



Energy Ombudsman

Broker Dispute Resolution Scheme

Annual Review
to December 2023



Foreword

The Energy Ombudsman is an independent and impartial service that has been providing an alternative dispute resolution scheme to the UK energy sector since 2006. As part of the Trust Alliance Group, our purpose is to build, maintain and restore trust and confidence between consumers and businesses.

In December 2022 we successfully launched our dispute resolution scheme for the energy broker market. We now support microbusiness consumers who choose to work with brokers, and who have not previously had these protections. We do this by independently and impartially resolving disputes which in turn promotes fairness within the sector.

A year into operation of the scheme, we want to share with the industry what we have found through the complaints that consumers have brought to us, with a view to providing the best possible experience for consumers and helping improve the sector overall.

Since the scheme opened, we have provided input and support to Government and Ofgem as they consider further strengthening the protections for non-domestic consumers. We will continue to work with the sector to ensure our schemes accommodate the Government and Ofgem's longer term plans for the regulation of the market, whilst also working more broadly to inform policy and address industry-wide issues for the benefit of all.

Going forward, we look forward to continuing to work with brokers and their consumers and building on the successes and learnings from the first year of the scheme.

Ed Dodman

Managing Director &
Chief Ombudsman – Energy Ombudsman



Executive summary

After the first twelve months of running the scheme, the key points to highlight are as follows:

- **1,890 brokers are now members of the scheme.** As we believe this to be the most definitive list of brokers operating in the sector, we will continue to develop our understanding of the membership in more detail this year.
- There were **741 cases accepted** during the first 12 months.
- There was evidence of effective signposting to us in **only 5% of cases** – which is very low. We will therefore be reminding brokers of their obligation to provide evidence of this for every case.

The two main dispute types were **Sales (71%)** and **Customer Service (13%)**

We upheld the consumer's dispute in **69% of cases**

We received evidence of remedies implemented on time in **only 57% of cases***

*We will be working with the relevant brokers to remind them of their obligations and will remove individual brokers from the scheme if this persists.

We have developed our understanding of the microbusiness sector overall and the types of dispute that are generated and we will continue to develop our colleagues' expertise in line with our findings. We also continue to strengthen the overall business team, adding expertise in business regulation and legal support.

In terms of the specific improvements that we will focus on during the next year to help improve the way the market works for consumers who choose to use brokers:

- We want to help brokers to improve the service they offer to microbusinesses to avoid the need for complaints to be made. We have outlined some of the key complaint themes we have received and we aim to continue to work with brokers to help them improve the service they offer.
- We believe that some brokers can improve their approach to complaint handling and we will work with them to improve signposting and increase general awareness of the scheme.
- We expect brokers to implement our decisions promptly. We will be working with brokers to ensure this is done.

Finally, as a result of achieving a more efficient setup and scheme operation, the subscription fees for existing members will reduce from £300 to £175 in 2024.

1. Introduction

In May 2019, Ofgem announced a strategic review of the microbusiness retail market to better understand and address the issues faced by microbusinesses. The review found evidence of poor service by a minority of energy third party intermediaries (TPIs). In March 2022, Ofgem announced a package of policy reforms, including a new requirement for energy suppliers to only work with TPIs who had signed up to a qualifying alternative dispute resolution scheme.

In this report, we set out our experience of providing a dispute resolution service for microbusinesses that use TPI's. We reflect on our experience of setting up the scheme and resolving disputes, and provide a summary of the types of complaints we have received.

In this report, we will refer to TPIs as "brokers". We use "brokers" as we feel there is greater awareness among the public for that term, compared to TPIs.

2. Establishing the scheme

A dedicated project team, made up of colleagues from around the business, ensured the scheme was fully set up and ready to take on complaints. Following months of preparation, we were pleased to be able to launch the scheme on time in December 2022.

The development of the scheme came on the back of a two year period where we had changed our operating model to be more consumer centric. This involved all dispute resolution executives attending a six week intensive training period on how to provide an excellent service in dealing with all complaint types.

The design of the Broker Scheme was based on the complaints system that we have been running in energy supply for over 15 years. However, there was much to do to deliver the scheme for brokers on time, including:

- Raising awareness among brokers, for example by running industry engagement sessions and creating dedicated pages on our website.
- Onboarding brokers to our scheme.
- Making membership information openly available for suppliers to be able to see who was signed up to our scheme.
- Making the necessary changes to our case management system, reporting and application process.

The onboarding process

1,240 brokers applied ahead of launch

One of the biggest challenges we faced was onboarding brokers ahead of launch. After an extensive engagement programme with the sector, 1,240 brokers had applied to join up to the scheme by the deadline of 1st December 2022. All brokers who had provided us with a complete application were onboarded on time.

We have continued to receive applications and, after a year, we now have 1890 active members. We also have what we think is the most definitive list of brokers operating in the energy sector.

3. A review of the scheme in numbers

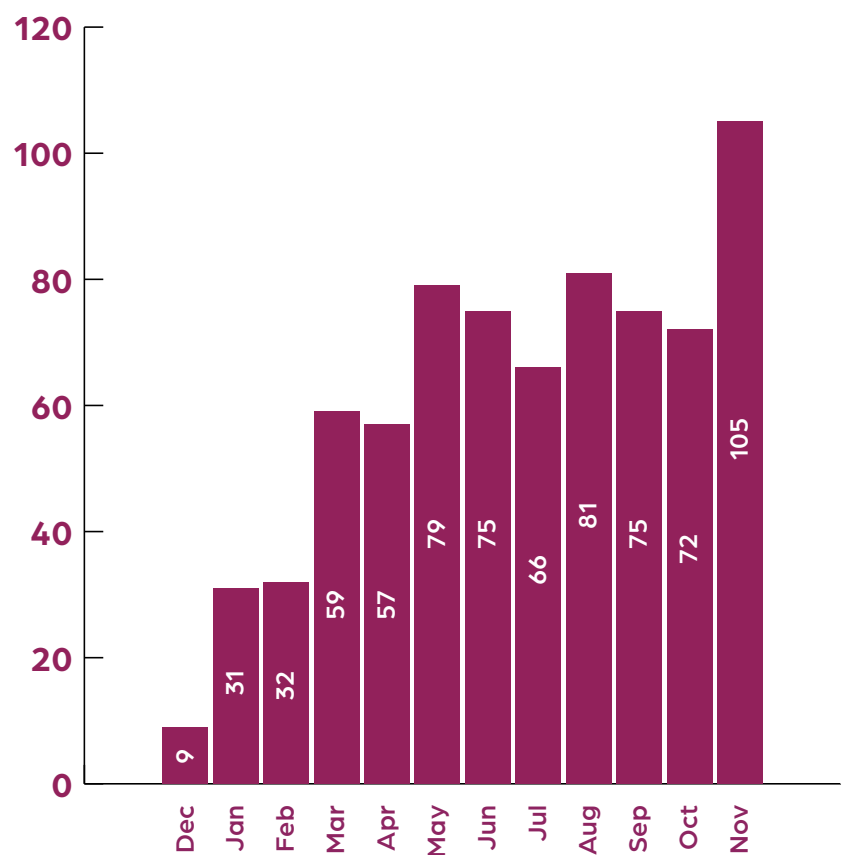
Volumes

We received the following number of disputes in the period December 2022 – November 2023:

We expected a gradual increase in complaints and, as can be seen to the right, this is what we observed.

However, complaints about brokers seem to be at relatively low levels – it might be reasonable to expect that they continue to increase in the coming months and years as awareness of the scheme increases.

Total Cases
741



Signposting

When a broker is unable to resolve a dispute, they should advise the consumer of the right to use our service. This should be done at the point of deadlock (when it is clear that the broker and consumer cannot agree on the outcome of the dispute) or when the dispute has been ongoing for eight weeks without resolution.

Only 5% of disputes had evidence of signposting

In our first year of operation, we saw evidence of signposting in only 5% of cases. This is too low and may indicate also that, in many cases brokers are not responding to disputes effectively. This could indicate that there are significantly more unresolved disputes that should have been referred to this scheme.

We will be reinforcing with brokers their obligations around effective signposting and will encourage all brokers to ensure they are informing consumers of their rights to an independent review of their complaint. Good signposting is a key condition of scheme membership so we will be taking action against those brokers who persistently fail or refuse to do this.

Complaint types

71%

Sales



13%

Customer
Service



9%

Switching



7%

Charges



The vast majority of complaints we have received relate to the sales process. Customer service and switching also featured in a significant number of complaints. In the appendix, we will discuss some of these themes in more detail.

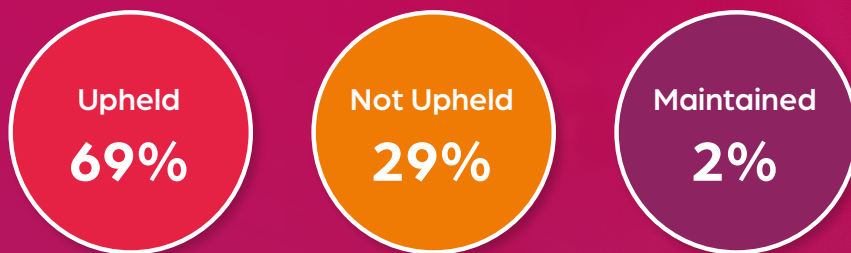
Outcomes

For reference the definition for each outcome is as follows:

"Upheld" is where we decide the broker acted unfairly and then did not offer a reasonable resolution when the consumer complained.

"Not upheld" is where we decide the broker did not act unfairly.

"Maintained" is where we decide the broker acted unfairly but did offer a reasonable resolution when the consumer complained.



As can be seen, most of the complaints we receive are upheld. This suggests brokers can improve the service they offer to consumers. We have included some recommendations for how brokers can do this in the appendix.

Remedies

If the consumer accepts our decision, the broker will be asked to carry out the actions we have required within 28 days. This will then bring the dispute to a conclusion.

In the first 12 months of operation, brokers provided evidence of implemented remedies on time in only **57% of cases**. This is not acceptable so we will also be reminding the relevant brokers of their obligations around remedies and will not hesitate to remove brokers from the scheme where this persists.

We will also remind brokers that failing to carry out actions in a timely manner damages their own reputation as well as that of the industry overall.

Awards

When we decide a consumer has been treated unfairly, we will first consider what the broker should do to put things right. That might be a financial award, to recognise the financial loss a consumer may have suffered as a result of an unfairness, or it might be some action that benefits the consumer – such as cancelling a contract on their behalf.

We also consider whether the broker should take action to acknowledge and apologise for the problems that they have caused – this might be in the form of a written apology. We might also consider a financial award to recognise the time that the consumer has spent dealing with their complaint, and the trouble they were caused as a result of the unfairness.

In cases where we upheld the complaint in favour of the consumer, **our average award was £894 – this includes all aspects of our remedies.**

4. Scheme financials

Setting up any new ombudsman scheme involves uncertainty – be it around set up costs, volumes of complaints, volumes of scheme participants (brokers in this case), or the ongoing complexity and time spent resolving new types of cases. So, when setting up the scheme, we made estimates relating to these factors, with a view to spreading the establishment costs over the first few years of operation.

Due to a more efficient setup and operation of the scheme than expected, we've decided to reduce the charges made to the market for 2024, as follows:

Our subscription fees will reduce from £300 to £175

(these exist to cover our fixed costs).

- **We will maintain the £300 initial subscription fee for new members** to cover additional costs of onboarding and set up, thereafter reverting to the lower subscription fee for subsequent years.
- We will freeze individual case fees at **£340 for a full case** or **£170 for a facilitated resolution**.

Having operated the scheme for only one year, we are aware that much uncertainty remains over exact complaint volumes going forwards. We will provide periodic updates to industry including any future changes we will make to the costs.

5. Looking forward

Ofgem are currently consulting on a proposal to extend the scheme to more businesses than our current remit. We support these changes and stand ready to help resolve more disputes between businesses and energy brokers.

Ofgem are also calling on the Government to look at the possibility of regulation for the broker market across the energy sector. The Department for Energy Security and Net Zero (DESNZ) are continuing to look at the case for introducing regulation. We will work with Ofgem and DESNZ to help inform thinking on this.

The findings in this report are our view after the first year of the scheme. We would be grateful to hear from microbusinesses and brokers on their experiences of using the scheme – please feed any comments via energybrokers@energyombudsman.org.

Appendix

Insight from disputes

When we decide a microbusiness has been treated unfairly, we will first consider what the broker should do to put things right. That might be a financial award, to recognise the financial loss a microbusiness may have suffered as a result of an unfairness, or it might be some action that benefits the microbusiness – such as cancelling a contract on their behalf.

5.1 The microbusiness's right to cancel

In some cases that we have investigated, the microbusiness has not realised that once they have entered an energy contract they have entered into a binding contract and therefore do not have the right to change their mind.

In some of the disputes we have received, the broker has not made it sufficiently clear that the microbusiness is entering into a binding contract with no cooling-off period. We've seen instances of microbusinesses calling up their broker to cancel as they have found an alternative option but have then been told that their original agreement is already in place and cannot be cancelled.

Brokers are expected to ensure that microbusinesses are aware they are entering into a legally binding contract with the supplier and in some of the cases we have seen, we think the broker should have been clearer about the binding nature of the agreement they are entering.

Case study

The dispute

The microbusiness initially spoke with the broker in January 2023 and agreed to enter a contract in May 2023, when their current contract ended. They then called back a few days later to cancel the contract but were told by the broker that they had entered a contract which was now binding. The microbusiness was unhappy as they had agreed another contract elsewhere and had not been notified during the initial sales call that they had entered a contract.



Clarity on the agreement

Our review and findings

We noted from the available evidence that the events were as the microbusiness described, with a contract agreed verbally on 5th January 2023.

Most non-domestic contracts do not have a cooling off period. Therefore, when entering a contract with a microbusiness, they need to be informed that they are entering into a legally binding contract along with the principal terms of the proposed contract. This is in line with the Standard License Conditions (SLC), which brokers will be working to when agreeing sales on behalf of suppliers.

We reviewed the initial sales call where the contract was agreed and found that, while the broker advised of the rates and the contract term, they had not confirmed that the microbusiness was entering a legally binding contract. In the absence of such a statement, we felt it was insufficiently clear to the microbusiness that they had entered a contract at the time.

We therefore concluded that the microbusiness had not been provided with full information before agreeing the contract and we could see why they later called to cancel as they had found alternative rates. Had they been informed at the time of the sale that the contract was binding they may have made a different decision.

In light of the misinformation, we concluded that the microbusiness was unable to benefit from the alternative rates they later found and would likely have agreed to had they been informed of the nature of binding contracts. Therefore, we decided the fairest option would be for the broker to credit the difference in rates between the alternative rates and original contract rates. Covering the difference in rates would put the microbusiness in the position they would have been in had they been able to secure the alternative contract. This amounted to an award of around £3,000.

5.2 Providing incorrect advice around future price expectations

Many disputes we have received this year are from microbusinesses who feel they have been provided with misleading information about the energy market from their energy broker which had led them to make what they later consider to be unwise contractual decisions.

There is no doubt that market conditions in the last year have been challenging. Energy prices increased significantly and predicting what will happen with energy prices is therefore even more difficult than ever before.

In such an environment, it is no wonder that some microbusinesses are turning to energy brokers for advice about what to do – for example, whether it is a good idea to fix their energy bills or take the risk of remaining on higher out-of-contract rates in the hope prices will fall.

Brokers should be entitled to provide help and guidance to their clients. Different people will have different opinions and predictions about what might happen. We do not criticise brokers who have given honest opinions based on good evidence or proper market analysis and will not judge disputes with the benefit of hindsight. However, we do have concerns that in some cases brokers have offered opinions which are clearly inaccurate or not justified with any evidence.

Case study

The dispute

The microbusiness believed that they had been mis-sold a three-year contract in December 2022. The microbusiness told us that the energy broker had told them that the chances of prices going down were miniscule and that they should fix prices to avoid even higher bills in 2023 and 2024.



Opinions based on evidence

Our review and findings

As part of our investigation, we listened to call recordings relating to the agreement of electricity and gas contracts.

The broker had contacted the microbusiness to offer new contract rates. The microbusiness's contract was expiring shortly but they were clearly conflicted on the call about whether to enter an energy contract at the time. They told the broker that they were struggling and that they might be forced out of business if they had to pay increased rates for a prolonged period.

The broker told them that they should fix a new contract as soon as possible to prevent rates from increasing. The microbusiness was hesitant, asking whether it was possible that rates would go down. In response, the broker said that the only scenario in which prices would fall would be if the UK found a new, undiscovered gas field in the North Sea and, even if that occurred, then it would take a long time for the necessary licences to be granted and for drilling to commence. It seemed clear to us that, based on this information, the consumer decided to proceed with the contract.

The broker argued that the information given to the consumer should be considered sales patter and did not offer advice to consumers. We disagreed – we felt it was reasonable for the consumer to have based their decision on the information provided.

The broker could not offer any analysis or evidence in which to base their strong assertion that prices would only fall if new sources of gas were found.

We concluded that the broker had deliberately under-stated the possibility that prices would fall to secure the contract. We required the broker to compensate the consumer for the higher rates they had agreed, compared to what they may have been able to secure if they had waited until prices fell.

5.3 Auto-agreement arrangements

Some brokers offer an auto-contract agreement service. Within this agreement, microbusinesses authorise the broker to negotiate, secure and enter a contract on their behalf. As part of the arrangement, when an energy contract is due for renewal, the broker will provide the microbusiness with some potential contract options via email and if they do not receive a response, they will proceed with the most beneficial contract for the microbusiness.

We have received some disputes where the microbusiness has told us that they were not aware of the auto-agreement in place. In most cases we have seen, the broker was able to provide evidence that the consumer had entered into such an agreement, and that the microbusinesses had simply ignored the renewal emails from the broker. It seems to us that because energy supply contracts often run for several years, some microbusinesses simply forget that they entered into such an agreement until their next contract is confirmed.

While we have not upheld many of these disputes, we feel brokers need to do more to remind consumers of the agreement in place.

Case study

The dispute

The microbusiness was unhappy that they had been renewed into a contract which they said they had not agreed to. The broker had responded by confirming that the contract was valid, and they were unable to take any further action.



Clarity for consumers

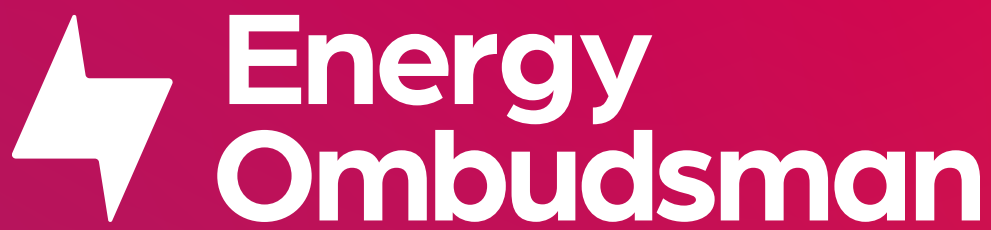
Our review and findings

From a review of the available evidence, we found that the microbusiness's originally agreed a contract via the broker in November 2020 and at the same time the microbusiness also entered into an auto-agreement arrangement with the broker for future renewals.

We identified that the broker had later sent three renewal emails in September 2023 to the microbusiness' registered email address. As the broker did not receive notice to decline the offers within the contracted timescale, a new renewal contract with the same supplier was entered into for November 2023.

We could not find fault with the broker's actions as they have acted within the terms of the signed auto-agreement arrangement.

We concluded that no remedy or award was required, but did highlight to the microbusiness that they may wish to review the auto-agreement arrangement and take action to opt out if they wished to source their next contract at renewal time in the future. We also recommended that the broker considered ways in which they could remind consumers of the arrangement in place – perhaps with an annual communication.



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