

## **Minded-to position on changes to the maximum award for non-domestic cases**

### **Introduction**

In April 2024, the Government announced that our remit would be extended to allow small businesses to use our service.

A small business is defined as one that:

- uses less than 200,000 kWh of electricity a year;
- uses less than 500,000 kWh of gas a year;
- or has fewer than 50 employees (or their full-time equivalent) and an annual turnover total of £6.5million or a balance sheet of £5million.

The change is planned to come into effect from 1 December 2024.

We're in the process of preparing for the increase in remit - including forecasting the number of additional disputes we're likely to receive from small business consumers, understanding what issues we're likely to receive disputes about and how complex those disputes are likely to be.

Another issue we're considering – the subject of this paper – is whether we need to change our terms of reference to allow us to continue to be effective in resolving disputes for consumers. We've therefore been reviewing our maximum award.

### **What is the maximum award?**

We can order energy suppliers to take specific actions to resolve disputes about unfair treatment. Our goal is to put consumers back in the position they were in before the problem occurred.

To achieve this, we can require suppliers to apologise, explain what went wrong, and make amends. This might include financial compensation or practical steps to rectify the issue.

However, there's a limit to the amount we can order a supplier to pay. Currently, this is £10,000.

### **What happens today if the value of the dispute is more than £10,000?**

If a dispute is worth more than £10,000, we'll let the consumer know upfront that we might not be able to award the full amount. In some cases, we may decide not to handle the dispute at all if the amount is significantly higher, suggesting the consumer pursue the matter through the courts instead.

While we often find that suppliers will voluntarily fix problems even if they cost more than £10,000, this isn't always the case. This can be frustrating for consumers who believe their issue is resolved, only to find out later that the supplier won't comply with our decision.

We've noticed this problem is particularly acute in relation to our Broker Scheme.<sup>1</sup>

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<sup>1</sup> Energy Ombudsman Broker Dispute Resolution Scheme annual review  
<https://www.energyombudsman.org/news/energy-ombudsman-reports-on-first-year-of-broker-scheme>

### **Why do we have a maximum award?**

We need to ensure our service can handle the disputes we receive. That's why there's a limit on the amount we can order a supplier to pay. This helps us manage our workload and resolve most issues fairly.

While we aim for fairness, our process isn't as formal as a court. We don't require sworn evidence, and suppliers can't appeal our decisions. So, whilst our process works for smaller disputes, larger, more complex claims might be better suited to a court.

### **How long has it been since we last reviewed the maximum award?**

The maximum award was set at £5,000 when we started in 2006. This increased to £10,000 in 2013 to match the small claims court limit. It hasn't changed since.

### **Is it common for ombudsman schemes to have a maximum award?**

It varies and many other ombudsman schemes have higher maximum awards than ours. For example, the Legal Ombudsman can award up to £50,000, and the Financial Ombudsman's limit is much higher at £415,000. Some schemes, like the Pensions Ombudsman, don't have a limit at all.

It's important to note that these schemes work differently. For instance, the Furniture Ombudsman's £10,000 limit doesn't include the item's price, while the Legal Ombudsman's cap doesn't cover legal fees.

### **Why are we reviewing the maximum award now?**

We're expanding to cover smaller businesses, who often have much larger energy bills than the microbusinesses we currently deal with. This means we could be handling disputes worth significantly more.

To handle these larger disputes effectively, we need to be able to order higher payments from energy suppliers. However, we want to avoid taking on cases better suited for the courts.

### **What have we considered?**

We've carefully examined how much we might need to award for small business disputes. While we found that some microbusinesses have high energy bills—sometimes exceeding our current £10,000 maximum award—we don't often award this full amount. Small businesses, with potentially much larger energy use, could require significantly higher awards.

We explored several options. They included increasing the maximum award to reflect the increase in the consumption limits in our new remit. As electricity consumption limits are increasing from 100,000 kwh per year to 200,000 kwh per year and gas consumption limits are increasing from 293,000 kwh per year to 500,000 kwh per year, we could reflect this approximate doubling of the consumption limits by increasing our maximum award from £10,000 to £20,000.

Alternatively, we considered reflecting the increase in the annual turnover of business that use our service. Under existing rules, businesses with an annual turnover total not exceeding £1.716 million can ask us to consider their dispute and under our new remit, this increases to businesses with an annual

turnover of £6.5 million. As this is increasing by approximately four times, we could increase our maximum award by four times – to £40,000.

Another option we considered is reflecting the next stage of the civil courts' procedures. The small claims court can consider disputes of up to £10,000. For claims of more than £10,000, the next stage of the courts process allows for claims of between £10,001 and £100,000. We could use this as a benchmark and increase our maximum award to £100,000.

### **Our decision**

We've carefully considered all options and we think it's likely that our current £10,000 maximum award will not be enough to handle all future disputes, especially for small businesses. We've decided it would be appropriate to increase the maximum award to £20,000 for non-domestic cases. This increase mirrors the approximate doubling of the energy consumption limits for small businesses and will support microbusinesses. That seems to be reasonable – taking account of the fact that we see relatively few complaints about microbusinesses today where the value of the award exceeds £10,000.

We'll keep the current £10,000 limit for domestic consumers and continue encouraging suppliers to resolve issues above this amount voluntarily.

We'll review the effectiveness of this change in the second half of 2025.

This decision aims to ensure we can resolve more disputes without overstepping our role.

### **Next steps**

Before we introduce these changes, we want to hear your views. Do you agree with what we are proposing? Do you think we are being fair and proportionate?

Please provide any comments you wish to make by 5PM on Wednesday 2 October 2024. Earlier responses are welcomed. Responses should be submitted to:

[smallbusinessremit@energyombudsman.org](mailto:smallbusinessremit@energyombudsman.org).