

Institute of Directors  
116 Pall Mall  
London  
SW1Y 5ED

01/09/2023

Dear Mr Brearley,

### Non-domestic market review: Findings and Policy consultation

*The IoD is an independent, non-party political organisation representing approximately 20,000 company directors, senior business leaders, and entrepreneurs, typically running small to medium sized businesses in all parts of the UK. It is the UK's longest-running organisation for professional leaders, having been founded in 1903 and incorporated by Royal Charter in 1906. Its aim is to promote good governance and ensure high levels of skills and integrity among directors of organisations. It campaigns on issues of importance to its members and to the wider business community with the aim of fostering a climate favourable to entrepreneurial activity in the UK.*

We welcome the opportunity to respond to the *Non-domestic market review: Findings and Policy consultation*, given that a well-functioning non-domestic energy market is a key component of a business environment conducive to growth and stability. As a business representative organisation, we are responding with our best understanding of how the issues laid out in the consultation would be viewed by our members.

### Summary of the IoD's view

The IoD has, in line with Ofgem's experience, received numerous reports from members of the non-domestic market not functioning adequately.

In January 2023, we polled 941 business leaders on whether they had experienced disadvantageous treatment by energy suppliers in the previous six months (see Annexe). While three quarters (73%) of respondents reported not experiencing such behaviours from energy suppliers, one in five (18%) reported encountering at least one form of negative behaviour.

The most reported negative behaviour experienced was suppliers requesting a larger share of the bill to be paid in advance (11%). This was followed by refusal to negotiate payment terms when requested to do so (6%) and refusal to renew a contract (6%).

Qualitative responses to the question revealed additional challenging behaviours, including a failure to process refunds, changes to payment practices, difficulties securing contracts, and poor communication:

“Not processing refunds for held monies on account.” – IoD member, construction sector, small business

“Loaded prediction of usage and monthly direct debit which amounts to requesting more in advance.” – IoD member, administrative and support services, microbusiness

“I am now requested to pay monthly whereas for 60 years I have paid quarterly.” – IoD member, arts, entertainment, and recreation sector, microbusiness

“Continually chasing for payment and meter readings... They chase every month (or even more frequently), when for years it used to be quarterly.” – IoD member, Professional, scientific and technical activities sector, microbusiness

“Changing tariff without informing me and being worse off because of it. (They have agreed to backdate).” -- IoD member, manufacturing sector, microbusiness

“Rate increased despite previously agreed rate that should have still been valid. According to the terms of the contract they were able to do this.” – IoD member, arts, entertainment, and recreation sector, microbusiness

“Refusing to provide prices - market broken.” – IoD member, accommodation and food sector, large business

“Long, long negotiation for our business to achieve a new continuation contract. Including additional costs due to risk (higher pricing) and payment terms (interest rate).” – IoD member, manufacturing sector, large business

“Indexing fuel pellets to 90% of the oil price but fixing it when the oil price was higher than it is now.” – IoD member, accommodation and food services sector, small business

We believe that some of the policy changes suggested in this consultation have the potential to create a non-domestic market which better meets business’ needs, most importantly by improving businesses’ access to redress.

### Answers to individual questions

#### **Q1. Do you agree with our proposal to agree voluntary improved pricing transparency and if so, please include comments on the particular areas you would like to see made more transparent?**

Yes. While we expect business concerns around pricing and transparency to subside in relation to their peak last winter, the persistent volatility in the wholesale market and risk of future shocks is such that improved pricing transparency in both quotes and bills would be a welcome step. IoD members have reported finding pricing systems confusing:

“I renewed two contracts both of which expired at the same time - the quotes were different for both the rate per KWh and standing charge. It would make matters much easier to understand and budget for if basically the supplier had to supply the meter within the energy

price on a KWh basis - meter daily charges have risen significantly to between £1-£2 a day! so £30 a month and the ability to understand the energy cost is complex” – IoD member, accommodation and food services, small business

Lack of clarity around pricing processes is compounded by poor communication:

“[Energy provider] could not be contacted by phone or email and they imposed new prices without any consultation. We are paying over double last year's tariff.” – IoD member, arts, entertainment, and recreation sector, microbusiness

Mandating specific bill information would not be appropriate in the non-domestic market due to the range of contracts offered in the sector, but any work to encourage suppliers to provide additional transparency – on bills, contracts, and websites – would be helpful.

**Q8. Are Micro Business Consumers aware they can contact Citizens Advice for support? Do we need to introduce a rule requiring suppliers to signpost them more specifically?**

The IoD does not have data on the proportion of microbusiness customers aware that they can contact Citizens Advice for support but would welcome any steps to improve supplier practices in signposting microbusinesses to the support that is available to them.

**Q11. Do you have any views on what (if any) threshold should apply on business size for complaints handling requirements, or views on which requirements set out in the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 should not be expanded to apply to all non-domestic customers?**

We encourage Ofgem to expand the supplier complaints handling requirements to include more non-domestic consumers, with a limit aligned to the standard government definition of a small or medium-sized company, namely under 250 staff with a turnover of under €50m and a balance sheet of under €43m<sup>1</sup>. More timely responses to complaints may reduce the need for non-domestic customers to turn to redress and legal routes, to the benefit of all parties.

While timely responses to complaints should be the standard set for suppliers’ interactions with all non-domestic customers, the SME segment of the market would benefit most from an expansion of coverage of complaints handling requirements. Larger businesses are significantly more likely to have both the in-house resources and the weight afforded by the scale of their custom, potentially combined with dedicated relationship managers, to reduce the likelihood of their complaints being handled poorly. While all businesses would benefit from being included in complaints handling requirements, SMEs would benefit disproportionately; we would therefore recommend that the requirements, at least initially, be expanded to include all SMEs.

**Q12. We are seeking stakeholder views on our suggested proposals to government around increasing access to the Energy Ombudsman. Should there be a threshold on who can access the Energy Ombudsman? If so, where should this be set?**

We strongly support the recommendation that more non-domestic customers be given access to redress through the Energy Ombudsman. We have received reports of the Energy Ombudsman service

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<sup>1</sup> BEIS small and medium enterprises action plan: 2022 to 2025, published 26 January 2023

being utilised and valued by microbusinesses, such as the case of a business in the health and social work sector which struggled to recuperate overpayments from their former energy supplier once a contract had been terminated. The business referred the case to the Ombudsman and reported the entire process taking eight months, which although a significant amount of time remains lower than the average wait – and with fewer associated costs – than complaints taken through the court route. Larger businesses would therefore benefit from access to this form of appropriately resourced redress.

The businesses who would benefit most from access to the Energy Ombudsman are small and medium-sized businesses who are more likely to struggle to resource redress through the court system particularly given their lower likelihood of having in-house legal teams. We would therefore recommend that access be expanded, as a minimum, to include all SMEs, aligned to the standard government definition of having under 250 staff with a turnover of under €50m and a balance sheet of under €43m.

**Q13. We are seeking stakeholder views on the proposed changes to the rules requiring suppliers work with TPIs who are members of a redress scheme. Additionally, what are your views on the costs and benefits associated with the different proposals?**

Our view is that *Option 3: Expand the requirement for suppliers to only work with TPIs that are signed up to a QDSS to a limited section of the non-domestic retail energy market (eg greater than micro business but excluding large customers)* would be the most conducive to a well-functioning non-domestic energy market.

We have received anecdotal evidence that the behaviour of a small minority of energy brokers is making the non-domestic energy market difficult for businesses to navigate:

“We are currently in dispute with regard to the last three months’ bills, which suddenly increased to twice the wholesale rate, even after the discount. This is not entirely the fault of the energy company but because of the use of a broker.” – IoD member, manufacturing, small business

We would therefore welcome a requirement that suppliers should only work with TPIs who are members of a redress scheme when working with non-domestic customers in the SME sector. As above, we recommend that the definition used be aligned to the standard government definition of having under 250 staff with a turnover of under €50m and a balance sheet of under €43m.

Applying this threshold would be particularly important if the aforementioned changes to access to the Energy Ombudsman were enacted, as it would ensure consistency for non-domestic customers in terms of access to redress.

While Option 3 would entail more brokers being required to subscribe to a QDSS and pay case fees where complaints against them are processed, it should be noted that the same approach is already in place for around 1700 energy brokers signed up to the Energy Ombudsman’s ADR scheme. The benefits of expanding these arrangements to enable SMEs who utilise TPIs access to redress therefore represents a cost-effective means of securing a better functioning non-domestic energy market.

We hope you have found these comments useful. If you require further information about our views, please do not hesitate to contact us.

With kind regards,

A handwritten signature in black ink that reads 'A. Hall-Chen'. The signature is written in a cursive style with a horizontal line underneath.

Alex Hall-Chen

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## Annexe

Have you experienced any of the following behaviours from your energy supplier in the last six months? Please select all that apply.

Responses	Response count	Response %
Refusing to renew a contract	56	6%
Refusing to negotiate payment terms when requested to do so	52	6%
Requesting a larger share of the bill to be paid in advance	105	11%
None	685	73%
Terminating or altering the terms of a contract before it comes up for renewal	34	4%
Other	86	9%