

## Utility Bidder Ofgem response – March 2023

Q1. Do you have evidence of suppliers not being proportionate or reasonable regarding charges necessary to secure a contract, including security deposits? If so, please provide us with details.

*Yes we have seen multiple instances of suppliers applying significantly higher security deposits despite customers credit remaining the same (score).*

Q2. Do you have suggested solutions to the concerns around high costs requested to secure a contract and manage risk?

*The manual systems used mainly to bespoke quote HH contracts causes delays – especially when multiple brokers are trying to get quotes for the same customer (customers can deliberately instruct multiple to try and improve quote competitiveness). This is a resource issue at suppliers and a technology investment issue.*

Q3. Do you believe there has been an improvement in terms to contract as market conditions start to show signs of improvement? Please explain your answer.

*Yes there has been a significant improvement in supplier products and pricing.*

Q4. Do you have evidence to support the allegation that suppliers have been inflating prices in response to the introduction of the Energy Bill Relief Scheme? If so, please provide us with details.

*The gap between wholesale costs plus operating costs has widened (aligning to wholesale movement) indicating that additional cost is being built into prices. This could be due to suppliers higher operating costs and / or higher risk costs baked into prices.*

Q5. What issues are you aware of businesses having in relation to deemed contracts?

*No comments*

Q6. Are there any other matters not discussed above related to pricing and contractual behaviour that you would like us to explore? Please provide details and your reasons.

*Yes win backs.*

*Win backs or objected transfers is becoming an increasing issue for the market. A win back occurs when the end customer has entered into a new supply contract to move supplier. Between the time that contract was signed, and the start date of that contract, their incumbent supplier – either directly or via another broker. By selling the customer another contract, in the knowledge that the customer has already signed with a new supplier, the incumbent creates contract breach liabilities on the end customer. Those are any penalties the customer has to pay to the supplier they were switching too by that contract failing – and to the broker who may also have failed fees.*

*We have an absurd situation that an incumbent supplier uses “already renewed” as an objection reason – even though their contract was sold after the other suppliers. The objections system is archaic – and provides the incumbent with an unfair advantage that they can refuse to release contacts. For some reason suppliers think that their renewal even if it’s after another contract has been completed trumps the contract. Suppliers operate a cartel system where nobody flags the issue as its become a knock for knock type relationship.*

*Suppliers have clear FCA obligations within their licence conditions – and attempting to persuade a customer to renew – knowing that this approach / attempt may create the customer to breach other contracts amounts to a material breach of TCF principles. This issue occurs on **thousands** of occasions every year. The legal position is clear that companies should not attempt to “tortiously interfere” with contracts.*

*As our standard process we automatically notify all suppliers on all contracts when we have introduced the customer into another contract – yes suppliers ignore this information. We would urge Ofgem to take this issue seriously – we flagged this within our Micro Business review and it was not progressed. Customers need to be signposted more and contract law should prevail.*

*If a supplier has been notified that a customer has already entered into a contract they should be banned from attempting to coerce that customer into another contract. They should also reject any contract that a broker introduces to them once such notification has been received.*

Q7. Do you believe there has been an increase in offers to contract in the past year as wholesale market conditions improved, or are there are segments of the market that are still struggling to secure contracts?

*Yes however poor credit / high risk view credit customers still remain very limited on supplier availability (pubs, restaurants etc).*

Q8. Are suppliers following the best practice steps around debt management and disconnection that we highlighted in our December 2022 letter or do you think that licence conditions need amending? Please provide evidence for your views and details of any specific examples.

*We have seen evidence of suppliers not properly checking whether customers are paying direct debits causing issues to build up. Some suppliers system flags weren't set until 6 or 9 months post contract live to flag whether debt had become an issue.*

Q9. Are suppliers' complaints process easy to find on their websites, or elsewhere? Do you believe we need to strengthen the rules around complaints processes? Please explain the reasons for your response.

*No comments to make*

Q10. To what extent do you believe the communication you receive from your non[1]domestic supplier is clear and transparent? Please provide examples where possible.

*No comments to make here*

Q11. Do you think the issues around Change of Tenancy/Occupier are significant? What potential solutions would you suggest to address the perceived shortfalls in the existing Change of Tenancy and Change of Occupancy processes, that do not exacerbate the potential for fraud?

*There have been systematic failures of suppliers to properly validate COT's / COO's. Effectively a knock for knock relationship is in existence where low validation checks are made – because some you lose and some you win approach. We have significant evidence of suppliers allowing illegal COT;s to be released from contracts – and we see this type of behaviour rise during periods of prices falling.*

*Many of the issues are broker / customer lead – where customers are told ways to change company status or report that ownership has changed and allow the customer to break their existing contract to avail a cheaper one. This causes significant damage to the market, higher risk to brokers (who can lose customers contracts this way), and creates negative attitudes. Suppliers are failing their supply licence conditions from not properly investigating COT's or when they do identify post release, that they then do not attempt to ET the contract back.*

*Suppliers must be required to properly validate legal COT's prior to release – or face penalties. We see circa 7% of contracts COT – and we calculate that circa 1 in 5 is illegal / third party sponsored in its form.*

Q12. Are there any other issues you would like to highlight related to competition in the non-domestic supply market? Please provide detailed explanations.

*Yes – LOA's, central data access and Fraud.*

LOA's

*We have seen instances of suppliers such as REDACTED refusing to accept LOA's unless you (as a broker) have a commercial trading relationship with them. This is simply a process frustration issue and needs to be stopped.*

Central data access

*Brokers have been held at arms length from accessing central database – despite the CMA making it clear that such access should be allowed. We are restricted to use third party, supplier led companies like REDACTED, and have found that our own attempts to gain access directly have been met with frustration of application process. Accessing central data including contract end dates would improve switching levels, live rates, reduce objections and lower administration costs which could be passed onto the end customer by lower broker commissions. Ofgem need to investigate the number of brokers whose applications have been accepted – and assess the application process and whether it's fit for purpose.*

Fraud

*We have seen a significant rise in the instances of fraud especially in the sub broking community. These include over statement of consumptions, awareness of areas within supplier process that can be abused, as well as fronting (customers using different companies to pass credit) – and finally the set up of completely false contracts.*

*Suppliers impacted have been slow to either notify or provide evidence to brokers also affected. It appears that there are concerns around the flagging of fraud indicators – assumed due to legal concerns about making such allegations from supplier compliance / fraud / legal teams.*

*Fraud is a big issue and companies need to work openly and in connected to avoid instances where a supplier has concerns / evidence over fraud, but takes many months to raise those concerns to the brokers affected – thereby creating additional risks on both parties. Other industries such as motor insurance have connected fraud working parties that allow brokers and insurers / suppliers to freely exchange information in controlled ways.*

*It's a complex issue but awareness that all parties suffer need to be highlighted. Brokers can help fight fraud given the right tools and access to central systems.*

Q13. Do you believe that there are segments of the non-domestic supply market, other than microbusiness customers, where there is not sufficient market pressure to correct any potential inappropriate supplier behaviours? Please provide detailed descriptions of these customers and evidence to explain your view, including what aspects of harm the regulations would need to help protect against.

*Yes poor credit / high risk are materially affected.*

Q14. If you responded yes to question 13, please suggest how these customers could be defined in the supply licence and identified by suppliers and customers.

*This appears to be a commercial decision from suppliers based on bad debt provision. There is little that can be done to change that.*

Q15. If we expanded the definition of microbusiness customers or created a new class of customers, what are the possible implications and costs of doing this?

*There could be implications from the Micro Business review outputs such as ADR and fee disclosure – which we would welcome. We currently have a difference in the levels of protection of customers where smaller usage customers have higher protection. However some of the industries highest broker commissions come from non micro contracts and suppliers are ad hoc on their views on whether commissions should be disclosed.*

Q16. What additional protections do you think might need to be put in place to protect domestic customers who are supplied via a non-domestic contract? Please provide an explanation or evidence of the areas of harm any new regulation would protect against.

*No comments to make*

Q17. Do you agree with the definition of, and clarifications around, what is a domestic customer as described in Appendix A? Are there other areas where further clarification is required?

*No comments to make*

Q18. Do you have any further comments about how the non-domestic market is currently segmented?

*No comments to make*