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

Dear Retail Energy Markets and Consumers Team,

A new threshold for businesses accessing the Energy Ombudsman

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 *A new threshold for businesses accessing the Energy Ombudsman* 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

We welcome the government's commitment to ensuring that access to redress in the non-domestic energy market is fair, effective, and does not disadvantage businesses with more limited resources.

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.

We therefore welcome the government’s proposal to introduce 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.

While we welcome the proposed increases to the thresholds for businesses to access the Energy Ombudsman and the intention to align with other redress schemes, we also recommend a) full alignment with the Companies House definition of a small business, and b) a further expansion of the thresholds to include all SMEs if the initial expansion proves successful.

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.

Yes, we strongly support the proposal to expand the eligibility threshold to allow small businesses to seek redress through the Energy Ombudsman. Although pursuing legal action through the courts is available to all businesses, many SMEs do not have the necessary resources to pursue such a route.

We have received reports of the Energy Ombudsman service 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 small businesses would therefore benefit from the opportunity to access dispute resolution.

In the long-term, as outlined in our [response](#) to Ofgem’s *Non-domestic market review*, we would recommend that access to the Energy Ombudsman (and other similar redress schemes) be expanded to include all SMEs, aligned to the standard government definition, which at present consists of having under 250 staff with a turnover of under €50m and a balance sheet of under €43m. While we recognise that the disputes brought by larger businesses would be more likely to fall outside of the scope of the Energy Ombudsman’s financial settlement limit and expertise, businesses in such circumstances could still opt for legal recourse. Medium-sized businesses whose disputes fall within the scope and expertise of the Energy Ombudsman, however, would have the choice to pursue Alternative Dispute Resolution (ADR).

We therefore agree with the government’s intention to review the thresholds in future; we hope to see a further expansion of access to redress to include all SMEs should the initial expansion prove successful.

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

Partially. Where the government intends to expand access to include only small businesses, we would advocate for alignment with the Companies House definition of a small business. While this definition is aligned with the employee numbers and balance sheet threshold indicators proposed in this consultation, the proposed £6.5 million turnover threshold is significantly lower than the £10.2 million

turnover threshold cited in the Companies House definition. The fact that the Companies House definition only requires two of the three thresholds to be met in order for a company to be considered small is another potentially unhelpful point of divergence from the thresholds proposed in this consultation.

We would therefore suggest the annual turnover threshold be amended to reflect the annual turnover threshold in the Companies House definition rather than the current Financial Ombudsman Services (FOS) threshold. We would also recommend, for the sake of consistency, that only two of the three (employee numbers/annual turnover/balance sheet) thresholds – in addition to the consumption level threshold – should need to be met in order to qualify for redress as a small business.

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

Yes, we strongly agree that thresholds for accessing redress services should be aligned, in order to build consistency across sectors and to simplify the redress landscape for SMEs.

However, while we agree with the principle of aligning the turnover and balance sheet elements in the new threshold with that for accessing the FOS, as described above, we believe that the thresholds for both the Energy Ombudsman and FOS should be in the short term aligned with the Companies House definition of a small business and later aligned with the Companies House definition of an SME.

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

Yes. Small businesses in energy-intensive sectors, for instance, will have higher energy consumption than is typical for business of their size but are likely to struggle to access legal redress in line with other companies of their size; the proposed expanded energy consumption threshold is therefore welcome.

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 nondomestic consumers to Citizens Advice for support?

Yes. Following anecdotal evidence that the behaviour of a small minority of energy brokers is making the non-domestic energy market difficult for businesses to navigate, our view is that Ofgem should expand the requirement for suppliers to only work with TPIs that are signed up to an ADR scheme to include larger small businesses, in order to ensure consistency for non-domestic customers in terms of access to redress.

Similarly, we have advocated for Ofgem to expand the supplier complaints handling requirements to include all SMEs. 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.

We do not have data on the awareness of SMEs regarding their ability to turn to Citizens Advice for support but would welcome any steps to improve supplier practices in signposting relevant non-domestic consumers to the support that is available to them.

For all of the above changes, we would recommend that they initially encompass small businesses and later expanded to encompass all SMEs, both as defined by Companies House.

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,



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.

January 2023; 941 respondents

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%