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1 February 2024

Dear Colin

RE: CONSUMER COUNCIL RESPONSE THE CALL FOR INPUT – REVIEW OF THE REGULATION OF THE NON-DOMESTIC ENERGY RETAIL MARKET

Thank you for the opportunity to provide feedback on the Utility Regulator (UR) Review of the Regulation of the Non-Domestic Energy Retail Market. We welcome the review which aligns with the ambitions and priorities set out in our own 2024-2029 Corporate Plan.

The Consumer Council

The Consumer Council is a non-departmental public body (NDPB) established through the General Consumer Council (Northern Ireland) Order 1984. Our principal statutory duty is to promote and safeguard the interests of consumers in Northern Ireland.

The Consumer Council has specific statutory duties in relation to energy, postal services, transport, and water and sewerage. These include considering consumer complaints and enquiries, carrying out research, and educating and informing consumers.

We have outlined our feedback below, which we hope is useful.

Q1. Do you agree with the four areas of focus identified in this paper? Please provide any additional information to support your view, including any additional areas that you consider should be of focus.

- We agree that the four areas identified (Operation of Third Party Intermediaries (TPIs), Treatment of debt, Transparency and information, and Contract terms) will provide the focus that is needed.
- The consultation document does not indicate how the areas of focus will be prioritised, but it is our opinion that if Transparency and Information is ranked as a priority it could make the other three areas simpler to navigate.

- As the UR non-domestic tracker shows, there is low use of TPIs – around 5%¹. Additional evidence gathering may be needed on TPIs in Northern Ireland to discover more about the ‘significant level of concern’ around the operation of TPIs referred to in the UR survey, whether the tracker data is accurate, and further analyse the causes and areas of concern.
- Additional protection in relation to Treatment of Debt will necessitate regulation to determine the rates at which debt is recovered that is both achievable for the consumer and acceptable for the supplier. The tracker does ask about debt advice and paying bills but only 1% said they would like more information about debt and 2% stated that they always or sometimes are behind in paying bills. However, there does seem to be greater concentration of debt within the hospitality sector so it may be useful to explore targeted advice to specific business sectors.
- The non-domestic consumer experience of switching is likely to be a cross-cutting theme but should be fully considered.
- In relation to switching, the most recent Annual QREMM report² showed increased levels of switching within the non-domestic sector. In Quarter two (April to June) 2022 only 1.1% (853) I&C electricity customers and 1.7% (253) I&C gas customers switched. One year later (Quarter two 2023) this increased to 3.8% (2,883) electricity customers and the I&C gas switches remained at the same level 1.7%.
- The energy suppliers active in the non-domestic market differ from the range available to domestic consumers. This could be interpreted as providing greater competition, yet switching level remain relatively low in comparison to the percentage of domestic customers that switch.

Q2. Do certain groups of customers require specific additional levels of protection (e.g., small and medium sized businesses) beyond what is currently provided? Please provide your rationale.

- As the consultation points out, energy bills are a key concern and the findings from the non-domestic tracker reveal high levels of concern around energy bills (53%) and 27% of non-domestic consumers stating that they sometimes struggle with bills.
- The UR tracker survey appears to highlight the need to focus on small to medium sized non-domestic businesses, a sector that reports greater levels of concern over their energy bills. This is further demonstrated in the UR interviews around the treatment of debt, with interviewees suggesting “more targeted regulation in this area would benefit small businesses in particular”.
- Greater transparency of what tariffs are on offer for the small and medium sized businesses is needed and should be readily available to customers on supplier websites and the Consumer Council website.
- Awareness of the Consumer Council Small Business Tool remains low, with the non-

¹ <https://www.uregni.gov.uk/files/uregni/documents/2023-05/Non-Domestic%20Tracker%20Final%20report.pdf> – page 3, 17% aware, 32% of this currently use a broker.

² [Retail Energy Market Monitoring Report for Q3 2023 | Utility Regulator \(uregni.gov.uk\)](https://www.uregni.gov.uk/files/uregni/documents/2023-05/Retail%20Energy%20Market%20Monitoring%20Report%20for%20Q3%202023.pdf)

domestic tracker indicating 74% have never heard of it. Consumer Council figures shows very low levels of usage, with around 700 users per year from April 2021 until present. Awareness could be increased by requiring supplier to reference the Small Business Tool on customer bills, similar to the approach with domestic bills.

- If small business tariffs were also published on the suppliers' websites, this would form a layer of protection for the small business customer and could make the market more competitive for them.

Q3. Is the current level of competition in gas and electricity retail markets sufficient to produce positive outcomes for non-domestic consumers? i.e. around matters such variety of contract offers, tender responses, supplier service, etc. Please provide any additional information to support your view.

- Based on the contacts that we have received from business customers in the past five years, there is little evidence that the current level of competition in both the gas and electricity markets is detrimental to consumers. However, greater transparency regarding tariffs should still be mandated so that non-domestic customers can make more informed decisions.
- At present, suppliers are not required to publish their tariffs on their own websites. Since 2018, after discussions involving UR, the Consumer Council and suppliers, it was agreed that a Small Business Tool would be developed by the Consumer Council to provide small business customers the opportunity to compare relevant tariffs. It was agreed that suppliers would update the Small Business Tool when they introduced a change, however the frequency of tariff updates can vary significantly from supplier to supplier and the Consumer Council does not have the information or enforcement powers to ensure the Small Business Tool is being updated appropriately.

Q4. Do non-domestic consumers require regulatory protection when engaging with TPIs in the energy market in Northern Ireland? Please provide any information to support your answer.

- The non-domestic tracker³ highlights that around 5% of customers use Third Party Intermediaries (TPIs). "17% of respondents were aware of energy brokers. Of those who were aware, 32% currently use a broker, while 9% have used one in the past but do not currently". Awareness was higher with larger sized organisations and manufacturing businesses.
- 46% of those who were aware of energy brokers felt they provided unbiased advice and could do a better job when comparing deals than they could do themselves.
- Perhaps the UR should decide on something similar as Ofgem's scheme⁴, that suppliers must only work with TPIs, such as energy brokers, who are registered with a qualifying alternative dispute resolution scheme and registered with the Energy Ombudsman. A similar scheme would enable a better understanding of the role and responsibilities of the three parties, customer, supplier and broker, at each stage of the contractual

³ <https://www.uregni.gov.uk/files/uregni/documents/2023-05/Non-Domestic%20Tracker%20Final%20report.pdf>

⁴ [Alternative Dispute Resolution scheme for brokers and Third Party Intermediaries: what your Microbusiness needs to know | Ofgem](#)

process would be beneficial to all, and in turn would add a level of protection for the non-domestic consumer.

- Improved transparency is necessary regarding the charges involved with using a TPI. As there are different ways that TPIs can charge the consumer, it is possible that the customer may not know if they are receiving a competitive deal if the charges are not clear from the outset and/or are difficult to compare. This may require regulation to stipulate what information is provided to the customer and in what format to allow them to fully understand the charges involved.
- The most common reason small businesses contact the Consumer Council is due to confusion when taking over a new supply, including issues regarding contractual Terms and Conditions.
- We have also received calls from TPIs directly which would indicate that they are also not fully aware of the process when acting on behalf of non-domestic customers.
- There have been cases when the TPI did not realise consent was needed from the customer before the Consumer Council or Trading Standards Service could discuss the account with them.

Q5. If you answered yes to Q4, what additional protections do you feel would benefit non-domestic consumers in Northern Ireland? Please provide examples to support your answer where necessary.

- Energy contracts and bills between the customer, the TPI and the supplier need to be easily understood. We have seen first-hand small business electricity and gas bills, and they can be difficult to follow for these consumers. This problem was exacerbated by the application of UK Government support schemes, highlighting the need for clear and easily understandable bills. Due consideration should also be given to the fact that microbusinesses make up 89% of Northern Ireland's business population⁵, as many engage with the energy markets in similar ways to domestic consumers.
- TPIs can potentially prevent small businesses from knowing what the best deal is for them.
- There is confusion about who should be contacted regarding specific issues. There may be a contractual issue that needs to be dealt with by Trading Standards Service or it could be with the supplier. Identifying the source of the issue and then who has responsibility to address it could be very difficult to ascertain when there are a number of parties involved, each with their own areas of responsibility.

Q6. What are your views / experiences of the treatment of non-domestic consumers in debt by suppliers in the retail energy market in Northern Ireland? Please provide examples where possible.

- Out of the 500 business contacts received by the Consumer Council in the last five years, ten percent related to debt. However, these were often due to confusion about debt owed by a previous tenant and final meter reads which, once provided, led to the

⁵ [Northern Ireland business activity, size, location and ownership: Department for the Economy, 2023](#)

issue being resolved satisfactorily.

- Over the last number of years, the Consumer Council has been made aware of instances of threats to disconnect small businesses when the customer has not received any previous correspondence from the supplier or there has been confusion around the contact details having not been recorded or provided correctly. Disconnection without adequate warning could have a significantly negative impact for businesses. We support the UR ambition for targeted regulatory frameworks that ensure confidence in Northern Ireland's energy companies, and delivers fair competition and social justice in markets, so consumers and businesses can benefit in equal measure.
- It is unclear who, if anyone, businesses turn to when they are in debt; how suppliers support businesses that are in debt; and if repayment plans are modified based on affordability.

Q7. Are there specific supplier behaviours and / or debt collection processes that require enhanced regulation to better protect non-domestic consumers? If so, please specify, with examples.

- Consideration should be given to capping the level at which suppliers can ask small businesses to pay back debt. There is a cap 40% for prepayment domestic customers and the voluntary supplier Energy Charter reduced this to 20% due the high energy prices. Small businesses should also be given similar forbearance to domestic credit consumers.
- It would be beneficial for suppliers to agree to a reasonable payment plan rather than receiving no debt repayments because a business is forced to close due to debt. While energy is a priority debt, there should be greater protections in place. The number of non-domestic customers in debt is not fully quantified in the tracker so it would be useful to get a sense of the average amount of debt and how many live cases there are to gauge debt levels.
- In addition, there should be consideration for an energy charter similar to that available to domestic consumers to help protect small businesses during the winter period.

Q8. Should certain non-domestic consumers (such as small and microbusinesses) be provided a similar level of protection as domestic consumers regarding treatment of debt? (e.g. as is provided in CoP on the Payment of Bills).

- Yes

Q9. To what extent do you believe the communications from suppliers to non-domestic consumers are clear and transparent (e.g. billing, renewal agreements, etc)? Please provide examples where possible.

- Small businesses have consistently voiced concerns to our consumer protection team around not being able to understand their bills. This calls into question the transparency provided to small business consumers and whether it is sufficient for them to engage appropriately in the market and achieve fair pricing. In the next financial year, as part of our Forward Work Programme 2024/25, the Consumer Council

will be developing our information tools, we may consider creating more detailed informational resources for non-domestic consumers. We will of course liaise with the UR and suppliers should this progress.

- Detail regarding organisations that small businesses can approach to for help and advice should be on energy bills and made widely available so that awareness of those bodies that work with, and for, small businesses is increased.
- As previously stated, contracts can be daunting due to the level of detail contained within terms and conditions and codes of practice. There is the risk that customers could feel pressured into signing a contract or entering into an agreement. Therefore, a cooling off period should be provided to allow small business customers time to consider the contractual implications.

Q10. Do you believe that there is sufficient market information available for non-domestic consumers to make informed choices around their energy needs? Please provide details and your reasons.

- As mentioned previously, in 2017 The Utility Regulator and Consumer Council agreed to take steps to make the energy market more open and transparent for small businesses and it was agreed that rather than publish the tariffs on their individual websites, suppliers would update the comparison tool, known as the Small Business Tool on the Consumer Council website. This was designed to help small to medium sized businesses compare tariffs on offer from the different suppliers so that they could make an informed decision on what tariffs suited their needs.
- The responsibility to update the tariffs is with the suppliers, however the frequency of the tariff updates by the suppliers can be irregular. Our data shows one supplier updates the Small Business Tool every month while another only updates the tool once a year. Consideration should be given to enabling enforcement action against suppliers who fail to provide sufficient transparency by updating the Small Business Tool. Alternatively, including information about the Small Business Tool on customer bills may encourage suppliers to update the tool in a more timely manner.
- The Consumer Council have, on occasion, had to persuade suppliers to update the comparison tool with their existing tariffs when their excuse for not doing so was, they were not actively promoting certain tariffs. Without some sort of deterrent from the UR, this apathy from suppliers could persist.
- It is vital for the Small Business Tool to be updated consistently otherwise it is not providing an accurate representation of available tariffs. This is misleading for small business consumers and has the potential for reputational damage for both for the Utility Regulator and the Consumer Council.

Q11. Are you aware of any onerous or unfair contract terms which impact a non-domestic consumers ability to engage with the retail energy market in Northern Ireland fairly, or are there any contract terms and conditions that you have concerns about? Please provide evidence for your views and details of any specific examples.

- Consideration should be given to the provision of additional support to small businesses who signed fixed term contracts which energy prices were at their peak in

the last 18 months. Encouraging suppliers to release customers in debt from exceptionally high fixed-term deals could assist a small business since government support has been withdrawn.

- We recommend a cap on excessive cancellation fees and early exit fees with very stringent timelines to exit earlier than the agreed date.

Q12. In terms of protecting the short-term and long-term interests of non-domestic consumers, is there anything else not covered by questions 1-11 that UR should consider?

- A more accessible and simple way of obtaining and comparing tariffs is crucial to allow small businesses to make informed decisions. This could also encourage switching and create a more competitive market.
- Customer education, affordable tariffs, transparency and simplicity in billing are the first essential steps in customer protection.

Yours sincerely,



Raymond Gormley
Head of Energy Policy