



# **Review of the Regulation of the Non-Domestic Energy Retail Market**

**Utility Regulator**

**Power NI Response**

29 January 2024

## Introduction

Power NI welcomes the opportunity to respond to the Utility Regulator's (UR's) Call for Input (Cfl) in relation to Regulation of the Non-Domestic Energy Retail Market.

The UR have a statutory duty to protect consumers, and this extends to include non-domestic customers. With Northern Ireland now in line with the rest of GB in terms of price regulation, the non-domestic market has evolved and continues to grow despite the challenges faced by the within the last few years.

Power NI are active in the non-domestic market and have developed good relationships with local business, representative organisations as well as with Third Party Intermediaries (TPIs) to ensure customers are provided with the best products and services available. It is important to note that Power NI and all Suppliers are subject to regulatory requirements via Licence and Codes of Practice; this is not the case for all market participants.

On review of the UR Cfl document, Power NI were disappointed to find that suppliers, as a key stakeholder, were not invited to participate in the market research and provide a supplier viewpoint as part of the structured interviews conducted. Power NI believe this has led to a public document that is unbalanced and portrays suppliers in an unfavourable manner.

It is important for the UR to recognise that non-domestic customers have a different level of commerciality than residential customers and therefore should be treated accordingly. The outcomes of the UR interviews highlighted some concerns which will be explored in more detail throughout this response, but terms like 'dark art', 'wild west', and debt chase as 'aggressive' contradict independent research carried out on behalf of Power NI. Findings showed that 91% of customers were satisfied with the service from Power NI and 74% confident that Power NI could meet their needs.

Power NI are committed to engaging with the UR to develop appropriate regulatory protection for non-domestic customers and would encourage the UR to consider suppliers valuable input into any follow-on work in this area.

## Specific Questions

***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 feel should be of focus.***

***Power NI response:***

The commercial energy market is highly complex and on review, Power NI are generally supportive of the four areas of focus identified. It is important that any issues identified within these focus areas can be mitigated where possible in the interests of a well functioning market. Gaps or issues which lead to poor outcomes or practice reflect badly upon the energy industry as a whole and Power NI is keen to avoid that where possible.

***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.***

***Power NI response:***

Power NI believe the customer should always be the focus, with consumer protection applied to those involved at the forefront of delivering for the customer, from suppliers through to those who are on the ground i.e. TPIs. Therefore, particularly given the complexities of the commercial market, Power NI believe it to be fair for certain customer groups to require additional levels of protection. Whilst some levels of protection are already in place through the Codes of Practice (CoP) for both marketing and billing, there is opportunities for additional protection to be provided.

The current CoP only apply to specific areas of a customer journey. Non-domestic customers interact with the energy market in different ways – for example LEUs engage differently to SMEs, given they usually have sufficient resources and knowledge to manage their own contracts. SMEs tend to have less resources available and do look for support, which is usually in the form of TPIs. Protections should focus on how to support those groups who require it. It is important to recognise this is not akin to domestic or vulnerable domestic customer groups as all businesses are operating in a commercial environment and therefore are more comfortable in the areas of contracting, negotiation, sales etc.

Throughout the Cfl document, the UR refer to work undertaken in GB within the non-domestic market. The UR should be mindful that whilst lessons can be learned from the GB market and there is scope for further protections to be offered to customers within NI, the NI electricity market is significantly different to the GB model. These differences would need to be recognised in any work the UR undertake going forward and not assumed that similar measures can be applied in NI.

***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 offers, tender responses, service, etc. Please provide any additional information to support your view.***

***Power NI response:***

The commercial retail market is competitive and provides a large choice for non-domestic customers. Competition has enabled customers to not only have the choice of supplier but the development of individual products such as multi-national tendering, pass through, fixed, variable, flexi etc. This choice should be seen as a positive outcome of competition and in the best interests of customers. TPIs have also entered the markets and are becoming more and more prevalent with customers looking to them for support in finding the best deal to suit their needs.

***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.***

***Power NI response:***

Competitive markets which drive choice will always foster the opportunity for parties to offer services to customers in assisting to navigate those options. This is a normal and welcome part of a well-functioning market. There is however an asymmetry in the current governance of the Northern Ireland energy market when it comes to regulation and governance. Suppliers are subject to strict regulatory controls underpinned by licence. These requirements come with significant penalties for any failures. Not all participants in the market are subject to the same regime. TPIs for example have no governance or regulation.

The activities of any party who is active in the energy market reflects on the industry as a whole and participants must work to ensure that consumer is protected. The TPI experience in GB has undoubtedly had an adverse impact on the entire GB energy industry and it is important that such an outcome does not occur in the Northern Ireland energy markets.

Power NI has experience of working with over 30 TPIs in the market, ranging from large organisations to small, local one-man businesses. While they can drive competition within the market and have a heavy influence, customers do require some level of protection to ensure that they operate in a fair and transparent manner.

There are specific areas which Power NI believe should be looked at from a regulatory perspective:

- **Transparency**

Experience has shown that TPIs operate 'under the radar' when it comes to pricing and commission earned. There is little evidence of transparency of commission agreed with the customer and the same for pricing of contracts.

When a supplier submits a price to a TPI for customer contracts, there is no formalised feedback process provided by TPIs to understand what was or was not successful about the price, what the successful margin was and therefore hinders suppliers from being able to learn and potentially improve future offers for customers and drive competition where possible.

- **Commission**

Commission is a contentious area and Power NI have experience of seeing large differences in costs between various TPIs and even varying differences at customer level. For example, costs ranging from 1p/kWh vs flat fee of £150 depending on the customer. In some cases, it can come down to how much they can get passed a customer, therefore taking advantage of a customer's lack of knowledge in this area, with some commission payments being up to ten times more expensive. Given the current climate, particularly for smaller business, this is concerning especially when customers are relying on TPIs to help navigate this area and place trust in them to find the best deal. As a result of TPIs are making more than a supplier on a customer and it is of no risk to them, allowing them the freedom to come and go with the contract once they have received commission payment.

For Power NI's non-domestic customers who have contracted via a TPI, c.95% are paying commission and Power NI holds the rates for billing purposes. This does not necessarily translate that a customer is always aware of the commission on their contract and Power NI believe that any requirements being placed on TPIs should be mandatory, with TPIs made to make it clear what commission is and for this to be published on all bills. Any requirement that is made voluntary runs the risk that TPIs may opt for suppliers who choose not to publish commission on their bills, leading customers to be given less choice and therefore incentivise those suppliers who chose to implement the requirements to revisit that decision.

Power NI in the past have excluded themselves from tenders due to margin demands and been forced to make difficult decisions due to lack of regulation. This should not be a responsibility on suppliers, it is the URs statutory duty to protect consumers whilst ensuring integrity in the market and getting a fair, transparent deal for their energy should be paramount.

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

***Power NI response:***

Power NI believes that the publication of TPI commissions on customer bills would give customers a better understanding of how they are paying the TPI's fee. Power NI strongly advocates that any requirement should be a requirement for all and therefore mandatory. If the requirement is voluntary there is a risk that TPIs may tend to opt for suppliers who choose not to publish the commission on their bills. This would lead to customers being given less choice and would incentivise those suppliers who chose to implement the requirements to revisit that decision.

Power NI already do request that commission information is required in a Letter of Authority held on contracts to provide customer transparency and believe it should be displayed, so that customers are aware. It is important that the customer is provided with clear, transparent information before agreeing to any commercial contract.

**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.**

**Power NI response:**

Power NI are concerned by the outcome of the UR's research which stated that 'dozens of businesses had been forced out of business in part due to energy suppliers not offering a workable repayment plans'. Power NI's experience of debt treatment for commercial customers is no different to that of domestic customers. Power NI's processes surrounding debt recovery has been and will continue to focus on customer engagement, recognising specific circumstances, and reaching a mutually agreed and reasonable solution. Power NI already goes beyond existing regulatory requirements to support customers and provide high levels of customer service including those that find themselves in debt.

Customers are always encouraged to get in contact if they find themselves experiencing difficulties and if necessary Power NI will make several attempts to speak with the customer via a dedicated Payment and Accounts Resolution (PAR) team who will discuss their individual circumstances and agree an appropriate repayment plan that is suitable for both the customer and Power NI.

Whilst Power NI believe there are robust processes in place for non-domestic customers who find themselves in debt, there is more that could be done as preventative measures to help facilitate customers before they get into a debt position. There is no reference to debt prevention or steps to support customers within the Cfl and Power NI believe this is fundamental and needs to be considered.

It is important for the UR to recognise that an increase in debt is a material issue for the whole market and whilst suppliers are at the customer facing end of the market, it has a knock-on impact as debt begins to increase. Feedback from Power NI customers has shown that they would prefer alternative ways to pay, and this has been identified as a gap in the market for non-domestic customers. For example, keypad metering for non-domestic customers has been explored before, but there has been no appetite to support this or progress this proven solution for customers to manage their energy needs which is disappointing. With plans for a smart metering design underway, perhaps there is an opportunity to include a smart prepayment option within the design specification for micro-SMEs.

Power NI would welcome the UR reviewing this area and address any issues in terms of supporting customers with preventative measures were possible.

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

**Power NI response:**

Power NI is confident in its debt procedures and processes and is happy to provide further information to the UR in relation to those.

**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).**

**Power NI response:**

Different customers require different levels of protection as highlighted earlier. The same principle applies to debt and not one approach will fit all. Power NI believe the customer should always be the focus and believe it to be fair for certain customer groups to require additional levels of protection. Power NI however believes the UR must recognise that no matter the size of the business it is still a commercial operation and has obligations to operate as such.

**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.**

**Power NI response:**

The majority of content contained in a bill from suppliers to non-domestic customers is dictated by the CoP on non-domestic bills and statements. Whilst the information can be complex, it is a licence condition that suppliers must fulfil. Given how the market has changed since CoP were last reviewed, perhaps there is an opportunity for this work to be undertaken, decide what information is deemed necessary and implement any required changes.

Power NI are the first supplier to have a lifetime membership to Plain English and the first supplier in Ireland to sign up for Plain Number training across the organisation. These principles will be rolled out across all customer communications including bills, statements and letters which will help to ensure communications remain as clear and as transparent as possible within the confines of licence conditions. Again, there are opportunities for this type of work to be taken forward into any future reviews of CoP.

Where possible customers are provided with information on their commission and the publication of this information provides customers with a better understanding of their TPIs fee.

For renewal agreements, up to two months prior to the contract coming to an end, Power NI provide customers with bill messages, separate written communications via email or letter advising of contract renewal due, as well as outbound calls before renewal period begins. The focus is putting the customer first and remaining as transparent as possible.

**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.**

**Power NI response:**

There is sufficient information within the market, but customer understanding of this information to make an informed choice is the question. From Power NI's experience of

operating in this space, awareness and a wider understanding of how the market works is fundamental.

***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.***

***Power NI response:***

Power NI have seen examples of contracts which in some cases require customers to give 30 days' notice, even when they fall out of contract. This means a customer could be locked in for a further two months post contract end before they are aware and provide the adequate notice period. Practices like this hinder a customer's ability to engage effectively within the market and drive competition.

***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?***

***Power NI response:***

The removal of price regulation in the non-domestic electricity market brought Northern Ireland in line with the rest of GB. While this development has had a positive impact on the marketplace and there is active competition between several suppliers, the market for TPIs has grown significantly.

While TPIs can offer a useful service to customers and there are many reputable TPIs, experience would suggest that this sales activity can have negative impacts, in particular regarding the impartiality of advice offered and the level of commission charged. The UR has taken steps to regulate the sales activities of suppliers in the energy market through a mandatory Code of Practice. It is therefore inequitable and not in the interest of consumers that a situation exists in which one group of market participants are held to a different standard of sales activity than another.

The UR have a statutory duty to protect customers, so ensuring customers get a deal that is fair and transparent should be paramount. Power NI therefore would urge the UR to look at this area and is committed to positively to engaging with the UR on this work.