



Department for  
Energy Security  
& Net Zero

# A new threshold for businesses accessing the Energy Ombudsman

Summary of Consultation Responses and  
next steps



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# Introduction

On 7 December 2023, government published a consultation on a new threshold for businesses accessing the Energy Ombudsman, which closed on 31 January 2024. As set out in *Delivering a better energy retail market*, 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. This consultation feeds into the aim of working better for consumers and is right at the heart of our plans for the market.

Though the non-domestic market has worked well for consumers in the past, with customers being able to secure good deals from their providers, recent challenges with rising energy prices (following Russia's invasion of Ukraine) demonstrated that some improvements could be made to provide business consumers with more clarity and access to redress. As the independent energy regulator, Ofgem 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 some issues non-domestic customers faced were driven by challenging market conditions; however, targeted reforms can be enacted to ensure the market works better for consumers.

Following on from this review, Ofgem recommended, among the other measures, to ensure that a greater number of businesses have access to redress against their energy supplier, without having to rely on the courts. This means, in practice, expanding access to redress between a supplier and a consumer for those non-domestic customers larger than microbusiness size.

At present only businesses with a non-domestic energy contract that meet the definition of a relevant consumer (referred to by Ofgem as microbusinesses) can access the Energy Ombudsman to acquire dispute resolution assistance between them and their energy supplier. The Ombudsman provides a free and impartial service to consumers who have raised an issue with their supplier which could not be satisfied. Although pursuing legal action through the courts is available to all businesses, many of them don't have the necessary resources to rely on professional legal help, especially small businesses, thus resulting in them giving up and not pursuing the redress route.

This summary of responses following our consultation indicates how government intends to follow through with this recommendation and enact changes to ensure more non-domestic customers who would benefit from redress have access to it.

The consultation set out a minded to position for what that expansion could look like, by introducing a new small business definition into the Gas and Electricity Regulated Providers (Redress Scheme) Order 2008. This would sit alongside the existing microbusiness definition<sup>1</sup>. The proposed definition of small business included a combination of the following thresholds:

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<sup>1</sup> See the non-domestic element of the definition of "relevant consumer" in article 2(1) of the Order.

- Fewer than 50 employees or their full-time equivalent AND an annual turnover of at most £6.5 million or a balance sheet total of £5.0 million, OR
- An annual consumption of electricity of not more than 500,000 kWh, OR
- An annual consumption of gas of not more than 500,000 kWh.

Government estimated that introducing a new threshold to access and seek redress through the Energy Ombudsman to include small businesses 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%*, which represents at least an additional 200,000 businesses in the UK. The three main objectives of the consultation were to confirm appetite for expanding access to redress to small businesses, gathering feedback on the proposed thresholds and confirming if this definition should be mirrored in Ofgem's proposed changes.

A total of 36 responses were received from stakeholders including energy suppliers, consumer groups, Third-Party Intermediaries (TPIs), businesses and their representative organisations, industry groups, among others. A summary of responses provided by these stakeholders can be found during the remainder of this document. We are grateful to all those who took the time to respond.

In reporting the overall response to each question, the 'majority' indicates the clear view of more than 50% of respondents in response to that question, and 'minority' indicates fewer than 50%. The following terms have been used in summarising additional points raised in the responses: 'most respondents' indicates more than 70% of those answering the particular question, 'a few respondents' means fewer than 30%, and 'some respondents' refers to the range in between 30% and 70%.

# Summary of Responses

## Consultation Question:

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.

## Summary of responses

- 36 respondents responded to this question. The vast majority of respondents agreed with expanding access to small businesses. Some thought efforts should go further and expand access to redress to all businesses.
- Suppliers' reactions were more mixed, some welcomed a guidance note to work out how to distinguish between micro and small businesses. This could include: what report period should be used for the consumption threshold; how to apply the thresholds to group accounts; clarifying how suppliers should treat customers who grow or reduce in size.
- Whilst the majority of suppliers who responded to the consultation agreed with the sentiment to provide more businesses with access to redress, they did not wish for additional identification and reporting burdens to be placed on them to find and disseminate this information to the relevant customers.
- The majority of businesses and their trade body representatives who replied to the consultation highlighted the lack of resources and expertise available to small businesses to address energy related disputes.

## Consultation Question:

2. Do you agree with the combination of employee numbers, annual turnover and annual consumption level as threshold indicators?

## Summary of responses

- 33 respondents answered this question. Most responses were in agreement with the proposal, and a few respondents were unsure or did not specify one way or another.
- Some respondents highlighted issues already experienced by the microbusiness definition, including the difficulty in verifying accuracy of figures and the ability for employee numbers or financial indicators to fluctuate for businesses. These same respondents suggested consumers could 'self declare' if they meet the thresholds in

the micro or small definitions and/or suppliers could take 'all reasonable steps' to identify specific customers that meet these thresholds.

- While a majority of respondents did agree with the combination of threshold indicators, the reasons behind the responses of those disagreeing with the combination of criteria were varied. Of those that disagreed with the combination of threshold indicators, they recommended just using energy consumption thresholds to reduce complexity. This is information that is more easily accessible and verifiable for suppliers. However, some respondents who disagreed with the combination of indicators also acknowledged that business size and financial indicators are easier for consumers to deal with.
- A few respondents who disagreed also recognised that if the microbusiness definition was not to change that it would be useful to maintain consistent thresholds across both definitions.
- A few respondents also highlighted the various operational structures that small businesses consist of and pointed to a mix of threshold factors being beneficial to capture the maximum number of small businesses who need support.
- Finally, a few respondents recommended aligning with the Companies House definition of a small business, a turnover of £10.2m or less, rather than the FCA figures for annual turnover and balance sheet total.

**Consultation Question:**

3. Do you agree with aligning the turnover and balance sheet elements in the proposed new threshold with that for accessing the Financial Ombudsman?

**Summary of responses**

- 30 respondents answered this question. The majority of respondents agreed with the proposal, seeing the alignment of the Energy Ombudsman remit expansion with the Financial Ombudsman as a positive step towards greater clarity and consistency.
- As with question 2, some highlighted the challenge for suppliers to verify the eligibility criteria of turnover and balance sheet indicators. These are less readily accessible for energy suppliers than for financial institutions and some respondents suggested either eliminating the financial indicators criteria or allowing suppliers to rely solely on businesses' self-declaration for those.
- A few respondents pointed out that the eligibility criteria for accessing the Energy Ombudsman (EO) and the Financial Ombudsman Services (FOS) will not align entirely due to the proposed energy consumption-based aspect in the small business definition, which would be present for the EO scheme but not the FOS.

**Consultation Question:**

4. Do you agree with the expanded energy consumption levels proposed in the consultation?

**Summary of responses**

- 32 respondents answered this question. Some respondents agreed with the proposal. Most respondents were unsure, not about expanding consumption levels but the measure/amount of such an expansion.
- Some respondents envisage a risk, by setting the consumption threshold as electricity “or” gas, that a significant number of very high electricity consumers, with limited gas consumption, would be captured under the consumption side of the threshold. The same respondents suggest a way to prevent this scenario by replacing “or” with “and” in the proposed small business definition.
- A few of the respondents also noticed an inconsistency with the microbusiness definition, whereby the microbusiness definition has a higher consumption threshold for gas versus electricity and suggest that any new definition should strive for consistency with existing industry definitions in terms of the ratio between electricity and gas.
- Finally, a minority of respondents support a lower level of energy consumption as an eligibility threshold to align this with the net zero priorities.

**Consultation Question:**

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 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?

**Summary of responses**

- 26 respondents answered this question. Most respondents agreed with the proposal for the new threshold for accessing the Energy Ombudsman to be mirrored by any changes proposed by Ofgem.
- A few respondents, with specific reference to signposting, expressed some concerns about Citizen’s Advice’s capacity to adequately engage with larger businesses. The same considerations apply to the expansion of the TPI Alternative Dispute Resolution scheme to more businesses, the Energy Ombudsman’s capacity to face



such an expansion and the ongoing confusion, which may worsen, generated by different ADR schemes available.

- Some respondents took the occasion to express their support for formal regulation of TPIs.

## Next Steps

Based on the responses to the consultation and the responses to Ofgem's statutory consultation,<sup>2</sup> government will work to expand access to redress for small businesses through a change to secondary legislation. This step will be taken as soon as parliamentary time allows in this session. Subject to Parliamentary approval, we are minded to opt for the effects of any change to come into force for the common commencement period of October 2024. This is to give suppliers, the Energy Ombudsman, Citizens Advice and consumers enough time to understand the new definition and make any changes to their processes to accommodate this amendment.

After careful consideration of the responses, we will proceed with introducing a new small business definition into the Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 (the Order), which will be separate from, and will not replace, the existing 'relevant consumer' definition contained in Article 2(1) of The Order. Ofgem links the definition of a relevant consumer to their microbusiness definition in their Supply Licence Conditions<sup>3</sup>. The non-domestic element of the definition of a 'relevant consumer' in the Order covers businesses with:

- an annual consumption of—
- electricity of not more than 100,000 kWh; or
- gas of not more than 293,000 kWh; or
- fewer than 10 employees (or their full time equivalent); and
- an annual turnover or annual balance sheet total not exceeding Euros 2 million

The new small business definition, which we proposed in the consultation, would cover businesses with:

- Fewer than 50 employees or their full-time equivalent AND an annual turnover of at most £6.5 million or a balance sheet total of £5.0 million.
- OR
- An annual consumption of electricity of not more than 200,000 kWh (instead of the original minded to position of 500,000 kWh)
- OR
- An annual consumption of gas of not more than 500,000 kWh

As seen earlier in this document, most respondents agreed with expanding access to the EO to small businesses and having a combination of employee numbers, annual turnover, and annual consumption levels criteria. While most respondents also agreed on the employee numbers and annual turnover thresholds, some envisage the risk that a small

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<sup>2</sup> Ofgem Non-Domestic Market Review Statutory Consultation Decision, 5 April 2024, <https://www.ofgem.gov.uk/publications/non-domestic-market-review-decision>

<sup>3</sup> See for example the definition of "Micro Business Consumer" in condition 7A.14 of the Standard Conditions of Electricity Supply Licence.

number of middle-sized businesses would be captured with the proposed yearly consumption threshold, in particular, for electricity.

Following further discussions with Ofgem and analysts, and to more closely mirror the ratio between electricity and gas use in the micro business definition, we intend to replace the initially proposed annual consumption threshold for electricity from 500,000kWh to 200,000kWh.

The 200,000kWh value emerged as a threshold supported by some industry experts'. Moreover, the most recent Non-domestic National Energy Efficiency Data (ND-NEED) can be used to derive an average energy consumption level for small businesses in 2021. We recognise that this is only a partial dataset of the non-domestic businesses in England and Wales, however it is still a valuable data source.

The sample of businesses with between 10-49 employees (the small business size that we are using in our own threshold determination) using electricity in 2021 was 66,000. The electricity consumption of these totalled 8.585 TWh, which is 8,585,000,000 kWh. The average consumption per business therefore was 130,076 kWh. As a result, we believe that an annual consumption level for electricity of not more than 200,000 kWh would be an appropriate new threshold. We recognise that the ND-NEED represents an average so some non-domestic users may use more electricity, however, with the additional thresholds for gas and employee number and financial indicators, we believe these offer appropriate alternative options for this minority of non-domestic users to still qualify for redress. The three threshold avenues also align with our aim to ensure that those businesses who need access to redress most are able to receive this.

It is important to highlight that the new electricity threshold set at 200,000 kWh will not affect the number of small businesses initially estimated to benefit from this policy initiative (over 200,000).

We acknowledge that a firm limit for energy consumption levels is difficult to impose but based on the publicly available data and the responses from stakeholders, we will set the energy consumption thresholds at the above levels. These will be reviewed 12-18 months after implementation.

Whilst we understand the concerns raised by some respondents around having multiple forms of thresholds, we believe this is the most appropriate balance to ensure suppliers, who often prefer the energy consumption levels, and consumers, who more regularly interact with their employee numbers and financial information, both have useful avenues to ensure access to redress is met. To remain consistent to the microbusiness definition, a process that has been in place since 2008, we will mirror the types of thresholds for a small business definition, continuing this familiarity.

Though some respondents also mentioned financial alignment with the Companies House definition<sup>4</sup>, we believe that alignment with the FCAs thresholds is appropriate for

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<sup>4</sup> Companies House accounts guidance, 9.1 Qualifying as a small company, <https://www.gov.uk/government/publications/life-of-a-company-annual-requirements/life-of-a-company-part-1-accounts#small-company>

consistency purposes. The FCA reviewed their thresholds in 2023 and found them to be at an appropriate level. Having the same employee number and financial thresholds gives consumers a consistent level to understand when they can access redress in both the financial industry and in the energy sector. Like with all thresholds, this will be considered during the future review process.

The above thresholds are the parameters that will inform the drafting of the Statutory Instrument, the above wording is not the unequivocal phrasing that will be replicated in The Order. We will undertake drafting with legal colleagues to determine what the most appropriate wording should be.

## Alignment with Ofgem's proposals

We are clear that consistency is something that is important to maintain for all relevant stakeholders who will be affected by any changes to the non-domestic market. That is why we have always, and will continue to, work in conjunction with Ofgem as the regulator to ensure alignment with statutory changes to licence conditions and legislation. We have discussed stakeholder feedback from our related consultations and, where proposals link to a small business definition, will be following the same set of thresholds that are set out above.

## Ensuring the Energy Ombudsman is prepared for expansion

Under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015, if an energy company fails to resolve a complaint through their own customer service efforts, they will be required to advise the consumer of an alternative dispute resolution (ADR) body. Ofgem, as the Competent Authority, is responsible for certifying ADR entities in the energy sector. In 2015 Ofgem appointed Ombudsman Services (Energy Ombudsman) as an ADR entity for the energy sector. We will be working closely with the Energy Ombudsman, to understand how they will prepare for the outlined expansion above. This includes understanding their project plan, additional resourcing required, and ability to deal with different types of cases, amongst other considerations. We will also consider convening suppliers to gain a deeper insight into the differences in contract types between micro and small businesses.

## Review period

During the consultation we made clear that any changes would be subject to a review period 12-18 months after any changes came into effect. We still believe this would be beneficial and our aim is to be ambitious, to ensure that those non-domestic customers who need access to redress most are able to receive it. We envision the review would cover the thresholds that have been set out above and whether they are fit for purpose, as well as whether any further expansion of access is required.

## Guidance

We recognise that some stakeholders raised the benefit of guidance being prepared ahead of implementation of any expansion. We will work with Ofgem and industry professionals to produce a guidance document that sets out how we expect suppliers to share eligibility information with their customers, tackle frequently asked questions, and clarify roles and responsibilities.

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

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