



Protection of small businesses when purchasing goods and services

British Gas response to the Department for Business Innovation & Skills

July 2015

Executive Summary

Background

British Gas supplies over 850,000 non-domestic customer sites with gas and electricity, as well as energy related services to a significant number of our customers. Our customers range from the smallest SME businesses to large corporates, as well as local authorities, hospitals and other public sector organisations.

In 2013, British Gas responded to the Consumer Rights Bill consultation and engaged with government on the proposals. We welcomed many of the changes, particularly around consolidating and simplifying consumer rights. However, we had some concerns about how the protections would interact with consumer rights that already exist in regulated sectors, such as energy.

We are pleased that the government has recognised that regulated services should be outside the core scope of this call for evidence. Small and microbusinesses already benefit from specific existing protections in the energy sector and Ofgem is an active regulator. In addition, the Competition and Markets Authority (CMA) is currently considering microbusinesses as part of its Energy Market Investigation. Therefore, we do not believe that the Department for Business, Innovation and Skills (BIS) should, or needs to, intervene in this area.

However, British Gas also provides goods and services to non-domestic customers that sit outside Ofgem's remit, which could fall into the core scope of the consultation. This includes energy related goods such as boiler installations and servicing, and energy efficiency goods and services.

We have seen no demonstrable evidence to suggest that businesses in receipt of, or indeed supplying, such goods and services require any additional protections. In fact, we believe that any intervention in this area carries a great risk of distorting market dynamics and imposing unnecessary and undue burden.

Any extension of consumer rights to small businesses could impact British Gas directly, so we are very keen to support BIS with this work to ensure the right outcome for our customers.

Summary

Small and microbusinesses are a vital part of our economy. British Gas supports the principle that small and microbusiness customers are empowered and protected when goods and services fall below the required standards.

However, we believe the existing protections for small and microbusinesses are effective and proportionate. Any additional protections would risk shifting the balance between legislative protections and market solutions and would create unnecessary and burdensome regulation. For example:

- Many small businesses are both consumers and suppliers of services, from and to other businesses. Extending Consumer Rights to businesses would increase the regulatory burden, potentially making it harder for fledgling businesses supplying goods or services to compete and grow against larger, or more established competitors.
- Business customers have considerable scope to negotiate terms and, in a competitive market, the ability to switch suppliers of goods and services.
- It is our experience that many microbusinesses do not behave in the same way, or have the same characteristics as domestic consumers, therefore it would be inappropriate to apply regulation on the assumption that they do. For example, an accountancy firm with fewer than 9 employees, renting an office premises, would not have the same characteristics as a sole trader working from home.
- It is likely that those microbusinesses that act like domestic consumers already buy domestic goods and services and are therefore protected by the Consumer Rights Act. For example, domestic utilities contracts.

We have outlined below some specific concerns with extending the Consumer Rights Act protections to small and microbusinesses.

Detailed comments

Regulated energy supply

As the consultation document notes, certain sectors are determined by separate regulatory and legislative frameworks. In the energy supply sector, small and microbusinesses already benefit from specific existing protections and Ofgem is an active regulator. All non-domestic customers receive protections under Supply Licence Conditions and microbusinesses are given further protections. The additional protections include:

- **Additional pre-contract information** - before a supplier enters into a microbusiness contract, they must let the customer know that they are entering into a legally binding contract and provide them with the Principal Terms of the contract. Suppliers must ensure that all the terms and conditions of a microbusiness contract are set out in writing in plain and intelligible language, and a copy provided within 10 days of an agreement being made.
- **Making contract negotiations easier** - the customer must receive specific information before, at, and after, the point of contract renewal. This information has to be provided at a certain time in the contract lifecycle, intended to make renewal and contract negotiation easier for the consumer. There are controls on when a contract notice period can be in force, and how long it can be.
- **Simple and transparent language** - specific information has to be included in plain and intelligible language on each bill about the length of the contract, and how the customer can end the contract.
- **A requirement to be fair, honest and transparent** - some activities, including agreeing a contract, are covered by the Standards of Conduct Licence Condition. This means that Suppliers behave and carry out any actions in a fair, honest, transparent, appropriate and professional manner.

Small and microbusinesses can also make use of the statutory redress schemes provided under The Consumers, Estate Agents and Redress Act 2007 and The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008; and in case of dispute can approach the independent Ombudsman. Energy suppliers are bound to act upon the Ombudsman's recommendations. Importantly, this process does not remove the consumer's rights to take

legal action. In addition, suppliers must have a public complaints process and tell customers how they can escalate the matter if they remain dissatisfied.

Distorting competition

Unlike consumers, businesses are both purchasers and suppliers and therefore the extension of the protections to businesses would present the same additional risk and compliance cost for small businesses as it would for large businesses, who potentially have greater resources to manage the issues.

British Gas has some concerns that the extension of the Consumer Rights Act protections to small and microbusinesses could have the effect of distorting competition in favour of larger, or more established businesses. If government decide to extend the protections, the impact of this should be considered carefully as part of the Impact Assessment.

Micro and small business definitions

British Gas has some concerns about the definition of a 'microbusiness' and 'small business', which may not properly reflect businesses' commercial capability and ability to negotiate terms.

The consultation document applies a test purely linked to number of employees; however, we do not believe this takes into consideration that there may be businesses with a relatively small number of direct employees but a large turnover and commercial capability, and with the ability to enlist specialist support where needed (e.g. a law firm or private equity firm etc).

Equally, there may be businesses with a large number of direct employees who lack commercial sophistication and/or financial resources (e.g. pubs or restaurants who rely on lots of part-time employees). In addition, businesses are often part of wider Groups and affiliations that provide access to technical/commercial/financial/legal support.

Furthermore, according to BIS, businesses with zero employees account for 76% of all private sector companies. As such, it is likely that they would buy many goods and services, as a domestic consumer and would therefore already be covered by the Consumer Rights Act.

Additional problems also arise when considering that different definitions of microbusinesses apply across different sectors. By way of example, in the energy industry, the regulations

define microbusinesses based on their energy usage, or by turnover and employee numbers. Adding further definitions could lead to additional complexity and confusion.

Given the complexity surrounding definitions of micro and small businesses, we consider that extended consumer protections could create an uneven playing field for participants in the market.

Commercial trading dynamics

The dynamics of commercial trading are different to domestic. Contracting arrangements may be more complex, such as greater volumes of goods/services supplied, and may involve more intricate third party funding arrangements and associated payment terms.

It is possible that the rules could therefore be open to greater scope of abuse if the basic premise of *freedom of contract* were to be changed. For example, if a commercial party simply considered it had made a bad bargain, it could exploit the Consumer Rights Act to obtain a better position than should reasonably be the case between two commercial organisations.

There are also potentially significant differences between certain small and microbusinesses. Some microbusinesses may well purchase goods and services in a manner generally similar to domestic consumers, for example standard goods/services 'off-the-shelf' on standard terms and conditions. Whereas others may buy on a more bespoke basis either dictating or negotiating contractual terms with their chosen supplier.

For example, British Gas regularly receive tenders from small schools, care home establishments and other commercial organisations who have fewer than 50 direct employees but who evidently have access to fairly sophisticated resources to develop their specifications and proposed terms of contracting.