

Louise Van Rensburg; Paul Redmayne  
Non-Domestic Retail Policy  
Ofgem



By email to: NonDomesticRetailPolicy@ofgem.gov.uk

31<sup>st</sup> March 2023

Dear Louise and Paul,

**Re: Call for input on the Non-Domestic gas and electricity market**

The UIA is a trade association for third party intermediaries (TPIs) in the business utilities sector. Our aim is to promote and enhance the reputation of TPI's so as to give confidence to business consumers who utilise their services. All Members of the UIA must agree and operate to the UIA Code of Practice which in addition to setting the standards to which our Members adhere to, provides redress for consumers should any member fall short of standards expected from them.

The recent plight of business customers during the energy crisis clearly shows the need for greater protection of this sector. Business consumers literally have nowhere to go if they have a problem with a supplier ; unless via costly legal remedy. We believe some suppliers have cynically capitalised on that, having the deeper pockets. We welcome Ofgem's Call for input and hope that it will lead to better monitoring of suppliers and greater protections for businesses.

Please find detailed below the UIA's responses to the questions raised in Ofgem's Call for Input. Our responses are not confidential, but the email evidence we have provided is.

Yours sincerely

**Rachael Gladwin**

For and on Behalf of The Utilities Intermediaries Association



**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.

[See supporting evidence](#)

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

- [Prescribe an upper limit for security deposits \(An open letter to suppliers on non-domestic debt management mentions the typical amount being 3 months\) to avoid unreasonable amounts being requested](#)
- [Incorporate monitoring security deposit levels into Ofgem's retail monitoring regime so Ofgem can assess whether amounts being requested are in their view 'reasonable' Information from Citizen's Advice and Energy Ombudsman should feed in.](#)
- [Provide customers with the means to report, inform and seek arbitration which is currently only available to domestic and micro consumers](#)

**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.

**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.

[Although members were willing to discuss supplier behaviours around pricing, there was a reluctance to provide evidence for fear of being penalised and TPI agreements being revoked if identified. Some were under the impression they would be breaching confidentiality clauses and despite assurances that such clauses were inadmissible if the information was requested by a court of law, government, or regulatory body, were still unwilling to do so.](#)

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

[Deemed rates are supposed to reflect actual costs and inherent risks for suppliers but the frequency in which these rates are updated \(not very\) and the fact that some suppliers apply the same rates for out of contract suggests otherwise. Deemed rates should be reviewed and amended more frequently given their constant movement. Feedback from our members is that:](#)

- [Certain supplier-deemed rates are excessive compared with contemporaneous prices and/or based on market intel on where current commodity and non-commodity costs sit.](#)
- [Suspicion that some suppliers are deliberately profiteering by applying deemed rates for longer than is necessary, as is the case with Changes of Tenancy \(CoT\) or where customers find themselves stranded because the supplier will not provide a contract renewal.](#)

[The problem is that only individuals or organisations that have access to energy pricing information and the necessary knowhow to build up a price from scratch could challenge whether deemed rates are](#)

‘unduly onerous’. Ironically, the weekly publication of the Reference Wholesale Price and Government Supported Price under the EBRs scheme has provided a means of comparison of sorts and brought both the issue of deemed rates and high contract prices to the fore .

Ofgem, do have powers to interrogate suppliers on their costings and suppliers are required to publish their deemed charges. We feel that the regulator needs to be more proactive in monitoring supplier deemed rates to ensure they are proportionate.

**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.

1. Suppliers reserve the right to cancel a contract before it goes live or even mid-term if it is no longer economically viable for them to do so. In a rising market, customers are left high and dry. Customers on the other hand are bound to the contract on acceptance of the contract by the supplier and liable for losses should they attempt to terminate early or before live date.
2. Security Deposits
  - a. Suppliers are not compelled to return security deposits promptly. It should be an SLC requirement that deposits are returned X number of days after final bill is issued.
  - b. Suppliers do not pay interest on security deposits even though they retain these monies for the duration of the supply contract. Given that all suppliers charge interest on customer debt, some at 8% above BoE base rate, and the rising rates of inflation, this unfairly penalises the customer. We believe it should be part of SLCs that if interest is charged to the customer that same rate of interest is applied when paying the customer back any monies due.
  - c. Suppliers’ reserve the right to increase security deposit levels or request advanced payments from customers where they believe a customer’s ability to pay has diminished or the business sector in which that business operates is deemed risky. These decisions tend to be made at a higher level and do not factor in or allow the customer the opportunity to discuss or appeal, resulting in actions being taken that are more likely to exacerbate the likelihood of the business failing.
  - d. Businesses who contract with a new supplier are required to provide two security deposits - one for the existing contract at the start of the agreement, and one for the follow-on contract if they are changing supplier. This overlap, though temporary, has because of high energy prices posed a significant financial burden on some businesses, and disincentivised some from switching.
3. There are Suppliers who choose not to provide a hard copy or electronic version of their terms and conditions or provide a means to identify when those terms were issued - version name or number. This has been used to devastating effect by some suppliers who have made alterations to their terms and conditions post contract without informing the customer or giving them notice. It should be an SLC requirement that suppliers provide hard copy terms with version numbers. Suppliers should also be required to notify customers of any changes and allow them opportunity to leave if those changes are material
4. Suppliers refusing to provide information to TPI if they do not possess a TPI Agreement with them, despite the TPI possessing a legitimate Letter of Authority from the customer

- 5. Remove auto renewals and notice periods
- 6. Poor supplier response times and customer service

**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?

#### Hospitality

**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 covered this in our response to Q6 in relation to security deposits and suppliers credit control policies.

**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.

Processes are easy enough to find, but suppliers responses to complaints are very slow and vary. Rare to be provided with a named contact so there is no continuity or accountability from the supplier during the complaint process. Many are still using Covid as an excuse to only engage by email. There should be clear SLA's with timeframes and the means for customers to seek arbitration should they reach a deadlock.

**Q10.** To what extent do you believe the communication you receive from your nondomestic supplier is clear and transparent? Please provide examples where possible.

**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?

Yes, we see more disputes around Change of Tenancy/Occupier than any other areas. We believe there are some suppliers who are using CoT's as a retention tool and a means to extract higher margins by applying deemed rates.

There are suppliers whose requests are excessive and unreasonable. We have seen examples where the evidence requested would only be available to the customer weeks or months after they have moved in (such as a business rates bill).

We have been advised of situations where customers are moving into properties where there is no supply but cannot get the supply energised because the supplier will not accept their evidence. Suppliers

are then charging the incoming customer with costs to re-energise a supply and pay a deposit. It should be a SLC requirement that incoming customers are not penalised for an outgoing customer's debt.

To mitigate against possible fraud by customers or rogue brokers, suppliers must ensure they have contemporaneous evidence, and the information should be such that it would likely lead an impartial third party to the same belief. We believe that use of the "T" flag as was deployed in the MRA, could be a possible option within the Retail Energy Code.

There should be a standardised approach among suppliers as to what constitutes evidence and clear service level agreements and timeframes around the CoT process. Ofgem should consider guaranteed performance standards for suppliers as is applied in the domestic sector.

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

**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.

Except for I & C and energy intensive consumers who, due to the importance of energy for their day-to-day operations, would either outsource or have inhouse expertise plus market power to secure truly competitive offers from suppliers, we believe all segments should be afforded the same protections.

**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.

We would advocate removing all thresholds.

**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?

UJA cannot speak on behalf of suppliers and their systems, but general feeling is that this will create more complexity in an already confusing and complex market.

**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.

**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?

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