

# Consultation Response

**A new threshold for  
businesses accessing  
the Energy Ombudsman**

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February 2024

## 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.

Citizens Advice agrees with the proposal to extend the eligibility threshold in the Order to allow small businesses to access the Energy Ombudsman (EO). Small businesses often experience similar issues to microbusinesses as energy consumers but lack opportunities for redress<sup>1</sup>. Expanding the eligibility threshold should allow for financial recourse for small businesses while driving up standards across the industry as suppliers seek to avoid cases being brought to the Ombudsman by their customers.

Research shows that small businesses, like microbusinesses, often do not maximise opportunities for engagement with their supplier or the energy market. A lack of engagement can result in consumers being trapped in long-term contracts, being mis-sold products or missing out on tariffs better suited to their business needs<sup>2</sup>.

We don’t currently advise small business energy consumers, and as such do not hold data on their experiences in the market. We are aware that some small businesses do try to access our advice service for microbusinesses, as our advisors turn away clients who disclose they are a small business.

Research shows that small businesses experience similar issues in the energy retail market as microbusinesses, and we agree with the working assumption put forward by Ofgem and DESNZ that small businesses’ experiences of the energy retail market are more likely mirror those of microbusinesses than larger companies<sup>3</sup>. Our microbusiness data should therefore provide some useful insight into the likely experience of small businesses. Most of the issues that microbusinesses contact us about relate to debt and billing - these cases make up 50% of all our non-domestic cases.

### Case study

The consumer owns a restaurant, which has high energy usage needs. They last received a bill from their supplier four months ago, which they paid, but they have not

<sup>1</sup> [Micro and small Business engagement in the energy market, Citizens Advice, 2018](#)

<sup>2</sup> [Ibid., Micro and small business engagement survey, Ofgem, 2018, The impact of COVID-19 on microbusinesses: longitudinal research, Ofgem, 2023](#)

<sup>3</sup> [Micro and small business customer engagement in the energy market, Ofgem, 2016; The impact of COVID-19 on microbusinesses: longitudinal research, Ofgem, 2023](#)

had a bill since. They came to Citizens Advice when suddenly, without warning from their supplier, they were disconnected from their energy supply. As a result, the consumer lost frozen and refrigerated goods of considerable value. The supplier did not provide options for a payment plan, but demanded the consumer pay £35,000 to cover the period since they last paid a bill in order to be reconnected. They can't afford this and have remained off supply.

The above case study evidences a clear breach of suppliers' requirement to give 7 days written notice ahead of disconnection or prepayment meter (PPM) installation, which can be sent no earlier than 28 days after the supplier sends an initial demand for payment<sup>4</sup>. As a microbusiness, Citizens Advice was able to advise the consumer on their rights and the case was referred to the Extra Help Unit for further investigation due to the fact that the consumer was off supply. This business is at the top end of the current microbusinesses thresholds; a very similar business with just two more employees would be exempt from accessing this support.

As with microbusinesses, many small businesses have limited resources to initiate legal proceedings in the event of a dispute, and significantly less leverage than a supplier when participating in litigation. A recent group action case regarding energy brokers' hidden commission fees on energy bills illustrates the difficulties small businesses face; while group action can lead to redress, it is an expensive and lengthy option<sup>5</sup>. Access to the EO may provide some relief where small businesses cannot afford the time and effort required to cooperate with other firms to launch legal proceedings.

Finally, one of the reasons cited by DESNZ for expanding access to the EO was the finding from the Legal Services Board Survey 2023 that many small businesses either seek to resolve issues on their own, or take no action, rather than seeking legal support. Similarly, joint research from Citizens Advice and Ofgem has recently found that, despite having access to the EO, many microbusiness consumers do not seek help when they have a problem with their energy provider<sup>6</sup>. We therefore do not expect the proposed expansion alone to be sufficient to improve outcomes for businesses. We are keen to also work with the Government and Ofgem to raise awareness of the support available to non-domestic consumers, to ensure that businesses can access help when they need it. This includes improved signposting on energy bills and other supplier communications.

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<sup>4</sup> Gas Act 1986, Schedule 2B Section 7 (1) and (3); Electricity Act 1989, Schedule 6 Section 1 (1) (1A) and (2)

<sup>5</sup> [Legal action launched against rip off secret commissions on uk firms energy bills, The Guardian, January 2024](#)

<sup>6</sup> [The impact of COVID-19 on microbusinesses: longitudinal research, Ofgem, 2023](#)

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

Citizens Advice agrees with the combination of employee numbers, annual turnover and annual consumption levels as threshold indicators. This allows a greater variety of small businesses to access the Energy Ombudsman than requiring all three thresholds to be met. For example, a business may be a very high user of energy - such as a health and fitness studio - but they may only have a small number of employees. Their usage of energy is not necessarily proportionate to their expertise in the energy retail market, and they may still require more specialist support when things go wrong.

In addition, we agree with the proposal that being within either of the turnover and balance sheet thresholds is sufficient to be eligible. Businesses with this level of turnover are not likely to need access to the EO in order to mitigate legal costs, no matter how low their staffing levels or energy use. Further, the maximum financial compensation offered by the EO is £10,000. Businesses operating with £6.5 million in turnover are likely to seek more than £10,000 in compensation in a dispute settlement, as the losses suffered due to a breach of conditions are likely to be greater than this figure. We agree that businesses with over 50 employees but a turnover under £500,000 are likely to have similar experiences to smaller businesses.

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

In the Financial Conduct Authority's initial review after the expansion to the threshold for those accessing their services, they concluded that the new thresholds were set at the correct level<sup>7</sup>.

Their findings support our preliminary understanding that small and microbusiness consumers face similar challenges when interacting with the energy retail market. It is likely that consumers who would benefit from access to the Financial Ombudsman would also benefit from access to the Energy Ombudsman. The alignment of the

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<sup>7</sup> [Review of rules extending SME access to the Financial Ombudsman Service, Financial Conduct Authority, 2023](#)

turnover and balance sheet thresholds across different Ombudsman services will provide consistency and clarity for consumers.

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

Citizens Advice agrees with the expanded energy consumption levels proposed in the consultation. We recognise that defining a clear threshold of energy usage that captures small businesses is challenging. As noted in the consultation, Ofgem have worked to determine that the proposed threshold would increase access to redress for businesses who most need it, whilst excluding the largest businesses and I&C consumers.

Citizens Advice notes that the use of energy consumption levels to identify business types is largely utilised by suppliers, as they do not have information such as employee numbers available to them. Currently, suppliers are required to take all reasonable steps to identify whether the non-domestic customer is a microbusiness, and must signpost those customers to the Energy Ombudsman as part of their complaints procedure<sup>8</sup>. Given suppliers may use energy consumption levels alone to identify whether a customer should be signposted to the Energy Ombudsman, there is a risk small businesses with high usage levels could be excluded. The risk could be minimised with published guidance advising suppliers to cast a wide net and providing clear information on eligibility criteria when signposting to the Energy Ombudsman.

Small businesses themselves can struggle to identify their energy usage levels, and are therefore more likely to use the turnover, employee numbers or balance sheet thresholds when establishing which redress options they can access. If, on review, the proposed usage threshold is deemed inappropriate, this will have a limited impact on consumers due to the combination of the other threshold indicators. The significant margin between the proposed threshold and the average energy consumption levels of small businesses indicates it is unlikely to be too low, and if it is too high, large businesses should still be excluded by the turnover and balance sheet requirements<sup>9</sup>.

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<sup>8</sup> [The Gas and Electricity \(Consumer Complaints Handling Standards\) Regulations 2008](#)

<sup>9</sup> [Non-domestic National Energy Efficiency Data Framework \(ND-NEED\), Department for Energy Security and Net Zero, 2023](#)

## **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?**

Citizens Advice agrees that the introduction of a new threshold allowing small businesses to access the EO should be mirrored in Ofgem's proposed changes. We have responded to Ofgem's consultation supporting the expansion of the above consumer protections to small business consumers<sup>10</sup>.

We are strongly supportive of the proposal to extend the requirement that suppliers signpost non-domestic consumers to Citizens Advice to include small businesses. Through our Consumer Service, microbusinesses have access to free and impartial expert advice, helping them to understand their rights as consumers and which opportunities for redress are available to them. For particularly complex cases, or where the client is in danger of disconnection, they can be referred to the Extra Help Unit for further specialist support.

As the statutory advocate for microbusinesses, Citizens Advice can refer cases that demonstrate a clear breach of the licence conditions to Ofgem. Extending Consumer Service access to small businesses will provide additional practical support for individual small businesses, whilst also driving up industry standards as suppliers seek to avoid formal referrals to Ofgem. We have also submitted a separate confidential appendix which provides detail on our implementation planning, including a breakdown of the associated costs.

There is clear evidence that small and microbusiness consumers experience similar issues when engaging with the non-domestic retail market, and that both groups are often reluctant to seek support when they encounter a problem. Aligning any changes to those proposed by Ofgem would help provide small businesses with more options for support, and create a single threshold across the industry. This would help reduce confusion when it comes to establishing eligibility.

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<sup>10</sup> [Citizens Advice response to Ofgem's non-domestic market review: Statutory consultation on licence changes, January 2024.](#)

Please do not hesitate to contact us with any questions regarding our response, by contacting:

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