit from the opportunity to access dispute resolution.

The Energy Ombudsman provides a free and impartial service to relevant consumers, and suppliers are charged by the Ombudsman for each case they undertake. A consumer must first raise any issue with their supplier directly, if after 8 weeks there has been no resolution, the consumer can then raise the dispute with the Energy Ombudsman.

There are multiple outcomes that could result from the Energy Ombudsman dispute process. This includes telling suppliers to: offer financial awards of up to £10,000, make an apology, make recommendations to prevent the issue from happening again, take practical action such as cancelling or changing the customers tariff, or a combination of these actions.

The Energy Ombudsman is also currently the only provider running an established Alternative Dispute Resolution (ADR) scheme for all relevant consumers to undertake dispute resolution with their energy supplier.<sup>4</sup> They are monitored by Ofgem to ensure they remain the most appropriate and effective body to provide the scheme.

## What are the differences from the Third-Party Intermediary ADR scheme?

Some non-domestic energy consumers also interact with Third Party Intermediaries (TPIs), such as energy brokers, as well as their energy supplier. Following the Microbusiness

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<sup>3</sup> <https://www.ofgem.gov.uk/publications/non-domestic-market-review-findings-and-policy-consultation>

<sup>4</sup> <https://www.ofgem.gov.uk/publications/redress-schemes-approval-adr-body>



Strategic Review that Ofgem published in March 2022, since 01 December 2022<sup>5</sup> non-domestic energy suppliers must only work with TPIs who are registered with a qualifying ADR scheme. For the first year of the scheme, the Energy Ombudsman has been the sole provider of such a qualifying scheme, but other organisations who are able to demonstrate they can meet the criteria defined under Ofgem Standard Licence Condition (SLC) 20.5D for electricity and SLC 20.6D for gas are also able to offer this service.

In parallel to our work, Ofgem is exploring whether access to this TPI ADR should also be expanded so that more businesses can access this provision. We are working closely with Ofgem to ensure that we are aligned with our threshold proposals in the first instance, as we recognise that clarity for businesses, suppliers and TPIs alike is important.

## When was the definition last amended?

Ofgem's definition of a microbusiness consumer in the supplier licence conditions is linked to article 2(1) of The Order.<sup>6</sup>

The Order requires energy providers who provide a supply to domestic and micro-business customers to join a redress scheme which has been approved by the Gas and Electricity Markets Authority. This requirement enables domestic and micro-business customers to have access to a redress scheme if they have not been able to resolve a consumer complaint with their energy provider directly.

In 2014, the Department published a consultation seeking views on whether the upper limit of annual energy consumption in the micro-business definition in the Order should be changed by increasing it from:

- i. no more than 55,000 kWh to no more than 100,000 kWh of electricity per year, or,
- ii. no more than 200,000 kWh to no more than 293,000kWh of gas per year.

This proposed definition change was to be in line with recent changes at the time from Ofgem to SLCs 7A and 7B which had proposals to amend the SLC's in the same way.

All of the respondents were supportive of the proposal to change the upper limit for annual energy consumption in the definition of micro-business in the Order. The Government then made amendments to the Order on the basis set out in the consultation. Following its passage through Parliament the Order came into force in August 2014.

## What feedback from Ofgem's recent non-domestic market review have we taken into account?

Following Ofgem's non-domestic review, although respondents did see the benefit in expanding redress for larger businesses than micro-businesses, they did not think it would be appropriate or beneficial to expand the current definition of a microbusiness to achieve this. It is the view of the Department and some respondents that this could have unintended consequences on other work, such as the smart meter rollout as related to Ofgem's SLCs. Instead, a new definition for small businesses in the Order may be required.

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<sup>5</sup> <https://www.ofgem.gov.uk/publications/alternative-dispute-resolution-scheme-brokers-and-third-party-intermediaries-what-your-microbusiness-needs-know>

<sup>6</sup> <https://www.legislation.gov.uk/ukxi/2008/2268/article/2/made>

The current wording for “relevant consumer” in the Order<sup>7</sup> reads as follows:

(...)

*(b) a person supplied or requiring to be supplied with gas or electricity at premises other than domestic premises, with—*

*(i) an annual consumption of—*

*(aa) electricity of not more than 100,000 kWh; or*

*(bb) gas of not more than 293,000 kWh; or*

*(aa) fewer than 10 employees (or their full time equivalent); and*

*(bb) an annual turnover or annual balance sheet total not exceeding Euros 2 million.*

## The issue

Currently, all business customers can pursue court action if they have a dispute with their energy supplier. However, this option is more feasible for larger businesses with more resources.

The 2021 latest survey findings of the Legal Services Board,<sup>8</sup> which conducts a regular survey into small business legal needs, found that small businesses face a significant access to justice gap. Only a quarter of small businesses (less than 50 employees) used professional help in response to legal issues, while around half either sought to resolve their legal issues entirely on their own or took no action at all. Though this research relates to legal issues across a business’s remit, and not just in relation to energy, this gives a good indication of how businesses larger than micro but still classed as small (more than 10 employees but fewer than 50), fare when they need to find a resolution to an issue through legal means.

Introducing a new threshold allowing small businesses and microbusinesses to access the Energy Ombudsman’s services should also assist in driving up standards for businesses with their energy supplier. If there is a more accessible route for additional businesses to seek redress for negative supplier behaviour and actions, then some suppliers may aim to drive up their customer service offerings to avoid more businesses taking them to the Energy Ombudsman, which results in a financial charge to the supplier per case that is brought.

## Proposed solution

The Department recommends introducing a new threshold allowing access to the Energy Ombudsman above microbusiness customer size. The Department proposes to change the eligibility threshold to access the Energy Ombudsman to include businesses with fewer than 50 employees and a turnover of at most £6.5 million or a balance sheet total of £5.0 million in line with the rules set by the Financial Conduct Authorities (FCA) extending access to the Ombudsman Service for more small businesses.

The Department does not suggest opening up access to all non-domestic customers, and the reasons for this are threefold: firstly, the largest businesses can more easily access forms of redress through the courts due to their additional resources. Secondly, the current highest settlement payment through the Energy Ombudsman is £10,000, while some of the largest

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<sup>7</sup> <https://www.legislation.gov.uk/ukxi/2014/2378/article/2/made>

<sup>8</sup> <https://legalservicesboard.org.uk/research/reports/small-business-legal-needs-survey>

businesses may need financial redress in much higher magnitude than this. Going through the courts could, therefore, be a more appropriate outcome for seeking greater compensation. Thirdly, changing the threshold to include all businesses would likely change the advice needed to be given by Citizens Advice and the cases that the Energy Ombudsman takes on. These disputes could involve quite complex legal issues that we do not want to put on either organisation and could have substantial funding implications for Citizens Advice.

As part of Ofgem's findings within their non-domestic market review, a clear majority of respondents want companies larger than microbusinesses to be able to seek redress through the Energy Ombudsman. Most of these respondents recommended modifying the threshold to include smaller businesses.

In terms of the mechanisms for how we arrived at our preferred option, we believe that including a new small business definition that increases the employee and turnover limits in article 2(1) of the Order would be the most appropriate approach to meet the desired outcomes of providing smaller businesses who do not employ an energy manager and/or do not have the resources or time to take complaints through the courts, with an easily accessible form of redress. Making this change would require a secondary legislation amendment. Before the legislative change takes place, and through this consultation, we seek stakeholders' views on the new small business definition and are eager to hear about views for the new threshold.

## A definition of small businesses

### **Employee number**

We propose expanding redress access to businesses with fewer than 50 employees or their full-time equivalent. The Government currently defines small businesses<sup>9</sup> as those with fewer than 50 employees. This is also in keeping with the level that the financial sector uses to allow cases to go to their own Ombudsman, so this level of expansion would be consistent across sectors.

As detailed previously in the consultation, a vast majority of respondents to Ofgem's policy consultation wanted redress access expanding beyond microbusinesses. We have also engaged with the FCA who have successfully achieved an expansion from micro to small businesses<sup>10</sup> and have taken heed of the most recent Legal Services Board findings that note the particular difficulty that small businesses face with successfully accessing legal forms of redress.

### **Turnover**

We propose converting the turnover amount from Euros to British Pound Sterling and raising this to £6.5 million for turnover and £5.0m for balance sheet total. This is in line with the thresholds used by the FCA for small business access to the Financial Ombudsman Services. This change also reflects that the United Kingdom has left the European Union.

The amendment to the Order is a good opportunity to convert the current Euros denomination into British Pounds Sterling. Ofgem's non-domestic review findings found some feedback from

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<sup>9</sup> <https://www.gov.uk/government/statistics/business-population-estimates-2023/business-population-estimates-for-the-uk-and-regions-2023-statistical-release>

<sup>10</sup> <https://www.fca.org.uk/publications/calls-input/call-input-sme-access-financial-ombudsman-service#revisions>

stakeholders that the annual turnover figure in Euros in the definition was confusing and difficult to apply when there are fluctuating exchange rates.

## **Energy consumption**

As different businesses use and consume energy in a number of ways and for varying purposes, defining a clear threshold to capture just small businesses is challenging. We propose expanding the electricity consumption threshold to 500,000kWh and also expanding the gas consumption threshold to 500,000kWh. We have been working in tandem with Ofgem as they develop their proposed changes to the non-domestic energy market to ensure that we are in alignment so that any changes are easy to follow for businesses. Ofgem has determined through their engagement with stakeholders that these new levels would not capture the largest businesses or industrial and commercial consumers, while also acknowledging the difficulty in determining an exacting threshold level. This aligns with the policy objective to increase redress access to businesses who are most in need and would benefit from this. We suggest expanding in line with Ofgem at this time and then reviewing in the future to ensure this threshold level is appropriate.

## **The legislative route: limits and opportunities**

Ofgem's ability to ensure suppliers join a recognised redress scheme provided by the Energy Ombudsman is set out in the Consumers, Estate Agents and Redress Act 2007<sup>11</sup>.

Adding a small business definition within the Order would entail minimal regulatory and legislative intervention to result in greater protections for more businesses. This change could foster greater trust in the non-domestic retail energy supply system as businesses will know they have more routes to redress if an issue emerges with their supplier, which cannot be resolved between them. Introducing a revised threshold to access the Energy Ombudsman in the Order to cover small businesses will mean also expanding the scope of the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 ("CHS"). This is to ensure consistency across the regulations, as section 6 of the CHS requires suppliers to signpost consumers to the redress scheme if complaints cannot be resolved. Ofgem has the power to amend the CHS if required and is currently consulting on expanding the CHS to apply to small business consumers to align with our proposals.

## **Citizens Advice**

We have engaged with Citizens Advice during this process to seek their views on how expanding access to business redress could also expand the scope of the advice they may need to provide to small businesses. While our intended policy outcome from this consultation is to expand business access to redress through the Energy Ombudsman, we will also work with Ofgem and Citizens Advice to understand how the combined proposals may impact their organisation.

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<sup>11</sup> <https://www.legislation.gov.uk/ukpga/2007/17/part/2/crossheading/requirements-relating-to-redress-schemes>

## Alignment with the work of Ofgem – TPI ADR scheme & expanding complaints handling standards

Expanding the Energy Ombudsman’s remit must align with other reforms that Ofgem is considering. The expansion proposals set out in this consultation corresponds with Ofgem’s current proposals<sup>12</sup> to implement the following changes to apply to small business consumers:

- Expansion of the TPI ADR scheme for microbusinesses, which will expand access to redress for small business consumers
- Expansion of the CHS, to ensure that small business consumer complaints are handled in an efficient and timely manner; and
- Introduction of a requirement for suppliers to inform customers who are within the statutory remit of Citizens Advice and Citizens Advice Scotland that they are eligible for this service

We believe that it would be sensible to ensure the same limits are adopted to maintain consistency for businesses and suppliers alike.

## Learnings from the finance sector

In 2018 the FCA made rules extending access to the Financial Ombudsman Service for more small and medium enterprises (SMEs). The rules came into force on 1 April 2019. Since then, the Ombudsman Service has received complaints from 4,782 newly eligible SMEs, of which 2,891 related to banking services and 1,835 to insurance. The FCA agreed to a post-implementation review of the impact of the rules within 2 years of the rules coming into force. The review was postponed due to the pandemic, but the review<sup>13</sup> has now taken place and closed 28 April 2023.

In 2018 the FCA made rules extending access to the Financial Ombudsman Service for more small and medium enterprises (SMEs). The rules came into force on 1 April 2019. Since then, the Ombudsman Service has received complaints from 4,782 newly eligible SMEs, of which 2,891 related to banking services and 1,835 to insurance. The FCA agreed to a post-implementation review of the impact of the rules within 2 years of the rules coming into force. The review was postponed due to the pandemic, but the review<sup>14</sup> has now taken place and closed 28 April 2023.

Before 1 April 2019 the Ombudsman Service was only able to consider complaints from micro-enterprises (an enterprise that employs fewer than 10 persons and has turnover or annual balance sheet that does not exceed 2 million euros). The new FCA rules have meant that since 1 April 2019 the Ombudsman Service has been able to consider complaints made by micro-enterprises and small businesses. A small business is defined as an enterprise which:

- A. Is not a micro-enterprise
- B. Has an annual turnover of less than £6.5 million (or its equivalent in any other currency); and

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<sup>12</sup> <https://www.ofgem.gov.uk/publications/non-domestic-market-review-findings-and-statutory-consultation>

<sup>13</sup> <https://www.fca.org.uk/publications/feedback-statements/fs23-5-review-rules-extending-sme-access-financial-ombudsman-service>

<sup>14</sup> <https://www.fca.org.uk/publications/feedback-statements/fs23-5-review-rules-extending-sme-access-financial-ombudsman-service>

- i. Employs fewer than 50 persons; or
- ii. Has a balance sheet total of less than £5 million (or its equivalent in any other currency)

To be eligible to refer a complaint to the Ombudsman Service the complainant needs to have been a micro-enterprise or small business at the time the complaint was made to the firm.

On the 24 October, the FCA released its first review after three years since the change took place<sup>15</sup>. Following a Call for input launched in March 2023, FCA concluded that the current thresholds strike the appropriate balance between providing access to the ombudsman service to SMEs that do not have the resources to resolve financial services disputes through the legal system and broadening this access too far. Therefore, the FCA does not consider that changes are needed to the definition of a small business or a micro-enterprise.

### The forecasted impact

The Energy Ombudsman charges a case fee that a supplier pays for each case brought against them. The Energy Ombudsman currently charges £170 per case for an early resolution and £340 per case for a case requiring a full decision.

According to BEIS Business Population Estimate 2023<sup>16</sup>, 95% of businesses are microbusinesses. 4% of companies employ between 10-49 people, and 0.9% of businesses employ between 50-249 people. Businesses with more than 250 employees account for just 0.1% of UK businesses. At the start of 2023 there were around 1.18 million microbusinesses and 223,000 small businesses. Expanding the Energy Ombudsman's remit to include businesses with up to 50 employees would add only 4% of eligible businesses. This should not have a substantial detrimental cost impact on suppliers.

Although it cannot be taken as a direct comparator, if the Energy Ombudsman received a similar number of additional cases as the FCA did in its first expanded year, then they could see around 5,000 more cases. If these 5,000 cases were all for cases that required full decisions, then this would result in a total case charge of £1.7 million.

The Energy Ombudsman also has a maximum award amount of £10,000 per case. This is aligned with the maximum financial limit in the Small Claims Court. However, in 2022, the average financial award has only been £172.

Analysis has been conducted to forecast the expected cost to businesses, encompassing both businesses in scope for redress and energy suppliers, resulting from an expansion of the number of businesses that can use the Energy Ombudsman. For the impact of increasing the employee threshold to now businesses with 10-49 employees, we estimate there to be an **increase in total direct costs to businesses summing to approximately £100,000 a year on average** between 2023 and 2033<sup>17</sup>. Please note this is not for an individual business that decides to claim, rather the summed increase in total costs for businesses that claim and energy suppliers as a result of the policy change. The average cost to claimants going to the

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<sup>15</sup> <https://www.fca.org.uk/publications/feedback-statements/fs23-5-review-rules-extending-sme-access-financial-ombudsman-service>

<sup>16</sup> <https://www.gov.uk/government/statistics/business-population-estimates-2023>

<sup>17</sup> This figure is defined in present value terms. As defined in the Green Book, NPV is a “*generic term for the sum of a stream of any future values that have been discounted to bring them to a present value*”, considering the time value of money.



Energy Ombudsman, and to energy suppliers defending a claim would be approximately £25, and £360 respectively. These are lower compared to the costs of going to the Small Claims Court, which are estimated to be approximately £120 for claimants and £390 for the supplier defending the claim.

This calculation of the results considers the following factors:

- The difference in administrative costs to claimants and suppliers for cases that previously went to the Small Claims Court but now go to the Energy Ombudsman due to an expansion in its scope. The Energy Ombudsman has lower administrative costs than the Small Claim Court.
- The increased use of the Energy Ombudsman by small businesses with 10-49 employees that previously claimed via the Small Claims Courts or did not claim at all.
- The increased payouts from suppliers to claimants due to the estimated rise in cases being taken to the Energy Ombudsman rather than the Small Claims Court previously<sup>18</sup>. The increase in costs for businesses as a result of this policy change is driven by the additional number of cases that take place with the introduction of a new threshold, allowing Energy Ombudsman access for small businesses.

The total average annual cost to businesses as a result of the proposed intervention is not large in absolute terms for the following reasons:

- The number of businesses that become eligible following the expansion is only 4% of the total UK business population, which is forecast to only be around 230,000 in 2023.
- The uptake rate of the Energy Ombudsman services is assumed to be the same for microbusinesses that were eligible between 2019 and 2022 (0.23%). When applied to a small absolute number of businesses that might become eligible, this produces a smaller number of additional businesses that will seek redress after the policy change. In 2023, this would translate to approximately 500 additional uses of the Energy Ombudsman.
- The average payout from supplier to claimant between 2019 and 2023 was approximately £190. The Small Claims Court and the Energy Ombudsman are assumed to produce the same monetary payout and have the same probability of a payout. Applying this to the expected number of payouts, the total costs are low.
- This figure is an overestimate of the uptake because it could be the case that some of the small business analysed could have energy consumption below the thresholds required for going to the EO.

The impact of the proposal to increase the energy consumption threshold to 500,000kWh for electricity and gas is difficult to quantify. This is because data on the number of businesses with consumption below this level is not available or is sensitive so it cannot be shared. As a worst-case scenario we estimate the direct cost impact of considering all businesses with 50 to 249 employees eligible, which represents an upper limit on overall costs. Using the same method as for businesses with between 10 and 49 employees, we calculate that making all businesses with 50 to 249 employees eligible would add an additional £16,000 to the costs to business. This is a small amount compared to the £100,000 additional costs calculated before. Therefore, we can continue to argue that the costs will be small in magnitude, since these

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<sup>18</sup> The expected payout of the Small Claims Court and the Energy Ombudsman is assumed to be the same as they should achieve the same outcome for defendants.

costs are an upper bound on estimates given not all businesses with 50 to 249 employees will be eligible.

Full details of the analysis can be found in the annex.



## Consultation questions

- 1) Do you agree with the Government's proposal to expand the eligibility threshold in the Order to allow small businesses to seek redress through the Energy Ombudsman for complaints brought against their suppliers? Please justify your answer<sup>19</sup>.**
- 2) Do you agree with the combination of employee numbers, annual turnover and annual consumption level as threshold indicators?**
- 3) Do you agree with aligning the turnover and balance sheet elements in the proposed new threshold with that for accessing the Financial Ombudsman?<sup>20</sup>**
- 4) Do you agree with the expanded energy consumption levels proposed in the consultation?**
- 5) Do you agree that the introduction of the new threshold allowing small businesses to access the Energy Ombudsman should be mirrored in any changes proposed by Ofgem<sup>21</sup> to the TPI Alternative Dispute Resolution scheme, expanding the Consumer Complaints Handling Standards, and requiring suppliers to signpost relevant non-domestic consumers to Citizens Advice for support?**

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<sup>19</sup> If stakeholders agree with this proposal, we will review how the changes have been imbedded after 18 months and determine if any additional changes are required.

<sup>20</sup> On the 24<sup>th</sup> October 2023, the FCA released the first review after three years since the rules extending access to the Ombudsman Service for more businesses were adopted. Following a Call for input launched in March 2023, FCA concluded that the current thresholds, which include the business turnover value, strike the appropriate balance between providing access to the ombudsman service to businesses that do not have the resources to resolve financial services disputes through the legal system and broadening this access too far.

<sup>21</sup> <https://www.ofgem.gov.uk/publications/non-domestic-market-review-findings-and-statutory-consultation>

## Next steps

The purpose of this consultation is to gather views on whether introducing a new threshold allowing more small businesses to access to the Energy Ombudsman. This consultation will close at Midday on Wednesday 31 January 2024.

We will issue a government response shortly after the close of the consultation. If the government decides to pursue this proposal, we will then amend the Order to implement the change. We would expect the Order to come into force whenever parliamentary time allows this Session.

As set out in the introduction of this document, we want to ensure any expansion of access is at the right level, we would aim to review any new threshold 12-18 months after implementation to ensure it has been set at the appropriate level. If we discovered that further changes to access were required, we would then look to progress these at the appropriate time.

## Annex

### Analytical approach to estimating the costs of extending the Energy Ombudsman's remit to cover more business customers.

This annex considers the changes in direct costs to business from expanding the access to the Energy Ombudsman (EO) to include businesses with 10 to 49 employees ('small businesses'). For this we estimate the costs to all businesses (small businesses seeking redress and energy suppliers) in net present value terms<sup>22</sup>. This is calculated for the policy case (changing the conditions) and the counterfactual (keeping the conditions as they are). We also consider the effects of increasing the energy consumption threshold to 500,000kWh for electricity and gas, however this is only included as a sensitivity because the data and assumptions used are not robust. We believe that the majority of the increase in uptake will be from changing the condition on employee number rather than energy consumption. Analysis conducted has concluded that requirements for a De Minimis assessment are met as the costs to business have an Equivalent Annual Net Direct Costs to Business (EANDCB) or Net Present Value (NPV) of less than £5m. An Impact Assessment is therefore not required for this policy.

**We estimate there to be an increase in total direct costs to businesses summing to £100,000 a year on average** between 2023 and 2033. While the EO has lower administrative costs to claimants and defendants than the Small Claims Court (SCC), there will be more cases brought to the EO by small businesses compared to the SCC in the policy case. This relative increase in take-up outweighs the cost reductions of lower administrative costs to businesses.

### Counterfactual

Currently, small businesses with 10 to 49 employees typically seek redress through the Small Claims Court (SCC) in the event of a dispute with their energy supplier. The proportion of small businesses that use the SCC for energy-related disputes is not available. We therefore use the proportion of microbusinesses (less than 10 employees) that use the EO as a proxy.

We assume that the likelihood of needing redress is the same for microbusinesses and small businesses. Between 2019 and 2022, 0.23% of eligible businesses used the EO<sup>23</sup>. The administrative costs to both the claimant and the defendant at each stage of the claims process in the SCC are sourced from Ministry of Justice (MoJ) data. The work and therefore cost required for a claim in this process is sourced from the Impact Assessment on legislation to amend the definition of a microbusiness in the Order to help smaller businesses (2014)<sup>24</sup>. We estimate the expected costs to the claimant and defendant from going through the SCC based on probabilities of reaching certain stages of the trial, based on MoJ data<sup>25</sup>. The probability of energy-related claims from small businesses being successful is not known. As a

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<sup>22</sup> As defined in the Green Book, NPV is a "generic term for the sum of a stream of any future values that have been discounted to bring them to a present value", considering the time value of money.

<sup>23</sup> Calculated by dividing total cases by eligible business. This assumes that microbusinesses that claimed did so only once. Data supplied by the Energy Ombudsman.

<sup>24</sup> <https://assets.publishing.service.gov.uk/media/5a7db88de5274a5eb14e6c7e/impactassessment.pdf>

<sup>25</sup> <https://www.gov.uk/government/statistics/civil-justice-statistics-quarterly-july-to-september-2022>

proxy we therefore use the likelihood of microbusinesses that are successful through the EO. Between 2019 and 2023 this was 64%, according to data from the EO. The average payout for a successful case in this period was £186. It is reasonable to assume that the outcome of a claim should be the same, independent of the route of redress.

Using the above we estimate the expected costs to the claimant and the expected costs to the defendant, including administrative costs and payouts in the event of a successful case. The average expected cost of going to the SCC for small businesses seeking redress is approximately £120, and for suppliers is approximately £390. The transfer of the payout from energy supplier to claimant is only accounted for once as a cost to the defendant (rather than a benefit to a successful claimant) to avoid double counting.

Following guidance from the Impact Assessment on legislation to amend the definition of a microbusiness in the Gas and Electricity Regulated Providers (Redress Scheme) (2014), we adjust the uptake of the SCC in the counterfactual case by the ratio of the expected benefits for claimants of the SCC to the EO. The expected benefit for a small business going to the SCC and EO is calculated to be £69 and £162 respectively. This produces a ratio of 0.43 (£69/£162) which we identify as the ratio of SCC to EO benefit. We use the assumption that “*the probability of using a complaint resolution mechanism is in direct proportion to the expected net benefit of using that mechanism to progress a complaint*”<sup>26</sup>. This means that 57% of businesses that would claim to the EO, if it existed, would not claim using the SCC. The expected benefits for these businesses are therefore not gained compared to the policy case where access to the EO is available. As this is not a direct cost to business following the policy change we do not quantify this, however note that some business miss out on redress in the policy case because the EO does not exist and do not go to the SCC.

The costs of the counterfactual can be broken down into two categories:

- Administrative costs to businesses (claimant and energy supplier).
- Transfer from the supplier to the claimant in the case of the claimant’s case being upheld and the supplier paying out compensation.

## Policy case

Under the policy case where access to the EO is expanded, small businesses can now use the EO instead of the SCC. Due to the larger expected benefit of the EO to the SCC (£162 vs. £69), as well as lower expected administration costs (£24 vs. £120), we assume that claiming compensation through the EO, rather than the SCC, is strictly preferred.

In the policy case it is assumed that some small businesses now use the EO when before they did not use the SCC. The likelihood of winning a case through the EO is 64%, and the average settlement is £186, as mentioned previously. In the policy case the uptake of the EO for small businesses is assumed to be the same as for microbusinesses (0.23%). We assume that these figures remain the same for the EO between 2023 and 2033.

Increased access to the EO is assumed to lead to energy suppliers improving their standards given an assumed rise in claims sought against them. This should lead to a reduction in EO

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<sup>26</sup> Assumption derived from the Impact Assessment on legislation to amend the definition of a microbusiness in the Gas and Electricity Regulated Providers (Redress Scheme) (2014).

use over time, for which we have assumed a 5% lower uptake in each year compared to number of small businesses eligible. This assumption is derived from the Financial Conduct Authority, where they similarly expanded their Ombudsman services to small business from microbusiness<sup>27</sup>. Applying this discount in uptake each year to the above estimated uptake under expanded criteria provides an estimate of the number of companies seeking redress each year.

The cost categories that are measured as a result of the policy are the same as for the counterfactual case.

## Results

We estimate that the expansion of the EO to small businesses with between 10 to 49 employees increases access by 230,000 businesses in 2023. We use the average yearly growth rate of small businesses since 2010 (1.8%)<sup>28</sup> to forecast the expected number of additional small businesses in scope up to 2033. There is no data available to calculate the uptake rate for the SCC. We therefore assume that the percentage of businesses that go to the SCC is the same as the rate of currently eligible microbusinesses that go to the EO. The ratio of SCC net benefit to EO net benefit is 43%, based on expected costs and expected benefits. As set out previously, we adjust the number of potentially eligible businesses by this ratio to account for the lack of uptake of the SCC due to higher costs for the claimant than the EO. In the case of 2023, there would be an additional 519 businesses that would seek redress under the EO in the policy case. If the EO was not available (counterfactual), 221 small business would go to the SCC and 298 would not seek redress at all. We apply this ratio to forecasts of small businesses in the following years up to 2033 to calculate the costs to these small businesses seeking redress and energy suppliers under the counterfactual and the policy case. The increased direct costs to businesses of the policy are calculated by considering the difference in costs between the counterfactual and the policy case. These are shown in net present value terms in the below table<sup>29</sup>.

**Table 1: Comparison of total annual costs to business between the counterfactual and policy case**

Year	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Costs to business (counterfactual)	138	135	133	131	128	126	124	122	120	118	116	<b>1,392</b>
Costs to business (policy case)	245	240	237	232	229	224	220	216	213	209	205	<b>2,471</b>
Difference	107	105	103	101	100	98	96	94	93	91	89	<b>1,079</b>

*All prices are in £thousands and discounted to show present value<sup>30</sup>.*

The cost figures above show that the policy case results in additional direct costs for businesses (small business claimants and the energy suppliers). As this is not a cost-benefit analysis we do not quantify the benefits, rather we just state the difference in costs to

<sup>27</sup> <https://www.fca.org.uk/publication/consultation/cp18-03.pdf>

<sup>28</sup> Estimated by the average yearly growth rate of small businesses between 2010 and 2021. Data from the Office of National Statistic's Annual Business Survey (ABS).

<sup>29</sup> We discount these by 3.5% each year to obtain the present value in 2023 terms following Green Book guidance.

<sup>30</sup> The figures may not sum due to rounding.

businesses of the counterfactual and the policy case. The cost increase overall is minimal in absolute terms with the impact between 2023 and 2033 being £1,079,000. The average yearly cost across this period is **£100,000 a year**. This is small in magnitude due to two reasons:

- the amount of newly eligible small businesses is small compared to the existing microbusinesses of under 10 employees.
- the uptake rate of the EO is a small percentage (0.23%) of these businesses.

The primary reason for the increased cost for businesses is the fact that there are more cases that go to the EO in the policy case compared to the counterfactual. This is because some business now claim here rather than going to the SCC, and some business claim when they did not at all before.

However, higher costs do not necessarily reflect a negative impact to society of the policy change. It instead shows that more claims are made, which should translate into more successful outcomes to mitigate problems that businesses have with their energy supplier. There is also an additional benefit that some business previously do not seek redress at all, but not do through the EO rather than via the SCC due to the difference in administrative costs. This expands the reach of redress services, which is a positive impact.

## Effect of the change to the energy consumption threshold

The proposal to increase the energy consumption threshold to 500,000kWh for electricity and gas may enable businesses with 50 or more employees to access the EO when previously they could not if they had energy consumption above the previous threshold. Due to lack of data, it is difficult to calculate the exact number of businesses with 50 or more employees that meet this criterion. The publicly available version of the National Energy Efficiency Data (NEED)<sup>31</sup> shows average energy consumption for businesses with different levels of employment, as shown in the below table.

**Table 2: Average energy consumption by employee numbers of businesses**

Number of employees	Average electricity consumption (kWh)	Average gas consumption (kWh)
Less than 10	50,000	120,000
10 to 49	130,000	300,000
50 to 249	500,000	1,700,000
250 to 999	640,000	2,600,000

It is not known how many businesses with 50 to 249 employees have an energy consumption below 500,000kWh as the only data available states the average. As the above is an average, some businesses will have electricity or gas consumption below the 500,000kWh threshold, whereas others will have consumption above this. To represent the most extreme case (which overestimate the direct cost impacts), we assume that all businesses with 50 to 249 employees are eligible for the EO because of the increase in the threshold. Using the same method used above for small businesses, we estimate the additional costs to businesses if businesses with 50 to 249 employees also become eligible for the EO. Applying the 0.23% uptake rate of the

<sup>31</sup> <https://www.gov.uk/government/statistics/non-domestic-national-energy-efficiency-data-framework-nd-need-2023>

EO to the number of those businesses with 50 to 249 employees in 2023 results in only 83 cases brought the EO. This is considerably lower than the number of cases brought by small businesses, because the number of businesses with 50 to 249 employees is around 1% of the UK business population. As the true number will certainly be lower than this, the true effect will be almost negligible.

The difference between the counterfactual and the policy case costs for businesses with 50 to 249 employees is estimated at £16,000 a year on average between 2023 and 2033 in present value terms. This is small compared to the £100,000 estimated earlier, so the overall cost will not change by a large amount if the costs to businesses from the threshold changes are included. As the approach will over-estimate the costs, £16,000 is an upper bound estimate, therefore the actual effect will be very small and not substantially affect the conclusions reached earlier. For this reason, we do not include this in our headline results, and only present it here as a sensitivity to illustrate the effects it may have.

## Caveats of the analysis

- The figures presented above use nominal costs, which are not adjusted for inflation. This is difficult to do since a separate index is needed for each cost component. For instance, wages and average payouts might follow different trends of price increases between now and 2033 that cannot be known now. For this reason, all prices are in nominal terms.
- The likelihood of winning a case at the SCC is assumed to be the same as with the EO because of the lack of relevant data. This assumption makes sense given that both processes should achieve the 'right' outcome if both routes are efficient and use the same information. The only difference is the cost of achieving this outcome.
- The resource requirements of the SCC used to calculate costs are based on a payout of between £300 and £500 – this was chosen to represent a conservative estimate of the average payout, since some cases will be higher than the average level. These costs are higher than the costs for under £300 claims, therefore the increase in costs can be seen a slight overestimate of what could be seen<sup>32</sup>. As the EO takes on more cases by slightly larger businesses, it is not unreasonable that the size of the payouts might increase.
- Costs for the EO are not considered. We assume that their costs are covered by the case fee that they charge, as well as the membership payments that large energy suppliers pay. Therefore, they do not incur a loss as a result of more claims being handled.
- We do not consider cases that are charged the £170 early resolution fee. This is because this applies to only under 7% of cases. This would have an insignificant impact on results.
- It could be the case that small businesses previously used the EO because their energy usage was below the upper limit. Therefore, the small businesses captured here might not necessarily be additional and the numbers here overestimate the effect of the expansion. Business groups have found that the employee number aspect of the conditions was the most common reason for using the EO, suggesting that a change in

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<sup>32</sup> <https://www.gov.uk/government/publications/fees-in-the-civil-and-family-courts-main-fees-ex50/civil-court-fees-ex50>



employee number might stimulate some businesses that did not consider using the EO before. Granular data from the NEED database on energy consumption by businesses cannot be used in the analysis due to its sensitive nature.



This consultation is available from: [www.gov.uk/government/consultations/new-threshold-for-businesses-accessing-the-energy-ombudsman](https://www.gov.uk/government/consultations/new-threshold-for-businesses-accessing-the-energy-ombudsman)

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