

Broker FAQ – Key Questions

Applications and Membership

Who are the other accredited suppliers of the ADR scheme?

Currently the EO is the only qualifying provider of the new scheme that is due to go live 1 December 2022, however other providers may emerge in the future.

Is there a time period for enrolment, how do new TPI's entering the market enrol in an ADR?

New TPI entrants to the energy market after the go-live date of the 1st December 2022 will need to sign up to a scheme before they broker any energy supply contracts with microbusiness consumers. If you have missed the registration date of the 31st August you can still register, however there is no guarantee you will be enrolled by the 1st December.

Can a broker application be saved in draft and completed at a later date?

The application cannot be saved in draft. We recommend having the deed poll and complaint handling process completed and saved before completing the rest of the online application form. Once submitted, the broker can use the link in the application acknowledgement to check the status of the application and to upload additional documents (such as revised Complaint Handling Procedures).

We are already members of an ADR scheme. Does this cover us for the Broker Scheme?

No. Each scheme, e.g. Communications Sector, Energy, and Broker, is self-funded by the scheme members. Membership is required in each scheme applicable to the area of business the organisation is operating in.

What kind of organisations need to be a part of the ADR scheme?

Ofgem has defined an energy broker as follows: “An organisation or individual that, either on its own or through arrangements with other organisations or individuals, provides information and/or advice to a Microbusiness Consumer about the licensee’s Charges and/or other terms and conditions and whose payment or other consideration for doing so is made or processed by the licensee.” Organisations meeting this definition will be required to be members of the scheme.

Are only aggregators required to join the scheme or do sub-brokers need to join as well?

If you are an entity which meets the definition which Ofgem has set out, you need to join the broker ADR scheme.

EO Remit

What is the definition of a microbusiness?

A non-domestic consumer is defined as a microbusiness if they:

employ fewer than 10 employees (or their full time equivalent) and has an annual turnover or balance sheet no greater than €2 million

Or

uses no more than 100,000 kWh of electricity per year

Or

uses no more than 293,000 kWh of gas per year.

Can a non-microbusiness raise a dispute via the ADR Scheme?

The new ADR scheme only relates to complaints raised by microbusinesses.

Are there plans for this scheme to be extended into other markets, such as the domestic or large business markets?

The Microbusiness Strategic Review was in consideration of microbusiness energy consumers. Please refer to Ofgem's 2022/23 Forward Work Programme for further detail on any domestic and non-domestic work and BEIS's TPI call for evidence for what may be future Government policy in this area.

What TPI activities fall under the legislation?

'Relevant Third Party Activities' means any activity undertaken by a Third Party in respect of a Micro Business Supply Contract including (but without prejudice to the generality of the foregoing): (a) any

written or oral communications relating to the supply of electricity to a Micro Business Consumer including: (i) any pre-sales communications; (ii) any communications regarding Billing or Contractual Information; and (iii) any matters falling within the scope of standard conditions 7A, 14, 14A and 21B (insofar as they relate to a Micro Business Consumer); and (b) any processing of information relating to the supply of electricity to a Micro Business Consumer, together with any other Relevant Activities as the Authority may direct from time to time, following consultation.

Do outsourced call or sales centres classify as TPI's and need to come under the new regulations?

An outsourced sales function would fall inside of the Third Party and Third Party Costs definition and would therefore need to declare their costs on the Principal Terms and register on the ADR scheme if they intend to continue with relevant Third Party activities in respect of a microbusiness supply contract.

Are you able to investigate complaints about sales which took place before 1st December 2022?

Our ToR say that we shall not accept a complaint about something which the consumer was aware of before the scheme goes live unless the energy broker agrees to allow us to investigate. So, there may be occasions when we investigate the sale of a contract that occurred before December 2022, if the consumer only became aware of a problem after that date, but we would take the passage of time into consideration when considering what evidence is available.

What happens if a microbusiness wants to raise a complaint about a TPI which isn't registered on the EO Broker ADR scheme?

We would be unable to register the complaint under the broker ADR scheme as the broker will not be a member of this scheme. We would work with the broker to ensure they are registered with the scheme.

If you decide a contract has been miss-sold by a broker, what action would you require to put things right?

The objective is to put the microbusiness back into the position they would have been in had the issue not occurred. This will be decided based on the circumstances of each complaint.

Third Parties

Can a microbusiness nominate a third party (which could be a claims agency) to make the complaint on their behalf?

EO requires a signed Letter of Authority (LOA) from the account holder indicating that a third party can act on their behalf. We can also accept verbal authority from the account holder once data protection has been checked and confirmed.

If the claim agency has appropriate authority from the microbusiness to represent them in their complaint, We would log them as a third party and interact with them as the complaint progresses through our process.

Can a broker elect a third party to respond to a complaint on their behalf?

A broker can decide how they wish to handle complaints and may want to outsource. However, this should not affect the microbusiness' right to an ADR scheme. A broker either has eight weeks or can issue a deadlock letter before the complaint can be escalated to the ADR scheme.

Case Fees

Why is there both a subscription fee and separate case fees? What are the fees used for?

The subscription fee covers the fixed charge of setting up and administering the scheme, case fees cover the cost of handling each case individually.

Is there a risk of double compensation? One by the energy supplier and another by the broker if a microbusiness raises a complaint in both schemes.

A microbusiness has the right to raise a complaint against either broker or supplier or both. We won't hold a supplier responsible for the actions of a broker and vice versa.

Why does a small company (or sole trader) pay the same as a large broker?

Every energy broker organisation – large, medium, small, or sole practitioner – will pay the same membership subscription fee in year one. We appreciate that this means sole practitioners will pay the same membership subscription fees as larger companies, but without knowing the breakdown of

the broker industry, it's not initially possible to tier the membership subscription cost. As we establish the Broker ADR scheme, we'll review our costings to ensure that fees are fair. It's possible that, with more information about the scheme's membership, a tiered membership could apply to subscription fees based on organisational size.

Commission

Will EO consider commission complaints?

The requirement around disclosing third party costs falls on suppliers as part of the new licence condition, although in practice it will often be the broker disclosing third party costs prior to a contract being agreed. If we receive complaints which are linked to third party costs and call into question the actions of a broker we would consider whether the microbusiness had been treated fairly.

What is the expectation around the way commission is disclosed?

Information on brokerage costs must be provided to microbusinesses via the Principal Terms, for all contracts, and this information must be presented as a total cost in pounds/pence covering the duration of the contract. You are free to also present the costs as price per kWh.

Do suppliers' internal sales teams also have to disclose commission fees?

Brokers perform a different service to a supplier and offer a range of services to the microbusiness for which they are paying. A microbusiness would expect that a supplier's charges would be a total of all their costs, including that of any sales staff. However it's not always clear to a microbusiness that the prices they are quoted include broker commissions, and what portion of the prices they are quoted goes to the broker, and what are for the supply of energy. Hence the need to clarify the split of payments in the principal terms.

I get paid directly rather than via commissions, do I need to declare my commissions and register for the ADR scheme?

Third Party costs are defined as "any fees, commission or other consideration including a benefit of any kind, processed by the licensee and paid or made or due to be paid or made to the Third Party in respect of a Micro Business Consumer Contract, that are passed on to the Micro Business Consumer." If a microbusiness consumer is paying, or due to pay, any Third Party costs in respect of the energy

supply contract then these costs fall under the new rules and you would also need to register for the ADR scheme.

What does EO consider a fair rate of commission?

The requirement around disclosing third party costs falls on suppliers as part of the new licence condition. The ADR scheme does not regulate broker behaviour and we are unable to comment on what a fair rate is. If we receive complaints which are linked to third party costs and call into question the actions of a broker we would consider whether the microbusiness had been treated fairly.

Evidence

What kind of information will you be looking for as a backup for a complaint raised by a microbusiness? What would you expect to be included in a case file?

This will depend on the nature of the complaint. As a guide, we will be looking to see any written or verbal communications from both parties, contract terms and conditions, any testimony or other documentation you feel is relevant to the complaint.

What happens if the supplier is slow to respond to the broker's questions and this results in a complaint about the broker?

We would encourage brokers to work with suppliers or aggregators to establish realistic time frames for providing information. It's in a supplier's interest to provide information as required as this may prevent a complaint from the consumer about the supplier. If a broker receives a complaint in relation to a supplier issue, they should signpost the microbusiness to the supplier.

The outcome of a complaint and associated remedies (if any) will be communicated to the broker to implement.

We don't work with call recordings and all our sales are documented electronically. What can we provide as evidence?

Any sales options are covered under the scheme and either party should provide evidence in support of their position. If the dispute is surrounding what was said during a telephone call and there is no call recording, we would need to make a conclusion on the balance of probability.

Decisions

What is the process if the broker disagrees with the decision of EO? Can the broker appeal the decision?

When we publish a decision, if the broker or consumer can demonstrate a significant error or there's new evidence that wasn't previously available that makes a material difference to the decision, they have 14 days to appeal. We then have up to 14 days to issue our final decision for consideration by the microbusiness.

Publishing Data

Will you be publicising the outcomes/sharing data of the investigations of Broker complaints?

As an ombudsman service we want to share data and insight about the issues people are facing. We think very carefully about the data shared to ensure its accurate and helpful. We will not share data about individual organisations without further consultation.

Do you have any statistics on the percentage of complaints upheld?

Yes. We have statistics about outcomes of complaints for the current energy scheme. These are published on our consumer website. <https://www.ombudsman-services.org/about-us/annual-reports/complaints-data/energy-complaints-data>

Appendix

Key

EO / We / Us – Energy Ombudsman

ToR – Terms of Reference

TPI - Third Party Intermediary

Microbusiness - Consumer

Aggregator - an umbrella broker who sub-brokers work through to access supplier