

3rd April 2023

Dear Ms van Rensburg,

CALL FOR INPUT ON THE NON-DOMESTIC GAS AND ELECTRICITY MARKET

The Federation of Small Businesses is a non-profit making, grassroots and non-party political business organisation that represents members in every community across the UK. Set up in 1974, we are the authoritative voice on policy issues affecting the UK's 5.5 million small businesses, micro businesses and the self-employed.

The energy price crisis has significantly impacted the UK's small business community since 2021. Although wholesale energy prices have fallen since the beginning of this year, small businesses continue to be impacted by the rise of wholesale costs. FSB research conducted in November 2022 demonstrated the impact of increased wholesale rates on energy costs, with 44 per cent of small firms stating that their energy costs have increased by double, triple or higher in the year (a quarter of firms saw their energy cost double and 19 per cent saw their energy costs triple or increase more).¹

Case study of an engineering business in Hampshire: Before the introduction of the EBRs, this business, with a full order book and forty employees, has seen energy bills rise from £10,000 per month to £60,000 per month when the rate for electricity increased from 13p per kWh to 87p per kWh in October 2022. The business is trying to compete with other businesses offering similar products/services elsewhere in the UK at lower energy rates, making them uncompetitive. As a result, the business owner is considering closing their business, which would impact forty families in the town of Gosport.

In response to rising energy costs, small firms have taken a number of steps, ranging from raising prices (46%) to cancelling or scaling down investment (32%). In addition, eight per cent of firms have acquired further business debt to pay their energy bills.

Overall, the energy crisis has demonstrated the shortcomings of the retail energy market on small firms, ranging from a lack of a cooling-off period for non-domestic

¹ FSB, Energy Bill Relief Scheme review, November 2022, <https://www.fsb.org.uk/resources-page/fsb-report---energy-bill-relief-scheme-review--november-2022.html>

customers to a lack of adequate support and advice regarding energy contracts – affecting their negotiation power and ability to secure an affordable and fair business energy contract.

Where possible, we have provided evidence FSB received from businesses that are directly impacted by the issues raised by Ofgem.

Pricing and contracting behaviour

Q1. Do you have evidence of suppliers not being proportionate or reasonable regarding charges necessary to secure a contract, including security deposits?

Throughout the energy price crisis, and particularly in 2022, FSB has received reports from small firms about being charged high upfront payments to secure an energy contract.

However, the small business community has far lower cash reserves than larger businesses and more is likely to be unable to pay high security deposits. For example, ONS data² reveals that 42.4 per cent of the micro-business population has less than three months of cash reserves, which compares to 17.2 per cent of businesses with over 250 staff. 13.2 per cent of micro-businesses have no cash reserves at all, compared to 2.3 per cent of businesses with over 250 staff.

Case study of a business struggling to secure a new contract: Two out of three suppliers that offered a new contract (including their incumbent supplier) required a £16,000 security deposit. The business had a good credit rating with their existing supplier and never missed a payment. The business chose the supplier that didn't ask for a high security deposit.

Case study of an upfront payment request through an energy broker: This business was planning to renew their energy contract at the end of 2022 with support from an energy broker. The broker requested a £150,000 upfront payment before supplying a quote to the business.

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

In September 2022, we wrote to the leading energy suppliers³, and urged them to stop asking for disproportionate upfront payments.

² ONS, Business insights and impact on the UK economy, November 2022, <https://www.ons.gov.uk/economy/economicoutputandproductivity/output/datasets/businessinsightsandimpactontheukconomy>

³ FSB, “Stay vigilant with energy suppliers to ensure small firms are not overpaying, Government urged”, November 2022, <https://www.fsb.org.uk/resources-page/stay-vigilant-with-energy-suppliers-to-ensure-small-firms-are-not-overpaying-government-urged.html>

High security deposits were an additional financial burden for most small businesses that saw their energy costs double, triple or more since August 2021⁴, worsening small businesses' cash flow issues.

Going forward, we would like to see more transparency around security deposits that will help to better understand the methodology applied by suppliers. We recognise that security deposits are meant to protect suppliers; however, businesses that can clearly demonstrate their creditworthiness and that they have paid previous energy bills should be excluded from paying high security deposits. In a utility market like the energy market, it cannot be right for suppliers to de-risk themselves entirely at the expense of small businesses.

We therefore propose that Ofgem is working with suppliers to provide detailed information about the factors that influence the decision to ask certain businesses to pay a security deposit, including estimated levels of costs (depending on for example sector and size of business).

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?

One particular business reached out to FSB on 17th November.

Case study of a business facing inflated prices: This business was due to renew their contract in November. The business was offered a wholesale rate of £1 by their current supplier and £0.65 by a second supplier. The business owner tried to negotiate with their current supplier but was only able to settle for a new contract at £0.75 for two years.

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

Standing charges on non-domestic contracts were not capped under EBRS (compared to domestic contracts) and businesses have seen a disproportionate increase in charges. FSB recognise that standing charges are a critical part of the energy bill and ensure that the network is run efficiently. However, we have received reports where charges have been inflated during the energy price crisis.

Case study on standing charges and short negotiation window: The renewal of this business' contract also coincided with an increase in standing charges from around 0.55p to £7 and then £11. This manufacturing business tried to negotiate the new wholesale rate but the offer from their supplier was only valid for the next 24-48 hours. The electricity for the next twelve months

⁴ FSB: Energy Bill Relief Scheme review, November 2022, <https://www.fsb.org.uk/resources-page/fsb-report---energy-bill-relief-scheme-review--november-2022.html>

increased from approximately £5,000 (on reduced working) to approximately £17,000.

Case study on standing charges: A business, which has seen a gas increase per unit of over 500% and an electricity increase per unit of around 250%, has also seen an electricity increase in standing charge of over 2000%. They are a carbon-neutral business and only buy green electricity. They have a solar panel with an output of 102kWh and have done a lot here to become one of (if not the first) Carbon Neutral manufacturing businesses in Leicestershire.

Case study on standing charges: This business, a sole trader running an equestrian and pet laundry service who received a renewal quote for electricity, saw their standing charges increase from 23.27p/day to 40p/day and their wholesale market rate from 14.65p/kWh to 99.87 p/kWh.

Competition in the market

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 license conditions need amending?

We have some evidence that questions how suppliers handled debt management issues during the energy price crisis. The evidence pre-dates the letter Ofgem sent to suppliers in December 2022.

Case study debt: This business' energy provider advised that their contract would not be renewed. However, the business received a bill of £14,8000 for the period from 18/9 to 20/11 and was advised that they could not release them to another provider until the bill was paid.

Case study direct debit increased: This business is locked into a fixed contract. However, despite being on a fixed contract, the supplier tripled their direct debit in February 2022. The business owner reached out to the supplier and explained that they were unable to pay £500. The new rate was set at £200 without explaining why the direct debit rate was increased in the first place and whether that meant that the business would be in more debt now.

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?

Q10. To what extent do you believe the communication you receive from your non-domestic supplier is clear and transparent?

There is a significant imbalance of power and asymmetry of information between a small business and an energy supplier. A small business does not have an energy

manager, nor are they likely to have any particular expertise when choosing energy contracts and handling communication from suppliers, which is a task that is likely to fall to the business owner in addition to all their other responsibilities.

Case study customer service: *This business decided to find a more competitive supplier. The date in the letter to inform the business that their contract with their original supplier would end was 9/10/22. The business owner secured a new contract with their new supplier from the 9th October 2022. In a follow-up letter from their original supplier, the date was changed to 10/9/22, as the first letter was in an American format, which meant that the business owner was now without an energy supplier for a month. For this error, the original supplier offered a £30 goodwill gesture. However, due to this error, the business would have to pay out-of-contract rates for one month. Only by mentioning the FSB and the energy Ombudsman, the original supplier then extended the contract to the 9th October 2022 as per the first letter. However, the accounts team had not been informed about extending the contract by one month and instead billed the business at out-of-contract rates.*

Focuses regulatory support for specified groups of customers

Q13. Do you believe there are any 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?

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.

The energy crisis has clearly demonstrated the shortcomings of the retail energy market on small firms. A significant number of gaps in consumer protection remain for small businesses that should be urgently addressed.

The energy price crisis has highlighted that small firms (excluding microbusinesses) don't have a place to raise issues with their suppliers. We recommend that more businesses have access to the Energy Ombudsman and that the size threshold be raised from 10 employees to 50 employees and increase the usage threshold by a multiple of five.

Additional comments

Microbusiness Strategic Review: With the Microbusiness Strategic Review, Ofgem has taken a significant step towards more non-domestic consumer protection by recognising that microbusinesses are akin to domestic customers when navigating the retail energy market. However, the measures that took effect so far do not yet include recommendations of extending the cooling-off period to business customers.

Microbusinesses should have more rights to cancel a contract if they change their mind and should have access to a 14-day cooling-off period for all switches, like domestic customers. In the Microbusiness Strategic Review decision, Ofgem delayed the decision to implement a cooling-off period until after Faster Switching had gone live, which has now been completed. We have urged Ofgem to swiftly implement this commitment that would provide businesses with more autonomy when negotiating energy contracts.

We have also been alerted of examples where businesses entered a verbal contract without being aware that verbal contracts are binding. By introducing a 14-day cooling-off period, microbusinesses could reconsider contracts they may have entered without having fully considered all options.

Third Party Intermediary (TPI) regulation: Previous FSB research found that 30% of small firms used a Third-Party Intermediary (TPI) to identify their current tariff - demonstrating the importance of TPIs for small businesses. However, as there are no minimum standards that a TPI must adhere to, small businesses continue to have mixed experiences with TPIs.

We have repeatedly urged the UK Government to close a significant regulatory gap by introducing Third Party Intermediaries (TPIs) regulation, eliminating unethical practices in the sector. TPIs have a vital role in helping small businesses navigate the complexities of the energy market and can play a critical role in helping small firms secure the best possible energy deals. However, many small business owners will not use a TPI because of a lack of trust or confidence in the industry.

Case study: cold calling from an energy broker: *This business was cold-called by a broker who offered their service to find a new energy provider. The business owner explained that they were already in a contract but assumed that once they signed the new contract with the new energy provider that the current contract would be cancelled – which was not the case. As the owner had signed the contract, they had to pay the broker £2,000 in lost commission (the broker couldn't justify how they arrived at £2,000 commission).*

Unsolicited calls cause significant disruption to small businesses, and in this case resulted in the business signing up to a new contract following misinformation.

Price transparency: It is clear from feedback that we are receiving, that many small firms find it difficult to discern if the price that they are being quoted is competitive. This asymmetry of information can be addressed, in part, through regulatory intervention improving the transparency of information that electricity retailers publish on their websites.

There is precedent in other sectors - in December 2018, the Solicitors Regulation Authority (SRA) introduced new price transparency requirements within the legal

sector⁵. Under the new rules, all regulated law firms were required to publish information on prices they charge and what these include. For small businesses this included example include debt recovery, employment tribunals, and licensing applications for business premises.

We would like to propose a similar approach for the retail energy market to address the lack transparency and understanding of the energy market. This would address the significant imbalance of power and asymmetry of information between a small business and an energy supplier.

Ofgem could considering requiring suppliers to publish on their website, clear information on the following areas:

- Illustrative examples of estimated energy costs for small businesses of various sizes and levels of energy consumption to give small firms a better understanding of costs they can expect. This would help time-poor small firms as they have to re-submit requests for quotes from various suppliers and price comparison sites when shopping around for new contracts.
- Wholesale rates that will be charged in different circumstances, which may be described in a range where needed.
- Standing charges that will be applied, which should include a breakdown of costs that feed into individual charges. This would help businesses better understand what costs to expect and the individual components of a bill for more transparency. This would also help businesses check individually received bills for accuracy.
- Average size of security deposits that will be requested, with a clear indication of anticipated costs for a business and the details about the applied criteria and factors that feed into a security deposit.

The energy price crisis demonstrated that a lack of transparency around energy prices charged by individual energy provides is detrimental to the negotiating power of small firms. More transparency, for example around standing charges, could help small firms better understand their own bills while allowing them to flag errors and questions to suppliers.

Yours sincerely,

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For further information

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⁵ Solicitors Regulation Authority (SRA), SRA publishes price transparency guidance, October 2018, <https://www.sra.org.uk/sra/news/press/2018/transparency-rules-2018/>