



Business Energy Direct
6 Enterprise Court
Farfield Park
Manvers
Rotherham
South Yorkshire
S63 5DB

26th March 2023

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

Dear Colleagues,

Further to the request for input, the following is the response from the team at Business Energy Direct

Business Energy Direct is a serial award-winning energy consultancy and we have been providing support and services to commercial energy users for over two decades. We work with customers across all sectors of industry, and represent many different brands and associations, including several NASDAQ listed organisations. We provide our clients with a full cradle (*new connections/utility infrastructure project management*) to grave (*sale of business / site demolition / end of lease*) solution.

The wide variety of organisations that we serve and the broad range of services we provide, results in us touching most parts of the energy industry and this gives Business Energy Direct a unique insight into the energy market across all sectors.

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.

During 2022 it was evident that suppliers had taken business decisions that resulted in significant challenges for non-domestic customers that required energy contracts. We noted the different positions of the suppliers and their stances, and would categorise these as follows:

- 1) Supplier withdrawal from ALL market activities (include refusing to offer renewal contracts to existing customers).
- 2) A supplier may have offered a renewal contract to an existing customer; however, they had withdrawn from the acquisition market completely.
- 3) A supplier may have chosen to exclude certain industry sectors and only offer contracts to specific industry types, regardless of whether the customer was on supply, or with a different provider.



- 4) Suppliers continued to offer contracts to all customer types, but with increased credit criteria resulting in risk premiums being added to prices, along with requests for high value security contracts.
- 5) Suppliers continued to offer contracts in the normal manner, with any premiums not being advised of or identifiable, but believed to be built into the contract offer.

Throughout 2022 (and we can evidence in the year to date) we identified that some industry sectors were impacted greater than others. Whilst decisions were made by individual suppliers, the broad result was that certain sectors, especially hospitality, were being financially penalised and quite significantly.

We also saw some sector categories deliberately expanded for credit vetting purposes, to capture more customers in perceived high-risk categories. An example of this would be a 140-year-old cricket club being classed as a hospitality organisation, exclusively because they have a bar that can serve alcohol on matchdays.

Throughout the Covid pandemic and the energy crisis of 2022 which followed, we continued to work with companies that identified the opportunity to expand and grow their businesses, even in the most challenging of times. Gaps in their respective markets and industries, resulted in them needing to acquire new properties, with some of these requiring new energy connections or supply alterations.

Customers with such requirements and especially those requiring a final meter connection, were hugely penalised, with almost none of the suppliers offering supply contracts, and the few suppliers that did, took advantage of this situation, by deliberately inflating contract prices. The typical supply and demand business practices were very evident, with one of our customers finding it necessary to commit to a contract at 96p KWh for 12 months, because of their requirement for a grid connection. Shorter term contracts were not available with any provider.

Evidencing discriminatory behaviour

Supplier 3

Supplier 3 presently identify 15% of SIC codes as 'high risk' and will not provide new contract offers to businesses in these sectors. Some of the industry sectors identified include manufacturing, accommodation, food service activities and retail. The evidence of this is below.

REDACTED



Supplier 1

The below screenshot is extracted from an email exchange with Supplier 1, and it confirms that they were out of the market in late August. It also details updated 'risk' premiums to be included in the price offered to customers, which TPIs needed to apply upon return to the market.

From: Evans, Lisa <[REDACTED]> On Behalf Of Cardiff Team2 Tender
Sent: 25 August 2022 11:57
Subject: IMPORTANT INFORMATION

Good afternoon

Due to the market opening upwards and continuing upwards, we will not be pricing until further notice.

As soon as we are able to price I will let you know.

Please see below the new risk premiums. Please note these for when pricing using the Matrix.

Portfolio Max premiums = NHH 3.207p/kwh HH 1.924p/kwh Gas 1.150p/kwh

Pubs / clubs/ restaurants

Takeaways / cafes = NHH 6.414 p/kwh HH 3.848 p/kwh Gas 2.300 p/kwh

This is with immediate effect.

Kind Regards

SME Indirect Sales

Supplier Update

We're currently experiencing a high number of failed credits or the need for high security deposits for SME contracts via our supplier [REDACTED]

This is particularly apparent for any contracts which are being sold into high risk industry sectors, such as the hospitality sector (pubs, clubs, restaurants, bars, take-aways and catering companies).

For these sectors there is a high premium on the unit rate – 1.98 pence per kWh for Gas and 4.84 pence per kWh for Electricity.

Please carefully consider which suppliers you choose for your clients' accounts. By doing so you'll give them the maximum opportunity for their contract to go live and reduce your time and effort in sourcing an alternative supplier.



We have provided additional evidence of what we consider poorly considered and illogical credit positions with Supplier 1 at the link below.

REDACTED

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

Rather than taking cash (flow) out of companies by requesting high value security deposits, potential solutions could include some of the following.

Suggestion 1

Suppliers will often take trade credit insurance to protect them against a customer going out of business, especially if they are high consuming customers. Rather than request a large security deposit, suppliers could offer the customer the option to either pay the security deposit or purchasing trade credit insurance (via the supplier's provider) to cover against potential payment default.

Instead of requesting the equivalent of 3 months up front as a deposit, suppliers could take a vastly reduced deposit from the customer to cover credit insurance costs for the duration of a contract (for higher risk customers, reducing contract durations to a maximum of 12 months mitigates some risk too). The customer could have the actual (contract duration) cost of the credit insurance with a visible charge added to future invoices to show that credit insurance charges are being paid for by the customer. The deposit can then be refunded at the end of the contract, or retained if a new contract is agreed with the same supplier (retained where perceived risk still exists). This becomes entirely cost neutral to the supplier, the insurance removing their non-payment risk.

Suggestion 2

Some suppliers use a 'self-underwriting' mechanism (Supplier 1 for example), with a premium added to the KWh price that a customer pays. The supplier is collecting the premium from some customers and effectively, using those funds to offset at least some of the debt accrued over their collective portfolio. This is a flawed process, because whilst the different customer risk profiles do exist, Supplier 1 are an example of a supplier that almost always add the risk premium. Legitimate risk isn't being appropriately identified, it's just a blanket approach in most cases.

We believe that if a supplier does take this approach, then the risk premium needs to be identified in the customers contract at the point of contract agreement, and on future invoices. Furthermore, where a customer has paid (undisputed) charges that have been invoiced for, we believe that any supplier that follows



this process should refund the 'premium' at the end of the customer's contract. This would provide an incentive for customers to ensure that they make payment and support their supplier by taking steps to manage their account appropriately.

Suggestion 3

Most business customers will operate their business as a limited company. Where this is the case suppliers, could give customers the option to sign a Director / Personal Guarantee, instead of requesting security deposits. A hybrid of this could also be possible (a reduced security deposit if a guarantee is signed). If a company fails, the supplier could pursue the company directors, however, a key consideration here is that the Directors can obtain personal guarantee insurance, so they also can mitigate their own personal risk if they wish.

Deposit protection

Customers are generally looking to avoid paying deposits were possible, often to their detriment and to date the industry has failed to consider that due to the number of suppliers ceasing to operate (not just in the past 2 years), most micro business customers will be reluctant to agree to pay a security deposit, because they may lose their money.

Whilst a supplier is well within their rights trying to mitigate their risk of bad debt, presently the industry doesn't have a mechanism to protect non-domestic customer security deposits. Deposits aren't treated as credits by suppliers, they don't appear on customer invoices as such, therefore they aren't protected in the same way.

OFGEM don't guarantee that credits are protected in the non-domestic sector, business customers are not treated equally (with regards to deposits and many other industry aspects) therefore if a SoLR event takes place, any deposit is lost and may even be used to cover administrator / insolvency fees.

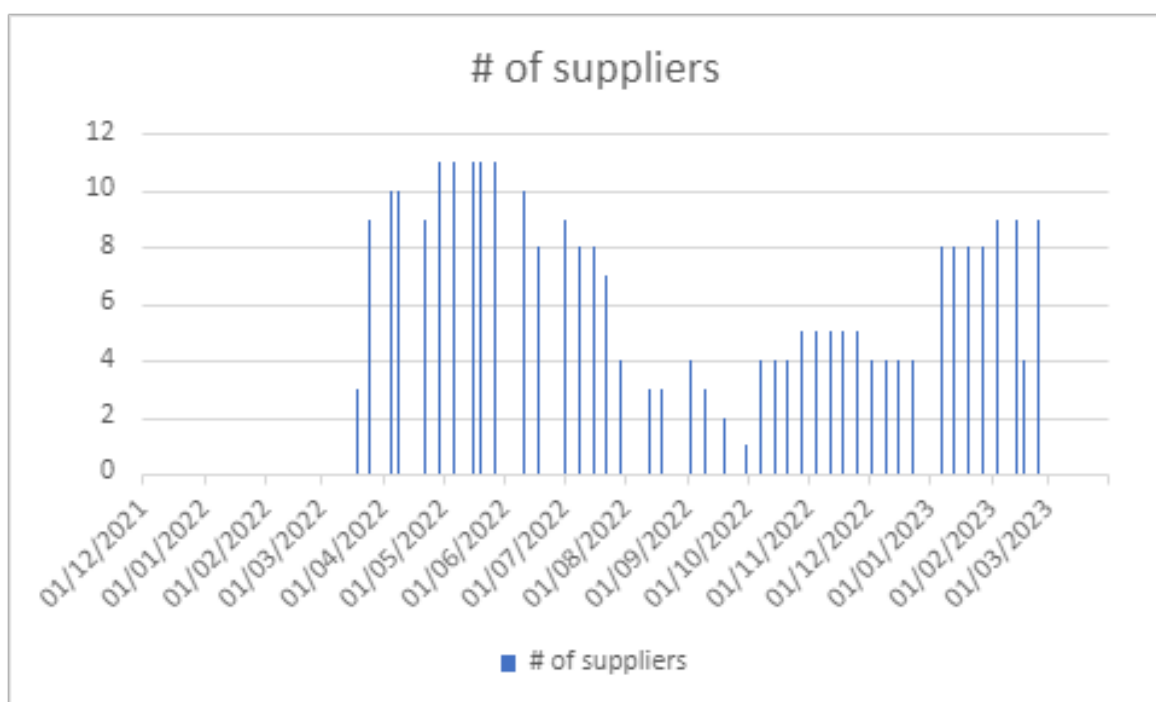
Supplier terms and conditions are not sufficient to protect non-domestic customer deposits, and we believe that the industry requires something similar to the Deposit Protection Scheme, which protects the deposits of those renting or leasing residential property.

Suppliers should also ensure that any requests for a security deposit appropriately reflects the company or business that they are asking to pay it. We have witnessed requests made to business owners asked to pay a deposit amount, calculated based on an entirely different level of consumption to what they will use, with only the previous site occupier's consumption forming part of any consideration.



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.

We track a number of metrics across the energy, including matrix / price book prices issued by suppliers on an (almost) weekly basis. The below graph (data for the past 12 months) shows the number of suppliers that have available matrix / price books in each week. During this period some suppliers may have changed from issuing price books, to only offering bespoke quotes.



Since the start of the 2023 we have seen more suppliers return to the market and “some” pricing competition. We do however have significant concerns that non-domestic retail contract prices being offered, are not aligned closely enough to the wholesale market cost.

Many suppliers continue to refuse to offer contracts to certain sectors.

We also believe that “price fixing/setting” is occurring in the SME / Micro Business Sector and that some aggregators are sharing suppliers pricing information with the suppliers, which is a breach of competition law. This is evident from the speed that some suppliers are reacting to another supplier’s price change (it can be within minutes to a few hours / following day). The suppliers don’t have specific days of the week or month that they issue their price books, if they did, the sharing of information would be less obvious.



We are aware of several organisations who operating in the market which have stated that they do share supplier's prices with some suppliers they work with. We are also approached by suppliers requesting feedback on price position in the market. Business Energy Direct have previously reported this activity to the CMA because we consider it anti-competitive behaviour.

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.

Given that we track SME business matrix / price book prices, we have access to most supplier (that issue them) prices, and we can evidence that prices have been inflated following the announcement of the EBRS.



Using the range of electricity prices for fixed contracts available shortly after the invasion of Ukraine (18/3/22) and just prior to the market peak (19/8/22), when comparing the supplier prices, **the average low price** (area 23 single rate used for analysis) of the collective acquisition prices was 40.06p KWh.



The average EBRs wholesale reference price for the same period was 32.58p kwh, therefore the difference between the average low acquisition price and EBRs wholesale reference price, price was 7.48p KWh.

EBRS was announced 2/9/22.

Using the range of electricity prices for fixed contracts available for the period between 2/9/22 and 24/2/23, **the average low** of the collective acquisition prices was 52.82p KWh

The average EBRs wholesale reference price for the same period was 37.42p KWh, therefore the difference between the average low acquisition price and EBRs wholesale reference price, was 15.4p KWh.

This represents an increase of more than 100% after the scheme was introduced, and this extra cost and the financial burden, which is passed to the taxpayer, cannot be justified. In our opinion this requires a thorough investigation by BEIS.

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

For the past 15 years, Business Energy Direct has challenged suppliers deemed contract charges, because when applying them (for the most part suppliers) they are not adhering to their supply licence obligations, SLC 7.4 specifically, which is detailed below.

7.3 The licensee must take all reasonable steps to ensure that the terms of each of its Deemed Contracts are not unduly onerous.

7.4 One way in which the terms of a Deemed Contract will be unduly onerous for any class of Domestic Customers or for any class of Non-Domestic Customers is if the revenue derived from supplying electricity to the premises of the relevant class of customers on those terms: (b) significantly exceeds the licensee's costs of supplying electricity to such premises.

For more than a decade we've shared the opinion that non-domestic deemed energy prices are the key driver behind the often-fraudulent behaviour, and misrepresentation committed by many Third-Party Intermediaries (TPIs), with suppliers inadvertently facilitating such.

We've said it persistently, if you want to kill a snake, cut off its head.

The consequences of 'unduly onerous' deemed prices (prices that aren't being regulated - no action has been taken on such since the market was deregulated more than 25 years ago) are far reaching. High (unduly onerous) deemed prices result in huge amounts of detriment being suffered by non-domestic customers as a result of both supplier, and TPI activity. The next 20 or so pages provide a real-world view of the whole "journey" that deemed contract customers are typically subjected to.



Becoming a deemed customer

Firstly, we need to look at how micro business customers become deemed contract customers. We would expect that 99% of non-domestic customers become deemed contract customers as a result of them taking over at a premise or where a change responsibility / legal entity has taken place (Change of Tenancy – COT).

The combination of poor processes, which some suppliers have deliberately designed to be obstructive (Supplier 2 for example – Redacted) and extended lead times to action required changes, is leading to most of these customers being exposed to high deemed prices, for much longer than they should be.

There are series of different outcomes that follow these delays and none of them are favourable to customers. We believe that OFGEM's failure to monitor and regulate deemed prices causes more detriment to non-domestic customers, than anything else in the industry, because of what it facilitates.

We would urge OFGEM to carry out a full investigation into non-domestic deemed pricing and suggest that OFGEM issue a RFI to all non-domestic energy suppliers, making it compulsory for suppliers to provide details of their internal COT processes (and process maps), details of the information they provide COT customers with (and / or how these customers are sign posted to information) and what information ('evidence' - if any) they request from the customer prior to actioning a COT, along with the minimum and maximum number of days taken to process the COTs, and (based on evidence) their current average time taken to complete a COT and create an account for the new entity.

OFGEM will quickly identify the magnitude of the problem and the challenges faced by most customers, once this information has been obtained. Thereafter, the principals identified in the MRA document GD28 should be discussed with suppliers to ensure they fully understand their obligations and what is expected of them when dealing with COTs.

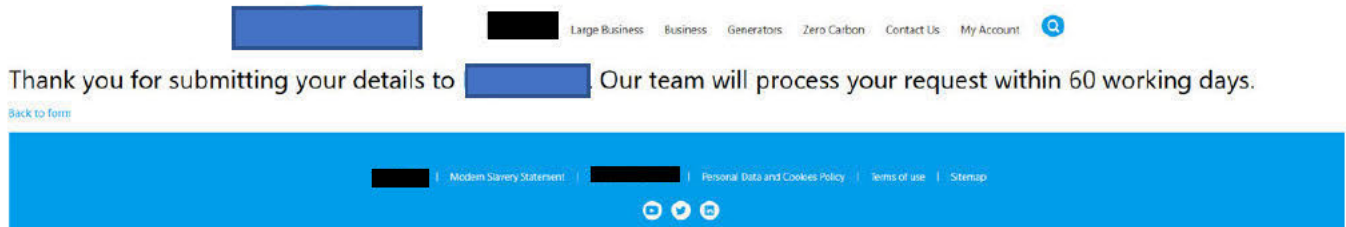
Faster Switching

Following the introduction of faster switching, which was implemented so that the transfer time between suppliers was reduced, Business Energy Direct haven't see any benefit for non-domestic customers. In fact, the evidence shows that following the agreement of contract, the average number of days for the new supplier to register a customer of ours, is now greater than before faster switching was implemented. Other TPIs that we have engaged with, agree with our findings, because they are experiencing the same.

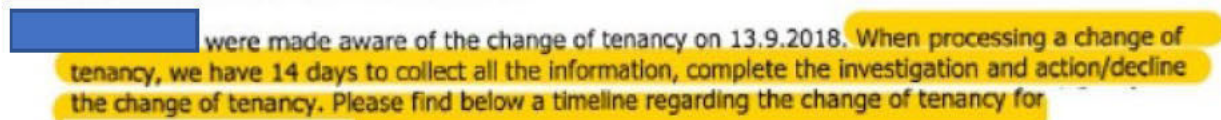
The customers that should have seen the biggest benefit of faster switching, are those moving into new commercial premises, and in theory, if a contract is agreed on the day that the customer becomes responsible for a premise, the customer should only be exposed to deemed prices for around 5 working days. However, the reality is much different, and we see very few COTs actioned in this time frame, which results in transfers being objected to inappropriately, even where the COT indicator is set to True when the new supplier is registering.



Whilst they have been poor for more than a decade, we identified that service levels (when processing COTs) started to decrease during Covid, with suppliers often blaming this on staff working from home. However, our view is that the delays have got progressively worse post covid. Some supplier staff are inappropriately stating that OFGEM allow 8 weeks for a COT to be processed and the below from Supplier 4 is an example of an autoreply to their COT mailbox, which evidences that they believe they have up to 3 months to complete the required actions.



This is also an example of Supplier 5 stating the same more than 4 years ago



The supplier lottery

Unduly Onerous prices are evident across the entire industry and customers continue to be charged at much higher prices than any supplier can justify. Where customers pay these charges, suppliers are profiting excessively. This evidences that it's not in a supplier's interest to action the COTs in a timely manner, given that they can increase profits by deliberately exposing customers to higher prices, for an extended period.

Following discussion amongst the Business Energy Direct team, regarding the challenges faced when dealing with changes of tenancy for our customers, we asked which suppliers we had identified as causing most detriment to customers. We were looking for the top 4 and narrowed it down eventually, however 10 suppliers were highlighted as causing significant problems, most of these having at least one Ombudsman complaint raised against them, as a result of inappropriate activity that resulted in customer detriment.

The four suppliers identified as causing most detriment are: Supplier 5, Supplier 2, Supplier 6 / Supplier 7 and Supplier 8. Two of these suppliers have already been investigated and fined by OFGEM following inappropriate objections activity (many of the objections being raised following COTs). Significant concerns were also raised regarding the processes and delays caused by Supplier 3, Supplier 16, Supplier 9, Supplier 10, Supplier 11/ Supplier 11a and Supplier 12. Of these suppliers, the performance of Supplier 3 and Supplier 10 has declined the most in the past 12 months (we believe because of process changes). We wouldn't have expected either supplier to have received such feedback prior to 2022.

We have evidenced supplier behaviour and what can be found when clicking the link is considered the norm and not the exception. They haven't been selected for any other reason than some are recent examples, and some may be from several years ago, and that examples of 8 different suppliers demonstrates a wider problem across the non-domestic sector; the constant battle customers and TPIs are faced with.

The evidence here will also show processes that aren't fit for purpose (such as Supplier 7' webchat), that Supplier 6 would like to tell customers which TPIs to use (which is anti-competitive behaviour and something expanded on later in this RFI) and that some requests are ignored completely, until the buttons of several company directors are pushed in such a manner that they find it difficult to ignore threatening emails. It also highlights some suppliers attempt to profit delaying the changes.

REDACTED

The industry's failure to implement an agreed process is the reason why Business Energy Direct submitted a change proposal (R0051) to the Retail Energy Code in 2022. Change must take place and forced on the suppliers where needed, and the industry must agree an acceptable standard that suppliers will adhere to in future. Failure to do so will result in continuation of the lottery that customers are faced with, the lottery being how much detriment a business will suffer, and determined by nothing other than which energy supplier is imposed on them (the existing registered supplier), following their becoming responsible for a premise.

A customer inheriting Supplier 22, Supplier 1, Supplier 20 or Supplier 21 will have a much easier time than one of the 10 others we've mentioned, and that shouldn't be the case. Non-domestic customers shouldn't have to worry about paying up to 5 times the price that they could obtain an agreed contract at, just because they've inherited supplier A rather than supplier B.

Requests for customer information

For a number of years some suppliers, including Supplier 5, Supplier 2 and Supplier 7, have asked for personal information including ID, to 'validate' a COT.

The below is an extract from Supplier 7's webchat

Thank you. Please allow me a few moments.

Thanks for your patience. Please can I check if you have your signed lease agreement, business rate bill, picture of you holding your photo ID & information to complete the below template?

MOVE OUT Date: MOVE OUT Read(s): Forwarding Address for Old Tenant/
Landlord: Incoming Details (NEW TENANT/LANDLORD) Business Name: Contact Name: Contact Number:
E-mail Address: Billing Address:



Firstly, we are of the opinion that at least two of the three suppliers named here, should not be trusted with copies of passports, driving licences and birth certificates, Secondly, no supplier should be requesting these documents anyway, because they have nothing to validate them against. If fraud is taking place, it's very likely that those committing it will provide fraudulent personal ID, (we've seen this on several occasions), so the requests are pointless.

This doesn't happen in the water or communications industries.

Lastly, the provision of such information doesn't validate anything. Just because a director (who may not be an owner or shareholder) of a company provides a passport, driving licence or birth certificate, it doesn't identify that the company he works for is responsible for energy charges at a commercial premise.

Additional evidence of the requests for information and the suppliers quoting time scales to deal with a COT can be found at the link below.

REDACTED

We would deem requests for such information a breach of GDPR. This is confirmed when reviewing Article 5 (1)(c) of GDPR which states that *'Personal data shall be: adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation')'*

We believe that OFGEM need to intervene immediately and prevent suppliers from requesting copies of formal ID in the form of passports, driving licences or birth certificates, from customers. It's possible that some business customers may not have applied for two of the above and the third could be impossible to locate.

Suppliers repeatedly fail to recognise and understand what constitutes a change of tenancy. At one time or another we've either highlighted the MRA document GD28 (Guideline for use of the Change of Tenancy Indicator – link below) or provided a copy of it, to help them understand it. The document identifies the many ways a legal change of responsibility takes place.

There are many different types of leases agreed by parties for any number of durations. Leases up to 999 years long, leases in excess of a hundred years (our office head lease is), leases for 25 years are commonplace too. Leases can be for any duration agreed by the parties, and short-term leases play a large part of landlord and tenant relationships. Leases that are for a duration of less than 7 years aren't registerable with Land Registry, and if they are for fewer than 3 years, they cannot be noted on the landlord title either.

Suppliers are often fixated on lease documents, as if they are the holy grail of evidence that legitimises a change. They don't, and such a mindset creates a problem for both suppliers and customers, especially when



many leases aren't registered, and suppliers are using the Land Registry website to validate changes of tenancy.

An example of the complex nature of leasing would be in the franchise world, where franchisors (the brand owner) take a head lease for a premise and the franchisee (the business owner) is personally assigned an under lease. The brand does this for brand protection reasons, and if a franchisee isn't operating in accordance with brand requirements or adhering to the franchise agreement, the underlease can be terminated quickly, which helps mitigate the risk of damage to the brand's reputation.

The franchisee themselves will almost always operate as a limited company and it's that company that will be the party responsible for energy charges, not the franchisor brand and not the individually named franchisee either.

Suppliers frequently fail to understand the complex relationships that exist in the commercial property world or lease structures and the legalities of such, and there will be other similar types of arrangements such as this franchise example. The suppliers quickly need to learn and adapt, so that they prevent detriment to customers and mitigate their own risks at the same time.

There are many different types of examples that don't fit into supplier processes, the above is just one.

Recent examples of obstructive supplier behaviour.

We have included the evidence of the Supplier 8 and Supplier 3 examples in the file previously linked to on supplier behaviour.

Supplier 8

Business Energy Direct informed Supplier 8 of a COT on 23/11/22 and we did so by email and via their web portal, doubling our efforts to ensure that it was actioned quickly (because of previous delays caused by them in other instances). When notifying Supplier 8 of this change, we provided a solicitor's letter (to help with validation), the solicitor representing the (sub) landlord of the property (by virtue of this sub landlord being assigned a lease to their franchise brand), the letter confirming that the brand as landlord were no longer responsible, and this had passed to a franchisee.

It was explained in the solicitor's letter that the assignment of a lease was in progress and that the franchisee had the right to occupy under the terms of the franchise agreement. Despite this information and many further emails (50 exchanged) and calls, Supplier 8 refused to acknowledge the company responsible for charges (the franchisee's Ltd Co) with Supplier 8 objecting to the transfer of supply on 4 occasions to date.



Supplier 8 eventually actioned the COT on 23/3/23. On the 24/3/23 issued an invoice for £11,609.38 requesting payment made within 10 days, which is entirely inappropriate, and Supplier 8 hadn't even provided the customer with the Principal Terms of the Deemed Contract prior to issuing the invoice. Furthermore, the invoice issued is not correct, the meter reads provided (evidenced in pictures) when notifying Supplier 8 of the COT, had been ignored in favour of random estimates.

Supplier 10

We have seen a growing number of COT requests being prevented from being completed by Supplier 10, with them reassigning some of the incoming requests to their 'fraud prevention team'. When the COT notices are passed over to this team, only that team can 'unlock' the account. No other team within Supplier 10 can do anything with it or create a new account for the new occupier.

This team take an extended amount of time to address what is ultimately a very simple process, one which we often make much easier by providing solicitors letters. When Supplier 10 push a COT to this team, we believe that they may have experienced a problem with the previous occupier of the address they supply, although this does not absolve the suppliers from adhering to SLC 0.A (the obligation to treat customers fairly and have customer service provisions which are fit for purpose).

We have evidence that shows Supplier 10 failing in those obligations and then further failing to deal with complaints, because they refuse to raise them, such complaints raised because of the failure to create an account for the new occupier and action the COT. Supplier 10 aren't deeming the new customer to be the new customer, therefore aren't recognising the detriment being caused.

Supplier 3

To evidence that this sector of the industry is entirely broken, we've included a third example from another different supplier, Supplier 3. This time it's a live case example, we are working on it whilst responding to this RFI and it's a useful example to show the extent of the impact to some customers.

Supplier 3 was informed by another TPI of the COT on 27th February 23. Business Energy Direct work with the customer providing connection services and support, the other TPI provides procurement services, and between our companies we have created processes that enable energy connections (new installations and meter upgrades) to be completed as quickly as possible.

We are representing REDACTED and there are many different stakeholders involved in their new store projects, including developers, building contractors and equipment providers. Every day of the program schedule is mapped out, and usually a known projected opening date is being worked towards. Prior to opening, energy connection work is often required. This can be anything from a brand-new service installation, through to an upgrade of fuses or meter upgrade. In this example, it's a meter upgrade that is required.



On behalf of the customer, both ourselves and the other TPI have completed all the required steps to ensure that the meter upgrade can take place, however there's one party that is preventing the meter from being upgraded, because they are refusing to recognise the customer and create an account for them, and that's Supplier 3.

Due to their refusal to create the account, they aren't allowing the customer to transfer the supply to the new provider, with the new provider needing to send data flows (once they have successfully registered the supply) to request the meter upgrade with the customer appointed meter operator. The consequence of this is that the customer can't operate using appropriate equipment, instead they must manage with lower rated equipment, reducing their output.

It isn't an isolated case, Business Energy Direct witness this deliberately obstructive behaviour daily. In this instance the COT indicator has been set to True, yet Supplier 3 have objected to the transfer 3 times. Before the most recent application we even provided screenshots from Google as evidence to show that REDACTED (which is the brand, not the company name) would be opening at the supplied address shortly. It made no difference; they still blocked the transfer informing us in advance that they would do so.

We've reported Supplier 3 to the Retail Energy Code as a result and asked for an intervention and we await their further response.

The question that must be asked is, how can OFGEM have allowed this behaviour to thrive across the industry? If OFGEM act to resolve at least some of the problems, suppliers such as Supplier 3 are causing, customers may not need to take drastic action to ensure that they are able to operate.

Summarising examples

Suppliers are treating customers as 'guilty until proven innocent', therefore the onus is being placed on customers to prove that are responsible, even though the industry already has rules in place that are supposed to be protect customers, SLC14 being one of them.

Along with poorly trained staff and broken supplier processes, a further example of obstructive behaviour is, that many suppliers are insisting that the new occupier provides details of the outgoing occupier (details that are often not known – business customers will usually work with commercial property agents, not previous occupiers) before they will create an account. This is causing widespread detriment to non-domestic customers and the suppliers themselves, as is elevating the status of a lease document (a document that isn't always available or may not even exist) to such a level, that supplier staff won't do anything without one.



There's an evident double standard with the approach taken by most suppliers, one which we would ask OFGEM to challenge the suppliers on.

Why do suppliers make illogical and unreasonable requests of customers (providing personal ID, previous occupier information etc.) even where the COT indicator is set to True, to 'validate' a COT, yet they require absolutely nothing from customers (when the same supplier is contracting with a different customer) at the point of contract agreement?

Deemed Prices

The failure to control and monitor Deemed Prices is the 'head of the snake' that we referred to earlier in the question. We believe that it is these excessive prices that has allowed unlawful activity, along with fraud and misrepresentation, to thrive across the TPI industry. However, many TPI's can only get away with such behaviour, if supported by suppliers and they have been, because of high deemed prices and the ability to uplift prices (to earn commission) by huge amounts.

Much of the highlighted supplier behaviour relating to COTs and the detriment being caused, is a direct consequence of 15 years of suppliers charging unduly onerous deemed prices. This isn't new information, the CMA report highlighted their concerns to OFGEM in 2015, since when the issue has become progressively worse.

Our evidence can be supported by the findings of the CMA Investigation into supplier activity, and we would draw OFGEM's attention to sections 173 and 174 of their report:

173. We have also found that a substantial number of microbusinesses appear to be achieving poor outcomes in their energy supply. EBIT margins were generally higher in the SME markets than other markets (8% rather than 3% in domestic markets and 2% in I&C markets) and beyond what appears to be justified by risk. We observed that average revenues are substantially higher on the default tariff types that less engaged microbusiness customers end up on, compared with acquisition or retention tariffs, which require an active choice by customers. These differences in revenues between tariffs go beyond what is justified by costs.

174. We therefore have concerns that the less engaged customers on these tariffs are not exerting sufficient competitive constraints on energy suppliers. Our concerns are particularly about the various types of default tariffs that customers can be automatically moved on to if they have not actively engaged with their energy supply (auto-rollovers and replacement contracts), or if they are receiving energy supply in circumstances where they have not agreed a contract (deemed and out of contract tariffs).

In a sector of the industry where it's evident that there's no limit to what a supplier can charge (because OFGEM are failing to intervene), if a customer is subjected to a deemed contract price, it allows a TPI, or supplier's direct sales team, to offer a highly priced contract and still legitimately offer the customer a 'saving'.



The amount of commission that TPIs (or suppliers) build into a customer's contract (the uplift) may be capped by some suppliers and not others, but in almost every instance a TPI can sell a contract with the maximum permitted uplift in it and still report a saving to a customer.

The rare instances where a TPI or supplier couldn't offer a saving against a deemed contract, are typically a result of significant market movements (upwards) with the existing supplier being quoted against, not having changed their deemed prices for a while. This has happened in the past 12 months; however, it was very unlikely prior to the invasion of Ukraine.

When EBRS was introduced, this was also a factor, and TPIs that consider customer need before their own, would likely have reviewed the customer's circumstances, considered the facts, presented options and possibly advised what the most appropriate solution would be. Business Energy Direct have approximately 1700 customers that have been financially better off by remaining on a deemed contract, rather than committing to contracts when the market was unfavourable for them.

Suppliers will inform customers both over the phone and in writing that OFGEM approve their deemed contract prices, as can be seen in the letter linked to below.

REDACTED

They will also state that their deemed prices are much higher (often double but up to 5 times the available contract prices) for several reasons, the most common ones we hear are:

- Having to procure energy on day ahead market.
 - Most customers have historically agreed fixed term contracts, therefore the supplier should have hedged power for the term accepted by the vacating customer, so in turn, this means that they COULD pass that agreed contract price onto the new customer for the remainder of the vacating occupiers contract term (but without the new occupier being committed to a contract). A few suppliers have done this historically, including Supplier 1 (it was their standard practice until around 2019) as well as at least four other suppliers that Business Energy Direct have had collective purchasing arrangements with, in the past.
- It cost more for collections activity.
 - Whilst there may be an element of truth to this statement, it's cost neutral because suppliers charge fees for late payment, site visits, collection visits and court warrants, with all these the 'costs' passed directly back to customers.

We spoke to OFGEM back in 2014 regarding the vicious circle that suppliers had created. Many customers were not paying deemed prices, or suppliers were not efficiently issuing invoices for them, which then resulted in a growing deemed debt portfolio, which consequently resulted in the suppliers needing to increase their deemed contract prices, and the cycle starting again.



It's a cycle that hasn't ever been broken, with few suppliers charging prices that would be considered less onerous, than unduly onerous prices since then, and it's very noticeable that historically deemed prices only went up with most suppliers, they never came back down when the market prices fell, and we are seeing this occur again in the early part of 2023, with most suppliers deemed prices set at unsustainably high levels.

'Don't pay deemed' and deemed contract complaints.

Since around 2008 we have discouraged customers from paying prices that we considered to be unduly onerous. We have regularly challenged suppliers regarding their deemed prices and informed them that our customers 'don't pay deemed'. This has resulted in an increasing number of suppliers accepting the terms of settlements that we present on behalf of customers, with one requesting that Business Energy Direct sign a non-disclosure agreement, because of the agreement we had with them, which resulted in lower charges for the customers that we represent.

Whilst the CMA confirmed deemed prices were excessive in 2015, we informed OFGEM at least 5 years prior, that the suppliers were using deemed pricing as a tool to increase profits and that suppliers didn't want to kill that cash cow.

Evidence of the cash cow in 2015 can be seen immediately below, Supplier 4 charging some small businesses £70 per day standing charge.



Historic rates:

Rate Effective From 00:00hrs on	Rate Effective to 23:59hrs on	Energy Rate for all units used	Daily Standing Charge
01-May-22	30-Sep-22	66.72p/kWh	£3.37/day
01-Apr-22	30-Apr-22	64.93p/kWh	£3.37/day
10-Feb-22	31-Mar-22	64.93p/kWh	100p/meter/day for all sites
15-Nov-21	09-Feb-22	48.73p/kWh	100p/meter/day for all sites
01-Nov-21	14-Nov-21	27.29p/kWh	100p/meter/day for all sites
01-May-20	31-Oct-21	24.15p/kWh	100p/meter/day for all sites
01-Oct-19	30-Apr-20	20.78p/kWh	£23 for sites with Profile Class 1 to 4
			£70 for sites with Profile Class 5 to 8
01-Apr-19	30-Sep-19	23.18p/kWh	£23 for sites with Profile Class 1 to 4
			£70 for sites with Profile Class 5 to 8
01-Aug-18	31-Mar-19	20.62p/kWh	£23 for sites with Profile Class 1 to 4
			£70 for sites with Profile Class 5 to 8
01-Aug-16	31-Jul-18	15.83p/kWh	£23 for sites with Profile Class 1 to 4
			£70 for sites with Profile Class 5 to 8
01-Oct-15	31-Jul-16	20.58p/kWh	£23 for sites with Profile Class 1 to 4
			£70 for sites with Profile Class 5 to 8
01-Oct-14	30-Sep-15	19.95p/kWh	£23 for sites with Profile Class 1 to 4
			£70 for sites with Profile Class 5 to 8
01-Apr-14	30-Sep-14	19.84 p/kWh	£23 for sites with Profile Class 1 to 4

Fast forward through a decade of successful challenges and millions of pounds of balance write offs (because some suppliers opted not to chase many of our customers for payment of deemed invoices at all, once they realised that we were representing them) and it's been evident that some suppliers believe that the cow should continue to be milked.

Prior to the early part of 2020, Ombudsman Services Energy (OSE) were determining cases in favour of our customers, following challenges (relating to unduly onerous prices) that we were raising (the challenges were usually a result of the supplier refusing to settle). OSE had ruled in favour of customers, agreeing with us that they believed the deemed contract prices were unduly onerous. One example of this is linked to below.

REDACTED

However, in early 2020, Supplier 6, Supplier 15 and we believe another supplier, challenged OSE's ability to rule on deemed contract prices, and from June 2020, OSE has refused to accept any complaint cases relating to unduly onerous deemed contract prices.

Following letter to us which attempted to explain their decision, the Ombudsman Services Energy published information regarding the deemed challenges on their website in June 2020. The links to the letter and their published notice are below.



[REDACTED]

[REDACTED]

We responded to OSEs change in practice, in considerable depth, forwarding a copy of our letter to OFGEM, which OFGEM didn't even respond to.

[REDACTED]

The undue pressure placed on OSE and the challenge by suppliers now means that in the middle of an energy crisis, Micro Business customers are unable to seek ADR on the matter and their only options are to roll over and pay whatever the supplier has charged, attempt to successfully defend a suppliers claim in court (which is time consuming, costly and unlikely, because the average customer solicitor or County Court Judge aren't familiar with the finer points of energy regulation), or take legal action against the supplier themselves.

We were informed by OSE that they notified OFGEM that they had taken this decision, however when we spoke to OFGEM in January this year to discuss deemed prices, this appeared to come as a surprise, with OFGEM stating that they expect OSE to investigate cases raised that relate to unduly onerous deemed prices.

Whilst it's likely that our points of contact at OFGEM may not be aware of OSE's communications in 2020, we agree with OFGEM's assertion that OSE should be investigating cases relating to unduly onerous prices, because firstly OSE's Terms of Reference doesn't exclude such, and secondly, 0.5A of the Standards of Conduct (extracted below from the Standard Licence Conditions (SLCs)) infers that they should be.

0A.5 Apart from any matters relating to Deemed Contracts, standard condition 0A does not apply in respect of the amount or amounts of any Charges for the Supply of Electricity or any other type of charge or fee, applied or waived.

The SLCs are quite clear, charging unduly onerous prices is a failure to adhere to the Standards of Conduct, and as the appointed ADR scheme for Micro Business customers, OSE should be obliged to review any such cases raised.

Business Energy Direct believe that OFGEM and BEIS need to urgently address this with OSE, to ensure that the rights of Micro Business customers are reinstated, so that customers are treated fairly. The Fairness Test and available market data, being the primary considerations, when determining if a customer has been charged unduly onerous prices by their energy supplier.



We believe that it would be appropriate for OFGEM make public, all exchanges with OSE from 2020 that relate to the suppliers challenging OSE, and OSE's rights to investigate case complaints, identifying all suppliers that were party to the challenge.

We also believe that we have also identified that the OSE's refusal to investigate these cases breaches the Memorandum of Understanding between The Gas and Electricity Markets Authority (OFGEM) and Energy Ombudsman Ltd (OSE), the specific sections of which are detailed below.

- 3.3 Energy Ombudsman (EO) is a private company limited by guarantee and independent from the industry, the regulatory authorities and the consumers. It has the responsibility to provide an independent and impartial Alternative Dispute Resolution service (EO) for the unresolved complaints of its members from domestic customers, and micro business customers defined in the redress scheme Order.
- 4.1 The joint aims of the Authority and EO in drawing up this MoU are to:
ensure each other's ability to fulfil its respective functions is not hampered through action or inaction by the other body;

OFGEM – Clarification Needed

We believe the SLCs relating to Deemed Prices could be clearer (so require changes) so that ambiguity is removed, and they should include an improved, clear definition of what is considered 'unduly onerous' when applied to pricing. It's especially important to make sure that 'relevant class of customer' can be correctly interpreted by parties reviewing the SLCs.

7.3 The licensee must take all reasonable steps to ensure that the terms of each of its Deemed Contracts are not unduly onerous.

7.4 One way in which the terms of a Deemed Contract will be unduly onerous for any class of Domestic Customers or for any class of Non-Domestic Customers is if the revenue derived from supplying electricity to the premises of the relevant class of customers on those terms: (b) significantly exceeds the licensee's costs of supplying electricity to such premises

What is a class of customer?

Is a Domestic Customer one class of customer and Non-Domestic Customer another class? If so, then why is there a reference to 'any' class? What are the other classes?

Is a one class of customer a Domestic Customer supplied under a Deemed Contract and another class being a Non-Domestic Customer supplied under a Deemed Contract?

Is a SME customer one class and Micro-Business Customers or I&C customers considered individual classes too?



The clarity is required because of the wording 'relevant class of customers on those terms' in SLC 7.4.

Most suppliers have a single set of terms that apply for each of their different customer types (SME & Micro Business and Industrial and Commercial). Those terms may have sections that refer to different contract types that may be applicable, based on the product that the customer has selected (where an agreed contract applies), with Deemed Contracts and pricing being referred to within the terms, but most of the collective terms are applicable to the customer supplied.

When considering how to address the wider deemed (unduly onerous) pricing issue, these important questions need to be answered, because the revenue derived from a class of customer, may be considered revenue derived only from deemed contract customers, or it could be revenue derived from all that supplier's customers covered by the relevant set of terms, that have incorporated a section on deemed.

One class would capture a much smaller number of customers to consider the revenue derived from, than the other class.

To summarise, should industry parties be considering revenue derived from Non-Domestic Deemed Contract customers and the suppliers other Micro-Business Customers, or the revenue derived only from the suppliers Non-Domestic Deemed Contract customers?

Supplier revenue - Deemed

The cost to supply a non-domestic deemed contract customer is managed exclusively by the supplier and we are aware that some suppliers 'outsource' their collection activities to another company within its group of companies. For example, Supplier 3 outsource their collections to Supplier 15 and Supplier 21 theirs to [REDACTED]

It could be perceived that collections activity costs aren't reflecting a supplier's true costs and a supplier can claim that their cost to supply deemed contract customers is high (so they can attempt to justify unduly onerous deemed prices), because the collection activity costs are high, costs that may have been manipulated between companies within the same group.

We understand that for some suppliers the average debt per customer is likely to be greater for a deemed contract customer, than a customer that has agreed terms, however, much of this is caused by some of the highlighted behaviour and the excessive prices. The evidence is available to OFGEM if it is sought.

If a supplier's deemed contract prices are reasonable (for example 32p KWh – Supplier 16 at the time of writing), they are far more likely to be paid than an unreasonable price (101p KWh – Supplier 18 at the time of writing). We consider many suppliers deemed debt portfolios to be a figment of their imagination, because balances of such, wouldn't be as high if they adhered to SLC 7.4.



Whilst there are 14 different network regions and many different gas exit zones, with supplier costs being influenced by these, most suppliers only charge a standard rate which is profile class and tariff dependent.

How can this be permitted if the actual cost to provide the service can vary by up to 20%, depending on where in the country a deemed contract customer's business is located?

Recently we've been more and more concerned about supplier behaviour that impacts deemed contract customers. We are seeing a growing trend amongst suppliers that are raising transfer objections, because a deemed contract customer has debt.

OFGEM make it clear that suppliers have no legal grounds to do so, and this has been the case for two decades.

If you are on a deemed energy contract, a supplier must not:

- stop you from switching to another supplier, for any reason or at any time. For example, they can't object to you transferring for reasons of debt or contract.

Source:
[contract](#)

Just one example of suppliers ignoring this can be seen below, Supplier 10 being the supplier objecting following a COT.

To: [REDACTED]
Cc:
Subject: Objection to [REDACTED]

=====

EXTERNAL SENDER: Be cautious, especially with links and attachments. Report phishing if suspicious.

=====

Hi,

You have been informed [REDACTED] Limited took over of the property at 472 - [REDACTED]

Both gas and electric were on supply with [REDACTED] r.

I have today been informed that you have objected the electric to leaving.
Please confirm the reason for the objection and confirm that you remove this
and allow the account to leave

LOA [REDACTED] also attached

Regards



The reason for objecting followed in the response to us.

Subject: Objection to 2 [redacted] 5 leaving

Dear [redacted]

Thank you for your recent e mail dated 07.02.2023 regarding the Supply address: [redacted]

I do understand you're contacting us regarding the switch being objected.

I have attached the Letter of Authorisation on to the account, for future reference.

On reviewing the records, I'd like to inform you that your client has a debt of £5405.41 on the Gas Account which needs to be cleared first for the supply to be successfully switched.

Regarding electricity, at the moment we do not have an Electricity Account set up for your client. Hence, before you can switch the supply we'll need to set up an account for [redacted]

In order to create an account, I'll request you to please email the Fraud Team directly with the copy of the lease at: [redacted]

Once the documents are verified they'll set up an account.

Objecting to a supply transfer is a system driven process. The supplier sets the criteria for objections within their systems and platforms, with the system recognising which path to follow before an action is taken. We believe that the management of some suppliers have taken the decision to set their systems to automatically object to any deemed contract transfers if an account is in debt.

Beyond this we believe other actions taken are deliberate and designed to cause customer detriment. We are aware that Supplier 10 and Supplier 15 / Supplier 3 have been inappropriately migrating customers from deemed contracts and placed them on alternative contracts, something that they cannot do without customer permission. We have a portfolio of around 1300 customers that Supplier 3 have done this to, and we believe that they are doing it to tens of thousands more.

It creates a deliberate problem for customers attempting to transfer their supply, because suppliers that do this, know that customers with account balances will be prevented from transferring to a different provider, which gives them an opportunity to leverage against such and in turn increase their profit.

Suppliers have been using deemed pricing as a sales tool for more than 15 years and they will continue to do so whilst deemed contract customers are placed at a significant disadvantage, because of what is very likely a status only applied as a result of them recently becoming responsible for a premise.

It may take several months for a customer to establish which supplier provides electricity or gas. Obtaining the information is far more difficult for customers (and TPIs) than it should be, and customers don't have access to the network information (via Xoserve or ECOES) that can identify suppliers and supply points. The M number enquiry line is mostly pointless for any non-domestic gas customers, and electricity customers are directed to



the ENA website, which in turn will direct to them to their local network website, on which an enquiry needs to be raised.

We've tested this previously and responses often aren't received, or information is missing or not correct, an example of which is below.

Dear Customer,

Thank you for using our 'Who is my electricity supplier?' service. Here are your electricity supplier details:



WHO IS MY ELECTRICITY SUPPLIER?

Supplier Name:



Supplier Contact Number:

03333709900

Regards,

Northern Powergrid

Any extended period exposed to unduly onerous deemed prices can be hugely detrimental to non-domestic customers and suppliers will take advantage of this, playing the numbers game. Suppliers will often offer to back date prices so that the customer isn't exposed to the deemed prices, claiming that they are doing this as a 'favour'. The 'favour' that the supplier is doing for the customer is generally considered when the supplier puts forward an offer, with the prices offered higher than they would be for a competitive tender.

We therefore consider that the failure to regulate deemed prices is creating an anti-competitive market, because deemed contract customers don't have the clean slate that they should when taking over a property. Whether they are treated fairly is a lottery that depends on which supplier they inherit, when that shouldn't ever be the case.

This puts the customer in a losing position, because they either accept a price that is higher than they can obtain under a competitive tender, or they agree to better prices that they can obtain with a different supplier but leave themselves exposed to a period of unduly onerous deemed prices (without being able to challenge them via ADR). It's the definition of being stuck between a rock and a hard place.

**Failure to display, or unclear deemed prices.**

Deemed prices are not available on some supplier websites (which is a breach of the SLCs) and there are instances where it isn't clear what a customer will be charged. Some suppliers set their deemed prices based on consumption bandings, with the bandings based on the annual consumption, as seen in the Supplier 13 example below.

Deemed Rates**Gas deemed rates from 1 March 2023**

Charge	Portfolio	Rate
Unit Rate	All	13.200
Standing Charge	Band 1	400
	Band 2	700
	Band 3	1350
	Band 4	1900

Portfolio	Annual Consumption (kWh)
Band 1	0 - 73.2k
Band 2	73.2k to 293k
Band 3	293k to 732k
Band 4	Above 732k

This is fundamentally flawed, because a deemed contract customer is not likely to be subject to a deemed contract for the annual period, and neither the supplier nor the customer has evidence to show which charging band is appropriate (so that the relevant price can be applied) until after the event (a year). If a supplier is going to band customers based on consumption, it needs to be on their own consumption and not that of a previous occupier. In this example, it is impossible to ensure that a customer is being correctly charged, until they've been on supply for a year.

Furthermore, the time of year a customer becomes a deemed contract customer, may also influence the price that they are bound to pay (typically more gas used in winter and less in summer), so if the supplier doesn't consider seasonal adjustments, a customer could be paying more or less than they should be.

Other instances when customers have no idea what they will pay until they receive invoices, include where bespoke or site-specific charges are applied by the supplier, such as the example below from Supplier 14.



Deemed Contract Rates

Updated 31st March 2023

Where [redacted] remain the registered gas supplier for your premise and no formal contract exists between yourself and us, then we will charge you on a Deemed rate basis. Deemed rates will continue to be charged until a formal contract is agreed or until you switch to another supplier. Deemed rates are generally more expensive than contracted rates. These rates exclude prevailing VAT and Climate Change Levies (CCL):

Final rates applicable for March 2023

Consumption period	Invoice item	Charge applied	QFDC charge
1 st March 23 – 31 st March 23	Unit Rate:	10.711p/kWh (March indicative rate 11.901 p/kWh)	10.187p/kWh (March indicative rate 10.83 p/kWh)
	Daily Standing Charge: (Inclusive of Administrative Charge)	Site Specific (£/day)*	Site Specific (£/day)*

Standing charges can make up more than half of some invoice values, so customers being exposed to these charging mechanisms have no idea what they can expect to pay, which isn't acceptable.

We would recommend that OFGEM puts out a consultation to industry regarding standardising a mechanism for charging deemed contract customers, one that removes the pricing uncertainty for non-domestic deemed contract customers, with any mechanism considering factors such as network regions and gas exit zones, so that deemed prices more closely reflect the true (network) cost to supply.

Conclusion to question 5 - Preventing TPI misrepresentation and fraud.

We have provided more than 20 pages of comments and 60+ pages of evidence in response to question 5. We believe that this demonstrates how huge a problem the failure to control supplier deemed prices is, not just for customers, but for the industry as a whole. The consequences of this failure has resulted in an industry free for all, with rogue TPIs (and some suppliers) running riot because of the vast amount of commission that can be earned.

The TPI sector is driven mostly by greed, and industry suppliers have been allowed to facilitate this because of OFGEM's repeated failures to hold suppliers accountable, for not adhering to the Standard Licence Conditions. This RFI on deemed pricing should have been put out 15 years ago, when OFGEM were being made aware of the problem. OFGEM chose to do nothing at the time and it's only now, in the middle of an energy crisis and when BEIS have put the spotlight on OFGEM, has it been deemed appropriate to gather evidence. Evidence that some parties have been providing for more than a decade.

OFGEM should be held accountable for the damage caused to the sector, because of the failure to take action.



The financial rewards have been too big to turn down for many TPIs, white label suppliers, aggregators and even suppliers, all at the expense of non-domestic customers. Whilst recently there have been some attempts to implement changes (the introduction of the TPI ADR Scheme) following the Micro Business Strategic Review, fraud continues to take place and customers continue to be misrepresented to.

Whilst fraud is likely to take place in many industries and couldn't expect to be eradicated completely, most of these highlighted industrywide problems, the full spectrum, are fixable and in a relatively short time frame. We have discussed some of these with OFGEM previously and would urge BEIS to take action with OFGEM following consideration of the responses to this RFI.

Deemed price controls

BEIS introduced a reference price methodology for the EBRs. We believe that a similar pricing methodology could work, to prevent suppliers from charging unduly onerous deemed prices. The Standard Licence Conditions are not sufficient, because neither OFGEM nor Ombudsman Services Energy are ensuring the fair treatment of non-domestic customers, that have been exposed to higher than justifiable prices.

Some control of these, with suppliers needing to justify their deemed prices, may prevent non-domestic customers from being victims of the inherent 'supplier lottery'.

Obligate suppliers to cap TPI commissions

Deemed price controls would work better if TPI commissions are capped. The smallest of small business owners can find themselves paying thousands of pounds in commission indirectly to a TPI. This is facilitated by suppliers with either no self-imposed commission cap or very high commission caps. The customer's prices are inflated to a level that is beyond what is often considered to be fair and reasonable and this destroys customer confidence in our sector. Even good TPIs, those that do treat their customers fairly, suffer from the sector's reputation and are being likened to Del Boy or Charles Ponzi.

A reasonable cap, acceptable to the wider industry can easily work and if the ability to earn vast commissions (relative to the price paid) from non-domestic customers is prevented, then the rogue TPIs and those committing fraud using fake IDs, to carry out fake COTs, will rapidly disappear.

No more aggregators

This is likely the most controversial of the solutions that could help fix the sector and one which will obviously be unpopular with the aggregators. They are however part of the problem, rather than part of the solution. This is largely because the industry allows TPIs to operate in a sector of the market that is unlicensed and unregulated.

Regulating TPIs will be a problem for OFGEM, because it's evident that OFGEM doesn't have the resources to regulate the 40 or so non-domestic suppliers, so there's little chance of efficiently regulating 1500+ TPIs.



Many billions of pounds a year are spent on energy by non-domestic customers, yet any individual from any background (including convicted criminals – two are running supply companies), an individual that knows nothing about the industry, could find an aggregator to place business with. Minimal (if any training) is offered, the individuals are not employed by the aggregators and neither are the aggregators held accountable for the action of TPIs misrepresenting to customers.

Aggregators will tell OFGEM otherwise, but evidently the background and diligence checks are not sufficient enough, given the high amounts of fraud that aggregators are facilitating, something we heard more about from other TPIs, at a recent event with the Retail Energy Code.

We have multiple live cases that we are involved in presently with one of the UK's largest aggregators (██████████) and their failure to act appropriately, is evidence that shows why they should be used as a prime example, of how aggregators are facilitating fraud. (All of this evidence is available to OFGEM upon request).

Suppliers should be mandated to work directly with TPIs, with a register created, and TPIs that aren't operating ethically, or in accordance with the required industry standards, would be removed from it. Supplier resource that is presently used to combat fraudulent TPI activity and COTs could be reassigned to managing relationships with the TPIs.

Upfront commissions

We now move on to the actual head of the snake, payment of commission upfront. Many suppliers have fallen foul of this, with the likes of ██████████ placing duplicated contracts for the same customer, with different suppliers, to get several upfront commission payments, when ultimately only one contract could go live. This has been happening across the industry for the past 20+ years and occasionally when a supplier is stung by it, they do change their process, just as ██████████ did around 2018, when we identified fraud taking place that their customers were being subject to.

They took onboard our recommendation and stopped paying upfront commissions to TPIs, recognising it as driving bad behaviour. We've had the same conversation with every supplier partner, with some now (reluctantly) moving to monthly or quarterly in arrears.

Suppliers informed us that they worry about losing sales from the larger aggregators if they don't agree to pay commission upfront. The industry cannot allow the tail to wag the dog and collectively the industry needs to move to payment in arrears (after the customer has paid the suppliers invoice). Along with the commission cap, this will drive the greedy TPIs and less diligent aggregators out of the industry.



It's greed that drives bad practice and actions, by motivating individuals to pursue their own interests relentlessly, often at the expense of customers. Now is the time to stamp this out.

Moving to payment in arrears will wipe out huge amounts of fraud that is taking place, because the customer subject to it, will likely have the opportunity to identify that something isn't right, and contact the supplier, before any payment can or would be made.

Moving to payment in arrears will vastly reduce the number of fake COTs that suppliers receive, COTs that many customers victim of them, don't even know are taking place. The incentive to commit fraud is mostly removed because of the quick financial reward is no longer there.

This in turn will free up resource at suppliers, who will be more likely to trust COT information being provided by TPIs and customers, instead of treating everyone as guilty until proven innocent.

The time efficiencies (for all parties) alone would be huge, with suppliers also being able to de-invest some money assigned to fund COT and fraud teams. Supply transfer times would improve because customers wouldn't be finding it necessary to deal with unlawful objections, or the consequence of not providing a meaningless piece of personal ID; which in turn would result in the mitigation of the exposure to deemed prices for any extended period.

This reduces the suppliers risk of debt from the deemed class of customers, which enables them to reduce their cost to serve, with the financial benefits being passed on to customers in the form of cheaper prices.

A further benefit would be a reduction in complaints across the industry, both with the suppliers themselves and Ombudsman Service, which translates to a further reduction in suppliers costs to serve.

The suppliers win. The customers win. TPIs serving the best interests of their customers win. OFGEM and BEIS win. The only losers are the greedy TPIs and the aggregators.

At the recent TPI meeting with the Retail Energy Code, one TPI that was clearly in self preservation mode, stated that not receiving upfront payment would cause a huge cash flow problem for them. Many service industries function well without the need for payment to be made upfront by the end provider. Ultimately, if an aggregator or TPI's business is already proven successful, alternative credit lines will be available through the banks.



An aggregator that cannot successfully obtain an appropriate line of credit if needed, with them instead insisting on upfront payment from suppliers, is likely already insolvent and perhaps should be considered a risk to suppliers and customers.

No more verbal contract agreements

Historically, to agree a contract, a customer needed to physically sign contract paperwork. Doing so meant that the amount of fraud taking place was much lower, because the risks (a chance of police involvement) were much higher if it was established that someone had been forging or faking signatures.

Supplier call recording scripts (verbal contracts) became more common place in the TPI industry around 2006 and for those operating ethically, it enabled them to be more efficient and support more customers, than prior to the introduction of verbal contracts. Some TPIs (and a few suppliers) established, that they could misrepresent to more customers too, with only the scripted parts of conversations being recorded.

More than 15 years on, this still happens and whilst many TPIs don't conduct sales verbally (Business Energy Direct haven't ever done so), there are hundreds of TPIs that do. Over the years we've received secondary call recordings (some from customers that have recorded calls without a TPIs knowledge) which evidence that some sales agents or TPIs will say anything to a customer, if it results in securing a sale.

Following the introduction of the ADR scheme for TPIs on 1st December 2022, we discussed internally how long we thought it may be before we found it necessary to raise a mis-selling case against another TPI. It took just two weeks, with the case now part way through the review with the Ombudsman. We have several other cases where a TPI has committed fraud too.

Customers being able to use Ombudsman Services isn't the solution to the problems caused by many TPIs.

OSE staff are often not trained well enough, and they don't have sufficient industry knowledge to be able to come to the correct conclusion in many cases. We are in direct contact with the head of regulation at OSE, and both he and his predecessor have found it necessary to intervene to overturn incorrect determinations (following our request for intervention), on multiple occasions.

Even so, in one such case, where it was evident that a call recording for a verbal contract sale (which had been conducted by a TPI) had been clipped and edited to make it appear that a customer had said 'yes' to agreement of the contract (at each of the right points of the conversation), OSE still failed to find in the customer's favour and it was then necessary to engage with a digital forensic expert to prove that editing had taken place.



A few months ago, Grant Shapps made the comment “I’m also concerned the regulator is too easily having the wool pulled over their eyes by taking at face value what energy companies are telling them.”

We believe that the same is happening regularly at Ombudsman Services and we have doubts relating to their impartiality. Can they truly be impartial if the supplier is paying for their services?

Verbal contract sales need to be stopped; they should no longer have a place in the energy industry. We live in a digital world and digital contracts started to be adopted by some suppliers more than 10 years ago. They are now more commonplace, with most suppliers using DocuSign, E-sign or the equivalent.

Some TPIs (and supplier staff) will continue to misrepresent, it’s impossible to eradicate all of it, but at least if TPIs and suppliers are obliged to exchange documents that require customer approval, before a contract can be agreed, the customer has an opportunity to raise questions if they aren’t sure if an offer presented, reflects what may have been discussed with the TPI or supplier.

Five points summary

OFGEM and the industry knows what the solutions are, they are in plain sight. The simple solutions are often the most obvious. OFGEM and BEIS need to remove the facilitators and key drivers that cause many of the supply industries problems. Now is the time to cut off the head of the snake.

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.

Since the introduction of the TPI redress scheme in December 2022, one which is managed by Ombudsman Services Energy, when dealing with misselling cases, there has been a noticeable increase in the obstructive behaviour of suppliers and aggregators. There have been consistent, frequent refusals to investigate, provide evidence or information requested, or correctly sign post customers in accordance with the supplier’s complaints process or Standard Licence Conditions.

Some of the examples that we can provide shows that fraudulent contracts have been processed by the suppliers and the customer had no idea which TPI put the contract in place with the supplier (because some TPIs are using false company names (or the name of a legitimate TPI) to contact customers), yet the supplier refused to investigate these sales, informing the customer to raise the issue with the TPI that they ‘agreed’ the contract with. This is resulting in some TPIs being contacted by customers (that they’ve never engaged with previously), regarding a sales complaint for a contract that the TPI hasn’t processed (or may not even be able to if they don’t have a relationship with the supplier).



It has been established that at the point of sale, the TPIs committing these types of fraud, are using the names of legitimate TPIs, likely in case the customer decided to look them up (giving the customer the false impression of being a legitimate TPI), with the TPI then submitting an entirely falsified or doctored contract document through an aggregator. When a customer calls the supplier to complain that the prices aren't what has been agreed to, the (mis)direction back to the broker that originally 'sold' the contract, is just a red herring that sends the customer on a wild goose chase.

The introduction of the TPI redress scheme has not and will not prevent many customers from being misrepresented to, not until some of the suggested actions in response to Question 5 are implemented. The payment of upfront commission remains the key driver, both before the redress scheme was implemented and now, and the visibility of commissions on contracts makes no difference whatsoever, when the contracts are completely falsified, after something different may have been agreed with the customers.

We will continue to urge OFGEM and BEIS to ban all suppliers from paying TPIs and aggregators up front commissions.

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?

Market competition hasn't fully returned to where it was in late 2019 / early 2020 yet. For much of 2022 there was little to no competition available for many micro businesses, including low consuming Half-Hourly settled supplied customers were hung out to dry, some having no supplier choice whatsoever (because competition in the Half-Hourly market for customers using less than 250,000 KWh, has been provably almost non-existent for many years), with not even their existing supplier being prepared to offer them a new supply contract.

OFGEM are already aware of some sectors of industry or market segments that have struggled to secure contracts, that's why this question has been presented. The hospitality sector is one that we believe has struggled the most and we've expanded on why we believe this is in our response to Question 1.

At the time of response to this RFI, some suppliers have recently returned to the commercial market but for much of 2022, supplier choice was very limited, as shown in our response to Question 3, so this question is not the question that should be asked in the manner it has been, because lots has changed, yet nothing has changed, during what is a long period of time in the energy market. OFGEM should have been seeking views of on the narrower periodic windows rather than a general view over 12 months.



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 are still seeing some suppliers falling short in this area. We believe that debt management complaints are likely more supplier specific, with some suppliers such as Supplier 3 having significant system, process and training issues, which consequently results in them failing to comply with Standard Licence Conditions and Schedule 6 of the 1989 Electricity Act.

Actions that we have evidence of, show Supplier 3 making collection calls within 20 minutes of an invoice being generated and many others without invoice balances being due or overdue, with collection site visits taking place when customers with no outstanding balances at all.

We are already providing OFGEM with more detailed specifics regarding Supplier 3's activity in this area and we are also building a case file to evidence inappropriate behaviour from Supplier 2.

There are identifiable problems with the non-domestic disconnection processes that some suppliers are following, including the outsourcing of pre-disconnection activity to parties that often choose not to comply with the 1989 Electricity Act or licence conditions.

OFGEM is aware of the recent debate in parliament regarding the domestic customer warrant process, much of the focus being on pre-payment meters and applications to force the installation of them.

[REDACTED]

Suppliers follow the same process for non-domestic disconnections, as they do for warrant visits to install pre-payment meters at domestic premises, so non-domestic customers are faced with the same issues highlighted in parliament, although the impact to these users is far greater, because they are left without power, rather than a pre-payment meter being installed.

Consequences of supplier delays

Business Energy Direct have found it necessary to raise complaints on two separate occasions in the past few months, relating to supplier delays in dealing with changes of tenancy, that have resulted in attendance at site to disconnect. When we commented regarding the far-reaching consequences of failing to control deemed prices (which leads to fraud and suppliers changing processes), in response to Q5, premises subject to a COT being disconnected, was one of the consequences that we considered.



It was only good fortune in one of the instances that prevented the customer from being disconnected. A flat occupier sharing the same supply as the ground floor business, which resulted in the job being abandoned. In the other instance, we believe that the new occupier was forced to clear the large outstanding account balance of the old occupier, to prevent the disconnection. The availability of funds was the determining factor here, without the ability to pay another party's debt, the customer wouldn't have been able to continue operating.

This shouldn't be necessary and OFGEM and BEIS should act to protect non-domestic customers from being exposed to activity, often carried out by parties that are not under the control of suppliers, even if the suppliers are held responsible for them.

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.

The complaint regulations set under The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 are very clear, all suppliers should be very familiar with them. However, it's clear that many are not, and how suppliers implement or build them into their complaints process is significantly different. Some suppliers deliberately choose not to recognise the standards at all, and we believe that financial motivations may be behind their reasoning.

We believe OFGEM should publicly remind all suppliers of their responsibilities and below are just some of the important areas where some industry suppliers frequently fail in.

- Refusing to open complaints for the new occupier / responsible party where a change of tenancy / occupier has taken place. These complaints can be raised in instances where the supplier has yet to action the COT (a complaint may also be for that reason) with a supplier stating that they are unable to open a complaint, because they don't have the new tenant/customer registered on their systems, so cannot acknowledge that a complaint has been raised, because they don't acknowledge the customer.
- Refusing to open a complaint a TPI raises on the customers behalf, even when the TPI has a letter of authority allowing them to do so.
- Refusing to act on a letter of authority if a TPI does not have a "sales agreement" with that supplier.

Ombudsman Services Energy have already written to all suppliers regarding the last two points, their position is that refusing to act based on the TPIs instruction, where a letter of authority has been provided is a failure to treat the customer fairly. They communicated following all determinations issued (where a supplier had



refused to act, provide information or raise a complaint) being found in favour of customers. Note the comments below.

'Where a customer wishes for all communication to come through their authorised third party, we believe that it's important to respect this.'

Suppliers universally misunderstand complaints handling standards in general, the last point being an example, because eventually a complaint may be raised, although it wouldn't be a complaint effective from the date the customer complained, rather the day that the supplier recognised the customer, as the customer, and created an account for them.

This clearly has an impact on the customers right to redress and their ability to escalate a matter to OSE, in the timeframe permitted.

As mentioned in our response to Question 6, since the introduction of the TPI redress scheme we have seen suppliers failing to investigate sales complaints where the sale was made via a 3rd party. Whilst the new procedure is in place for the customer to raise a complaint with the TPI, suppliers still have a duty to treat customers fairly and investigate complaints.

The examples we have seen include customers being mis-sold to on price, and the price they agreed isn't the price they are now being invoiced by the supplier. Whilst the customer can raise the issue with a TPI, the TPI is unable to make changes to the agreed contract, only the supplier can do this, therefore the supplier alongside the TPI should be raising and investigating the complaint.

However, in all examples to date (that we've seen), the suppliers are referring these customers back to the TPI.

Most suppliers fail to provide visibility of the complaint handling procedure when a complaint is raised on behalf of a customer. Some frontline staff block attempts to raise complaints, preferring to argue about what type of complaints can be raised and, in some instances, agents have told us or customers that they cannot complain. It is also very difficult to escalate the complaints through the complaint teams, to get to someone with industry experience or knowledge, someone that may be able to resolve a complaint.

For cost cutting reasons, some suppliers are rolling out online portals for certain divisions of their business, with online chat being the sole method of communication with that supplier. Supplier 7 is one example and the first step of their complaint's procedure is to contact them via webchat.



Business Energy Direct have serious concerns about this and whether it is fit for purpose. Suppliers and customers need to be able to communicate with each other easily and we would urge OFGEM to conduct their own exercise to establish how easy it is to engage with Supplier 7 as a customer.

Supplier 7's webchat often has very long wait times (in excess of 3 hours – one of the evidence files shows extended wait times on the screenshots) and we regularly see the chat function close between 2:15pm and 2:45pm because too many customers are waiting in the queue. Considering that the reasons for contacting suppliers can be very broad, there should be options available for customers to select, prior to a customer being funnelled into webchat. No customer wants to spend over 3 hours waiting (and neither does their business allow them the luxury of doing so) to request a simple billing adjustment, to address incorrect meter readings or address direct debit issues. Historically a customer could pick up a phone, or at the very least email the supplier.

Across the industry customer service has progressively deteriorated over the past 20 years and suppliers following the Supplier 7 example (moving to a webchat only service) need to be prevented from making the situation worse than it already is. We advise OFGEM to request details of all suppliers historical (past 5 years to capture pre and post covid performance) and current call and webchat waiting times, so that a broader view of customer service performance can be obtained.

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

Over the last 18 months we have seen the standard of communications from many suppliers decrease and we frequently receive examples of misleading communications forwarded to us by customers. However, they are often sent by the suppliers themselves directly to us too.

Examples of this can be seen on contract renewal or deemed contract letters, with suppliers failing to appropriately update pre-populated templates. The errors, deliberate or otherwise cover a broad range, but include instances of suppliers communicating to a new tenant, informing them that better prices will be available if they contact the supplier, but when the customer does, they may establish that the supplier is not prepared to offer a contract to them, or their sector, or alternatively, the prices offered may be more expensive than a deemed price.

There have been many poor communications from suppliers relating to EBRs. Some of this was because of the poor-quality communications and documents published by BEIS, which lacked clarity, and consequently led to the suppliers doing things differently, as a result of ambiguity in the wording of the scheme (one such example being that BEIS stated that the EBRs discount was aligned to the date the contract was signed, however some suppliers have disregarded this and used a different date).

**TPI pricing v Direct supplier pricing**

Some suppliers will deliberately mislead customers that visit their websites for quotes. We have raised this with the suppliers previously, in one instance (more than a year ago) challenging Supplier 6 openly on social media regarding their evident fraudulent misrepresentation.

REDACTED

Both Supplier 10 and Supplier 7 publish **falsified** TPI / Partner prices showing them to be much higher than the matrix prices they issue to the very same TPIs (the claimed prices higher than even the base matrix price plus the capped commission TPIs are allowed to build in Supplier 7's instance).

This action is to deliberate and to discourage a potential customer from using a TPI. We view this no differently to any TPI that chooses to misrepresent to customers, although given that suppliers are committing it, we believe that this constitutes anti-competitive behaviour. A year on and Supplier 7 are still doing this (even though their Managing Director and Head of TPI sales were both alerted to it)

Example obtained 27/3/23.

Supplier 7 Website 1yr offer – 40p a day 29.67p KWh.

1 Year Partner offer – 40p a day 97.26p kwh (**Falsified by Supplier 7**)

Your results (excludes VAT, CCL and any other applicable charges). The prices shown below are valid for this session only. Direct prices refer to online sales. Partner prices refer to Third Party Intermediary and telephone sales. Contact us on webchat for more information.

Fixed rate term	Standing charge p/day	Any time rate p/kWh	Contract £	Average per month	
1 year direct	40.00p	29.67p	£2,913.91	£242.83	> Select quote
1 year partner	40.00p	97.26p	£9,219.39	£768.28	> Select quote
2 years direct	42.00p	29.76p	£5,859.22	£244.13	> Select quote
3 years direct	45.00p	29.83p	£8,841.27	£245.59	> Select quote



Actual 1 year partner contract 40p a day 28.67p kwh (0p uplift)

Supplier	Contract Duration	Product Name	Unit Rate (Day) p/kWh	Night Rate p/kWh	EW/nd Rate p/kWh	Standing Charge	Annual Cost	Annual Diff
	12 months	Acquisition	28.6700	-	-	40.0000 p/day	£2,821	—
	24 months	Acquisition	28.7600	-	-	42.0000 p/day	£2,836	—
	36 months	Acquisition	28.8300	-	-	45.0000 p/day	£2,854	—

We can evidence the same with Supplier 10 too, the same exercise being carried out on 27/3/2023.

Supplier 10 Website – 70.98p a day 34.370p kwh

1 Year Partner offer – 70.98p a day 35.770p kwh (Falsified by Supplier 10)

All	1 year	2 years	3 years			
Price plan name	Price plan charges	Est. annual cost	Est. total cost	Contract end date	Available until	
For Business June 2024 Online View more detail	Standing charge: 70.980p/day Unit rate: 34.370p/kWh	£3,488.49 See calculation	£4,396.60 See calculation	30th June 2024	28th March 2023	Monthly Fixed Direct Debit Proceed online
For Business June 2024 TPI View more detail	Standing charge: 70.980p/day Unit rate: 35.770p/kWh	£3,620.03 See calculation	£4,562.39 See calculation	30th June 2024	28th March 2023	Monthly Fixed Direct Debit Proceed by Phone

Actual 1 year partner contract 70.98p a day 33.77p kwh (0p uplift)

Supplier	Contract Duration	Product Name	Unit Rate (Day) p/kWh	Night Rate p/kWh	EW/nd Rate p/kWh	Standing Charge	Annual Cost / Commission	Annual Diff
	38 months	Acquisition	31.3600	-	-	70.9800 p/day	£3,185 £0	—
	26 months	Acquisition	33.0200	-	-	70.9800 p/day	£3,340 £0	—
	14 months	Acquisition	33.7700	-	-	70.9800 p/day	£3,409 £0	—

We would like to request that OFGEM approach both suppliers, to establish why they deem it appropriate to falsify prices that would be charged if a customer opted to work with a TPI, rather than contracting with them directly. A warning should be sent to all suppliers to discourage them from doing this.



Confusing, contradictory or misleading communications

A lack of care, or even consideration of the known facts (and basic regulations) leads to suppliers creating and sending communications that are entirely invalid. Examples include sending threatening disconnection letters when a customer is no longer on supply (with the sending supplier), or maybe sending tariff advice or recommendations to customers, for accounts that they lost several months before just as is evidenced in the screenshots below.

From: Pa [redacted]
Date: Mon, 27 Mar 2023 at 10:22
Subject: [redacted]
To: [redacted]
Cc: V [redacted] >

Good Morning

Company: [redacted]
Meter: 110 [redacted]
Site Address: [redacted]

Please note; we have looked into the above account and due to current market conditions, you are best to stay on our out of contract rates as these are coming out cheaper than our fixed rates

As part of our commitment to providing the best possible service to our customers, we are transforming the way we service your account.

We have listened to your feedback and have invested in digitizing the way we work, making it easier for you to do business with us.

We are very pleased to announce our new online platform, Dashboard. To find out more, click here [redacted]

Kind Regards

[redacted]
[redacted]

 [redacted]

 MPAN [redacted]

Trading Status	Traded	28 Sep 200
RMP Status	Operational	28 Sep 200
Distributor	EMEB (National Grid Electricity Distribution)	
GSP Group	_B (East Midlands)	06 Sep 200
Line Loss Factor Class	N14	01 May 202

 Supplier

Supplier	DUAL	23 Jan 2023	NHH Da
Energisation	Energised	23 Jan 2023	NHH Da
Green Deal	No		Meter Q

 Ag



This RFI would be hundreds of pages long instead of dozens, if we provided examples that we see on a daily basis, however there are occasions when suppliers make some very significant mistakes and unless the customer is aware what the regulations are, and we've yet to meet one that is, or they have a very good consultant, the supplier will not be held accountable for causing detriment to the customers, because in many cases the customer doesn't realise how the mistakes have impacted them.

One prime example of this was Supplier 3's failure to appropriately on-board Half Hourly settled supplies, following their appointment as Supplier of Last Resort to Hub Energy.

Supplier 3 didn't even write to this group of customers to inform them that they had taken over as their supplier. They failed to provide any information at all (despite our persistent chasing of them requesting engagement between August 21 and December 21) and it wasn't until around 4 months after their appointment, did Supplier 3 commence sending invoices to some customers (it took around 6 months for the majority to receive their first invoice).

Initially this group of customers (with Half Hourly settled supplies) were assigned a price (without notice, only assigned on invoices and in line with their published SoLR price), and most of these customers went through a period when the invoices stopped being issued. This was around May 22. Following the invoicing restarting a few months later, we identified that Supplier 3 had changed the prices that the customers were being charged, without any notification being issued to them at all.

To understand the scale of this problem, Supplier 17 had around 250 Half Hourly settled accounts when the SoLR appointment took place. 140 of those were for our customers. We challenged Supplier 3 regarding this, and they admitted that they hadn't followed the correct process. Supplier 3 then issued letters to our customers (advising that they had made mistakes) and we monitored the communications that were being sent.

We don't believe that Supplier 3 notified any of the other former Supplier 17 customers and it should be noted that we asked Supplier 3 to self-report this problem to OFGEM a minimum of three times, because it was impacting hundreds of customers at the very least. They informed us that they wouldn't be doing so.

Copies of the letters sent by Supplier 3 will be included in a separate communication with OFGEM, however we have extracted sections of them below, from the first type of letter that was sent in mid-August 2022.

'We're sorry, your account has not followed the correct journey with us. We didn't provide confirmation of your prices when you came over to us, as part of the Supplier of Last Resort journey.'



In addition, your renewal tariff was not matched with your Half-Hourly supply. To fix this, we switched you to the correct Half-Hourly tariff, but we didn't give you notice beforehand.'

Whilst Supplier 3's letter is an acknowledgement that they failed to comply with their obligations, the letter (which had standardised wording, the changes being the prices – which were often completely incorrect) and others that followed, demonstrate a level of incompetence that we haven't ever witnessed in our time in the industry. Error on top of error, on top of error has taken place ever since with these customers, all completely avoidable.

The letters sent as documents are labelled 'offer letter', which they aren't, because an offer is something that must be accepted or declined. These are price change notification letters, they shouldn't have been labelled as 'offers' and customers shouldn't have been emailed advising '*If you would like to accept the offer please contact us to advise*', because that is a call to action, when the customers didn't need to do anything.

The letter continues with the following statement:

'The Flexible Business Plan cannot be reapplied, as it is not appropriate for your meter set up. We want to make sure you experience the correct renewal journey and offer the same terms available to you at the time of your renewal in April 2022.'

We have underlined important wording in this letter, remember a letter that was sent to 140 of our customers, not just the odd one. These were (still are mostly) customers that Supplier 3 supplied under a SoLR appointment. **There isn't a correct renewal journey, the customers haven't agreed terms with Supplier 3, ever.**

Supplier 3, inform these customers that they will put things right as seen in the further paragraphs of the letter.

*'We'll put this right by;
- Extending your Supplier 17 Protect Business Plan until 22 September 2022.
- We then give you the 30 days' notice before switching you back to our Half Hourly Flexible Business Plan, which (if you don't do anything) would start on 23 September 2022.*

7 months on and Supplier 3 are nowhere near close to resolving the problems on these Half-Hourly settled supplies, and it doesn't even need a customer to be trained in the energy industry, to identify they are being informed that they are (at that time) being supplied under two different tariffs, Flexible Business Plan and Supplier 17 Protect Business Plan.

The ambiguity continues with the wording '*before switching you back to our Half Hourly Flexible Business Plan*'. This is inferring that such a plan was in place previously, therefore these customers now have three different



tariffs to be confused by. This was preceded by the statement 'We then give you the 30 days' notice before' which is wording that creates a future event that will take place after 22nd September 22.

As for the pricing (under the [REDACTED] Protect Business Plan) element of the letter, the customers were informed in each instance that they were (as in currently at the time) paying 2.83p per day standing charge. This was not correct; they had been paying £2.83p per day standing charge.

The prices that the customer would move onto were also incorrect in many letters (which we could identify before the customer was even going to be invoiced), with standing charges detailed as 1.81p per day (rather than the £1.81 that was billed), day and night prices were being detailed in error, when the supply was to be billed based on a single rate register, with capacity charges being detailed for customer supplies that have whole current metering (so the industry doesn't charge them for capacity). The capacity charges would often be completely made up too, with customers in the same region being charged different values, and excess capacity charges (sometimes labelled as 'access capacity charges') costing less than capacity charges.

Frankly this was a mess.

These letters were being emailed to customers, but there were quite a few instances where the customer details were incorrect (so didn't relate to the customer sent to at all), with the address or company name not being one known to the customer, but the MPAN being the correct one.

The team at Business Energy Direct haven't previously seen such a volume of letters that are confusing, contradictory and misleading, in equal measure, however Supplier 3 managed to excel themselves doing this again, by sending another, different letter and they were sending these further letters (we've called the one referred to so far as format 1) which we refer to as format 2, either the same day or within a few days of the format 1 letter.

Before moving on to highlight the long list of problems with format 2 letter, we need to first highlight the last of the problems with the format 1 letter.

*'Extending your Supplier 17 Business Plan until 22 September 2022.
- We then give you the 30 days'*

Supplier 3 didn't send most of the customers the letters giving them the stated 30 days notice, because they were sent later than the 24th of August 2022 and that was the cut-off point for 30 days notice (if it was ever to be deemed such given that the wording created the future event). Supplier 3 failed to change the date they stated they were extending prices to on their letters, based on the date they sent them (their day of action).



Supplier 3 – Format 2 letter

Each of the points are detailed below with our comments below them.

1. The letter is titled *'It's time to renew your Supplier 3 Half-Hourly Tariff'*
 - A customer that hasn't previously agreed terms cannot be part of a supplier renewal program and OFGEM have already confirmed to us that all former Supplier 17 customers are legally considered Deemed Contract customers.
2. In the first paragraph the customer is informed *'if you do nothing you'll automatically go on to a new Business Flexible plan'*
 - Supplier 3 have contradicted the title of their letter, which refers to Half-Hourly Tariff, with the next sentence referring to the Business Flexible Plan, and further contradicting what was stated in letter format 1 *'before switching you back to our Half Hourly Flexible Business Plan'*.
3. In the same paragraph it is was stated that *'Your new prices and annual estimated cost are shown overleaf.'*
 - Whilst the prices (which were nearly always different to those stated in letter format 1) were detailed, estimated costs were not provided in any instances.
4. Continuing with the same paragraph Supplier 3 informed customers in these letters that moving to the Business Flexible Plan (and it wasn't clear that this plan would be applied) *'will provide the same budget certainty'*, with the next sub header stating *'Or switch to a fixed business plan?'*
 - Here we have Supplier 3 firstly offering peace of mind by stating that a customer has budget certainty (by doing nothing), something that can only be created by knowing how much the customer will be paying, yet two lines later they create ambiguity, because Supplier 3 appear to be asking the customer if they would like to switch to the fixed business plan. Supplier 3 continue to confuse the customers, by referring to the price cap which only applies to domestic and not business customers and then state that *'if you do want the certainty of fixed prices, talk to us about our one or two year fixed price business plans'*.
5. The second page of the letters detail prices that will apply from date A to date B, for example *'Your new prices from (23 September 2022 to 23 September 2023)'*.
 - The first point to highlight is that this is 366 days and the letters to each of the different customers were consistently showing prices to be applied for a period of 366 days. The second point is, Supplier 3 are stating the prices will be charged for the duration of the period.
6. The paragraph below the pricing stated *'The prices above are correct as of the date of this letter, but we may change them at any time.'*



- So to this point of the letters, customers didn't know which tariff they would be assigned and had also been informed that their prices are fixed (budget certainty), then they aren't (the offer to fix prices by contacting Supplier 3), then they are fixed again (prices from date A to date B), followed by them not being fixed because Supplier 3 state that they may change them at any time.
7. The paragraph that followed states *'Annual estimated cost on your new prices:'*
- Supplier 3 failed to advise of an estimated annual cost on all letters issued.
8. The sub header to the next paragraph was *'The small print - your statement of renewal terms'* along with the paragraph stated *'All your contract terms will remain the same - your new prices (shown overleaf) are variable'*, along with *'If you pay by Direct Debit (DD) you'll be charged lower prices than if you don't, and if you cancel your Direct Debit you'll be charged our higher non DD prices.'*
- There are four points to raise here. Firstly, the customers didn't know what the terms where, and to this date they still haven't been provided with terms and conditions by Supplier 3 (a licence breach), Secondly, again, these customers are on supply with Supplier 3 as a result of a SoLR appointment, therefore they cannot be issued with a 'statement of renewal terms'. The third point is that the prices are detailed as variable (so that's, fixed, not fixed, fixed, not fixed, not fixed); and lastly Supplier 3 now mention higher prices for not paying by Direct Debit, but don't state anywhere what those prices will be.
9. The penultimate point to raise regarding letter format 2 is what Supplier 3 advised the customers regarding balances, which was *'we may object to you changing supplier if there is a debit balance on your account'*.
- Industry rules are in place to protect deemed contract customers and Supplier 3 have no right to object to the transfer of any deemed contract accounts, whether the supply was gained through a SoLR process, or the customer is supplied under a deemed contract following a change of responsibility.

OFGEM publish a statement to this effect on their website:



Deemed energy contracts

[Read less](#)

If you are on a deemed energy contract, a supplier must not:

- stop you from switching to another supplier, for any reason or at any time. For example, they can't object to you transferring for reasons of debt or contract.
- say you need to give notice before ending the deemed contract or charge you a termination fee.



10. The last point to raise regarding format 2 letters from Supplier 3 relates to the last line of the letter which states *'You can find our current terms and conditions online at Supplier 3/business-terms.*

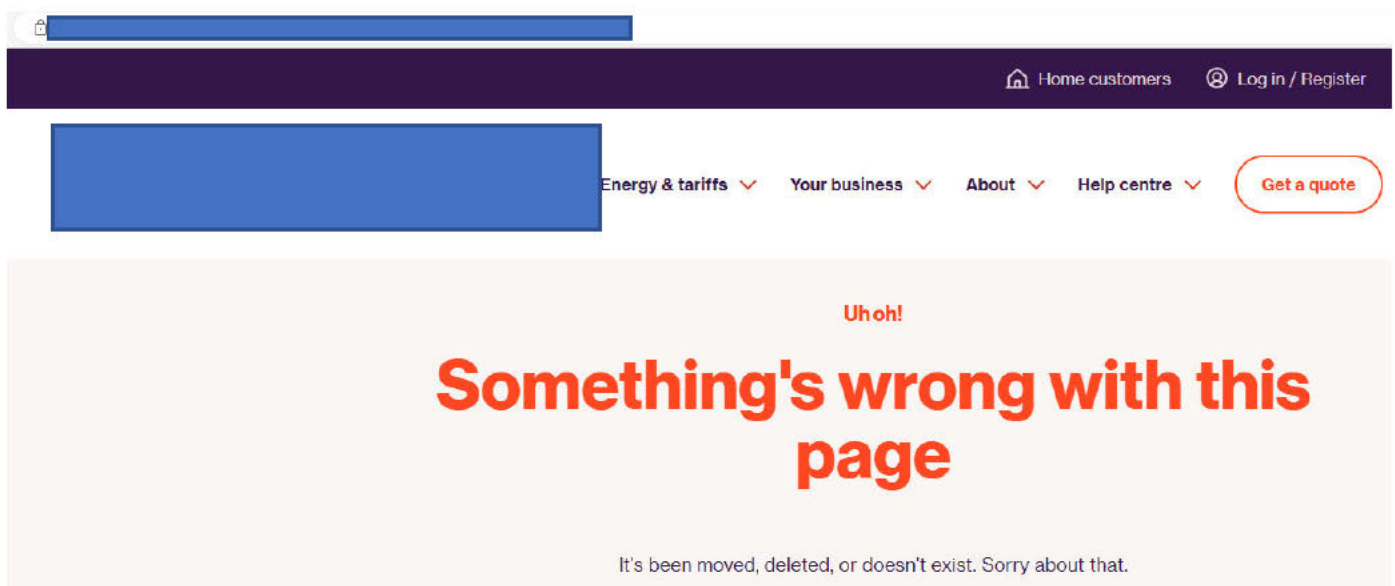
- Again, these customers hadn't (still haven't) been provided with either principal terms or any other business terms, a requirement under the standard licence conditions with the same OFGEM page highlight what a supplier MUST do.

○

If you use energy on a deemed contract, your supplier must:

- take all reasonable steps to provide the principal terms of the deemed contract, including charges and fees
- provide you with a copy of the full contract if you ask for it

- And whilst Supplier 3 stated where their business terms could be found, no one would independently conclude that adding a URL to the bottom of a letter constitutes 'all reasonable steps', even more so when the URL link is dead, as it was and is as seen below.



Conclusion – Supplier 3 letters and post event outcomes

Ignoring the fact that the letters would often be addressed to the wrong party, or the prices detailed on them would be incorrect, there are 10 points of contention in one letter format.

These letters are probably the best example that we have seen of a supplier unquestionably breaching the Standards of Conduct, specifically OA.3(b) which requires suppliers to *provide information (whether in Writing or orally) to each Micro Business Consumer which:*



- i. is complete, accurate and not misleading (in terms of the information provided or omitted);*
- ii. is communicated (and, if provided in Writing, drafted) in plain and intelligible language with more important information being given appropriate prominence;*
- iii. relates to products or services which are appropriate to the Micro Business Consumer to whom it is directed; and*
- iv. in terms of its content and in terms of how it is presented, does not create a material imbalance in the rights, obligations or interests of the licensee and the Micro Business Consumer in favour of the licensee;*

We informed Supplier 3 of the mistakes, asked them to report these widespread problems to OFGEM and they refused to do so. Business Energy Direct always do what we can to support both the customers and suppliers, because we have the industry knowledge to be able to do so, and whilst many suppliers welcome feedback from us and they have been known to implement changes as a result of it, we can advise that during our time as consultants, Supplier 3 are the most obtuse and arrogant energy supplier that we've ever engaged with.

In our opinion there is a huge cultural problem at Supplier 3 and they refuse to accept responsibility for their errors, in an attempt to prevent them from being held accountable. It's something that filters down from senior management, including some individuals that are responsible for regulation and compliance, experienced members of staff that have 15 years in the industry behind them. The refusal to accept that they are making mistakes, even when highlighted to them, results in a breach of SLC 0A.3 (c)ii. because they don't act promptly to put things right when they make a mistake.

Many mistakes made by Supplier 3, result in further mistakes, compounding the problems. The errors and problems with these letters were raised, with Supplier 3 admitting their mistakes for a second, and then a third time in some cases. They did eventually reverse back out all price increases (which they were obliged to because they failed to follow the correct process and breached multiple licence conditions) and we know that this cost them more than £1m because of the value of the credits.

They still haven't resolved the matters however, because they are still treating these (and other SoLR customers) as renewal customers and despite repeatedly reminding them that they cannot do so. OFGEM have already confirmed this to us in writing, the key extract below.

Following the appointment, the customer of the failed supplier can be charged no more than six-months on the Supplier of Last Resort deemed contract price and must revert to the supplier of last resorts normal deemed contract rate, if the customer has not entered into a new tariff agreement or switched to another supplier. Suppliers are required to make their deemed contract prices for microbusinesses available online, either directly on their website or by directing customers to where



they can be found. Additionally, the supply licence requires a supplier to ensure that each microbusiness customer is treated fairly, behaves in a fair, honest, transparent, appropriate and professional manner and provides information which relates to products or services which are appropriate to the customer to whom it is directed. We actively monitor suppliers' compliance with our rules and take compliance action where necessary.

Customers are being treated with contempt by Supplier 3, a company with a very evident consistent disregard for regulation and industry rules. We can and will expand much further on Supplier 3 causing customer detriment, whilst working with OFGEM on a separate matter, but what this response and associated evidence highlights is that, if Supplier 3 don't know what they are doing or are unable to convey messages appropriately, customers cannot act based on the information that they are receiving.

The screenshot below evidences how Supplier 9 communicated correctly to the customers that they acquired under their SoLR appointment.

Dear Customer,

As an [redacted] customer who remains on supply with [redacted] but hasn't yet signed a contract, you are currently under a deemed gas/electricity contract.

We are writing to advise you that, as of March 14th, 2022, our deemed contract rates will be [increasing](#):

New charges are outlined in the table below, exclusive of VAT:

Standing Charge	Day Unit Rate
-----------------	---------------

OFGEM have some questions to answer regarding Supplier 3's appointment as the SoLR to former Supplier 17 customers, and we believe that a minimal amount of diligence was completed prior to appointing them. Supplier 3 have been rolling the dice ever since.

We would like to request that OFGEM raise these issues directly with Supplier 3 and ensure that they are held properly accountable for the problems caused and compliance failures. We can provide hundreds of documents as evidence, upon request from OFGEM.

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?

We've highlighted many of the very significant problems in our response to Question 5. Delays in processing a Change of Tenancy and the consequences can put a customer out of business, just as they are starting out.



The risk of fraud is high, because of the key drivers and the financial rewards for rogue consultants and TPIs to commit it. The solutions are clear, and we've advised where to start in response to Question 5, but firstly suppliers need to receive a reminder of their supply licence obligations from OFGEM and REC, so that customers are no longer treated as guilty, until they are proven innocent, because the majority are innocent (as in the changes of tenancy are genuine).

Double standards apply across the supplier industry, with no validation required to agree a contract, yet often dozens of pages of information to prove that a party is responsible for the charges. Any supplier will accept a contract from any customer (subject to status) that is supplied by a provider other than themselves, yet the same suppliers apply a completely different set of rules when it comes new parties moving into premises they supply.

Historically the Standard Licence Conditions and Master Registration Agreement, dictated the course of action that suppliers must follow (but they often ignored those obligations), however when the Retail Energy Code took over from Genserv, all obligations relating to COTs under the MRA ceased to exist, because the same requirements were not adopted by REC. That was an oversight and one that we are trying to correct by submitting the change proposal last year.

Until such a time that our change proposal has been put through the consultation, or OFGEM improve the licence conditions (to adopt similar wording to that of 16.2 of the MRA) suppliers will believe that they can do as they please, the consequences of which can be devastating for a customer, but with little chance of recourse or accountability, negligible for the supplier.

A copy of the Master Registration Agreement (MRA) can be found at the link below.

The burden of proof under the MRA was with the supplier (when the COT indicator was set to True) and they had to retain evidence to prove that they had a contract with the party truly responsible, whenever they objected to transfers, yet now, customers need to prove to suppliers that they are responsible so that they can pay charges, which is ludicrous. There is supposed to be some protection here, but suppliers ignore the Retail Energy Code and 6.3 of Schedule 23

6.3 of Schedule 23 of the Retail Energy Code

*Where a **Losing Supplier raises an Objection** to a Pending Registration which has been identified by the Gaining Supplier as relating to a Change of Occupier, **the Losing Supplier shall keep (for at least 1 year) a record of the evidence relied upon** by the*



Losing Supplier to justify that it has raised the Objection in accordance with its Energy Supply Licence.

Customers suffer because they aren't protected from poor practices or rogue supplier activity, because aside from SLC O.A (treating customers fairly) nothing in the Standard Licence Conditions refers to the Change of Tenancy process. We stated earlier in the response to question 5 that suppliers often have poorly designed, lengthy and unfair COT processes for business customers, and have provided OFGEM with evidence to support that these customers are being exposed to deemed prices for an extended period.

Faster switching should be a valuable tool for deemed contract customers, with many looking to move away from deemed contracts (typically the highest prices) quickly, however most of the affected customers are unable to benefit from it. Instead, they find themselves exposed to deemed prices for longer than the industry should allow.

Again, we highlight in the Question 5 response, that whilst solutions may be challenging, most of the problems for suppliers and customers can be prevented, if OFGEM take positive action to remove the facilitators of fraudulent behaviour.

Due to the complex nature of some change of tenancies we believe that beyond the removal of the previously highlighted facilitators, the only way to improve the process for all non-domestic customers, is for OFGEM to review and ensure that each licensed supplier has robust, fair and transparent processes in place, confirming that they are fit for purpose. Presently most suppliers COT processes are not fit for purpose, which OFGEM can identify from our evidence alone.

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

Even prior to Covid and the energy crisis, the industry (especially the non-domestic sector) was plagued by anti-competitive behaviour, some of which we have commented on already in this RFI. Anti-competitive behaviour can be very deliberate or accidental and a consequence of poor processes.

Change of supplier

In 2007, having been made aware of existing supplier 'winback' activity, that was damaging to many suppliers that had contracted with customers (one of the biggest culprits being Supplier 6), OFGEM implemented new objection rules.

a supplier should not be entitled to re-contract during the objection window and then object to the customer transfer by virtue of a right contained in the new contract. Moreover, where the contract in

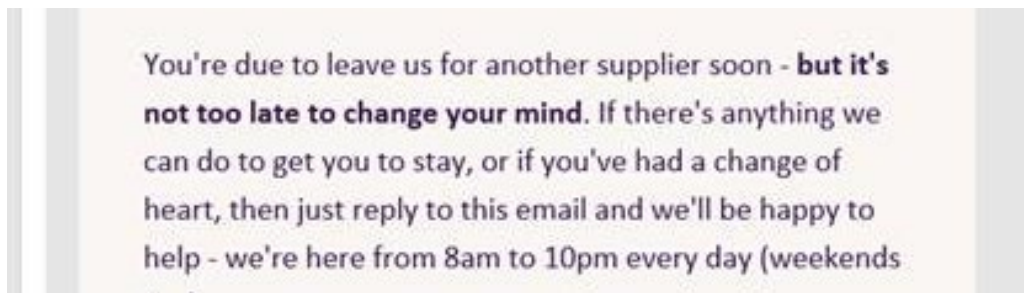


place at the start of the objection window gives a supplier a right to object at the request of the customer, the supplier should not use the objection window to persuade the customer to ask for the transfer to be stopped.

Following a consultation on Faster Switching, a lack of foresight from OFGEM resulted in the approval of a reduced objection window (down from 5 working days to one day) as part of the Switching Programme, which has resulted in the number of objections increasing. This is because suppliers don't have sufficient time to validate or check to see if they have grounds for objection, therefore most will object automatically.

The consequence of the reduced objection window is that suppliers are participating in 'winback' activity again, because there's nothing to stop them from offering a contract, because the objection window no longer exists (objections cannot be lifted, a new supplier must reapply for the transfer).

An example of the winback activity is below, an email message from Supplier 3 to a customer that they know had agreed terms to transfer to another provider, one that they unlawfully objected to transferring, because they didn't have grounds for contract or contract debt.



In 2007 it was the gaining suppliers suffering as a result of the customers not fulfilling the contracts (because customers were agreeing new terms with the existing supplier), this time it's the customers, because many TPIs have introduced contract conditions or terms of business, that result in termination fees being charged, when a contract registration fails, or the contract isn't fulfilled.

Business Energy Direct have such a condition in our terms of business and we have applied it, albeit on only a single occasion (our live rate is as close to 100% as it can because we educate our customers). Many customers are now finding that they are being pursued legally through claims companies, because of the failure to fulfil a contract and it may not even be the customers fault.

They could be a victim of circumstance and the supplier lottery following them becoming responsible for a premise. We've seen Supplier 2 unlawfully object 39 times, to one customer's supply when they attempted to



transfer following them moving into a business. The customer has agreed three different contracts with three suppliers, as they attempted to transfer the supply, with the Ombudsman finding a complaint case in favour of the customer because of the objections. However, just because the customer won their case it doesn't prevent the suppliers that don't gain the supply, from charging a cancellation fee, and the same applies if a broker issued the contract.

We have thousands of customers, and we haven't seen any evidence of faster switching working, if anything switch times are longer now than before the introduction of it. Whilst the registration time may be shorter (and there was no reason for that ever to be several weeks), the time the suppliers take to process and acknowledge the contract has increased significantly with some suppliers. With non-domestic objection rates for micro-businesses likely the highest they've ever been (we have asked REC to provide us with some of the switching data as part of our change proposal – so TBC and this is our view presently) if a supply transfer for a deemed contract customer takes less than a month, we consider it a good result, and it may take hours of work to achieve it.

OFGEM are too distant and are not appropriately monitoring switch data and objections. Patterns of behaviour are very easy to spot, and we've returned to previous consultations to identify what OFGEM stated regarding the monitoring of switches. The below was found in the Review of non-domestic objections in July 2016.

Enhanced data monitoring

As a result of our review, we also intend to enhance our monitoring of trends in non-domestic switching and objections. We will also consider requiring that non-domestic suppliers send us more detailed switching and objections information as part of our regular monitoring activities.

We've looked for the data to support the monitoring that OFGEM claimed would be taking place and there isn't any publicly available. We don't believe that it is, because OFGEM are not pro-active when it comes to supplier objections activities. Historically OFGEM have relied on negative feedback from industry bodies, before taking any action against the suppliers (Supplier 6 have been fined three times for unlawful objection activity, with several other suppliers also being fined).

Objections are a legitimate part of industry processes and the industry discussed removing the ability to object to transfer several years ago. The retention of it was entirely appropriate, however the same cannot be said of the behaviour of many suppliers since then. There's something further to consider in relation to the use of the COT / COO indicator with the below being extracted from OFGEM's July 2017 Policy Issue Paper Objections and Change of Occupant (under RP2A)

If Supplier A subsequently becomes aware that the CoO indicator was set invalidly the regulatory arrangements should allow them to challenge the evidence relied on by Supplier B when setting the CoO indicator and initiating the



Erroneous Switch process. Enforcement action against Supplier B for a false declaration should provide sufficient incentive on them to scrutinise the evidence carefully.

We cannot locate any publicly available information on OFGEMs website or in the archives that identifies action being taken against a supplier by OFGEM for inappropriate (false) use of that COT /COO indicator. We wouldn't expect to find that enforcement action has been taken, because whilst there may be occasions that it shouldn't be used, the use of it hasn't created an industrywide problem. The same cannot be said of unlawful objections activity, which is, and it facilitates anti-competitive behaviour, with many customers being handcuffed to a supplier against their wishes.

For every 100 unlawful objections, there may be one instance of the incorrect or inappropriate use of the COT / COO indicator and there are many suppliers that have systems that are not capable of setting the indicator anyway (which OFGEM should address – this should be a mandated requirement across industry).

Anti-competitive behaviour has been prevalent across the industry for more than 20 years and there are many actions a supplier takes, that can be deemed anti-competitive.

Deemed customers deliberately moved to standard variable.

Without customer's knowledge or without them explaining the differences, for years Supplier 6, Supplier 15, Supplier 3 and Supplier 10 have been putting some deemed contract customers, into standard variable contracts and prior to the micro-business review, customers would need to give 30 days' notice if they wanted to change supplier, yet they didn't know this, because they were not informed. Supplier 3 continue to do this to many customers, and whilst the 30 days' notice may no longer be needed, they will prevent a customer's supply from transferring if there's a balance on the account, which wouldn't (shouldn't) happen if the customers' accounts were correctly marked as being supplied under a deemed contract.

Preventing TPIs from representing customers.

There has been a growing trend of suppliers trying to influence which TPI's a customer should use or choose to represent them. Where a TPI doesn't have a direct agreement with a supplier to provide sales, (which is often the TPIs choice and not the suppliers) the supplier may be discriminating against that TPIs likely future customers. This is because there has been an increasing number of suppliers refuse to engage with or respond to (customer appointed) TPIs that are trying to manage customer accounts, deal with queries, obtain information or raise complaints, with several suppliers instead directing the customer to one of their 'approved' TPIs.

The below is an email forwarded to us by a customer in March 2021 which happened to be a response to a complaint that we raised, because Supplier 6 had put the customer onto a standard variable plan instead of a deemed contract.



Important Information



Dear Sir/Madam

Business Energy Direct have recently contacted us on your behalf and made us aware of a query/complaint regarding your account.

We've made some changes to the way we work with Third Party Consultants. We've undertaken a review of our Policy and Guidelines and how we service these needs. We no longer service [REDACTED] for customer information requests, [queries](#) and complaints on behalf of our customers

However, this does not mean your query or complaint will not be dealt with, so please contact us directly to discuss the matter further and we will endeavour to reach a resolution with you directly.

You can call us on 03 [REDACTED] or live chat:

Suppliers directing customers to use only their approved TPI's.

The customer also received a call from Supplier 6, advising them to choose a different TPI, which the customer refused to do.

Hi [REDACTED]

Just had a call from [REDACTED]... They will now close the complaint down and have noted the contract termination date as 8th April 2021... I told them to deal with yourselves but they categorically refused to do so and was prepared to send me the list of their approved energy consultants, which I declined... I trust you will handle this from here onwards and will ensure that our supply is switched over to the new, cheaper contract as from 8th April.

Many thanks.

Yours Faithfully,

A TPI having an 'approved' status may only mean that the supplier works with that TPI because they agreed to provide a minimum number of sales. The extract below is from an email sent to us by Supplier 6, confirming that in order to be one of their 'approved' TPIs, you must commit to 10-15 acquisition sales per week. Other TPIs trying to support their customers in the same way that we do, have also received these emails.

For your info you will have to be VAT registered and be able to submit **a minimum amount of business per week of approx. 10-15 acquisitions (not inc. renewal)**, this is subject to change

Thanks and kind regards

[REDACTED]

[REDACTED]

[REDACTED]

Business Development Manager

Partner Markets - UK Business

Email: [REDACTED]



We highlighted this to the CMA in 2021 and stated that we considered that some suppliers were abusing a dominant position and applying dissimilar transactions with other trading parties. A supplier directing an existing customer (we deal with many customers that are multiple business owners) or even a potential customer, to one of the TPIs that provide them with sales, is without doubt, anti-competitive behaviour. We believe that at least one supplier has reported Supplier 6 to the CMA because of this too.

Business Energy Direct would never agree to commit to provide a supplier with a volume of sales, because that would make us an agent of the supplier, not an impartial consultant trying to source the most appropriate contracts for our clients.

Suppliers should be banned from setting all external parties sales targets, because it compromises the integrity of the supplier and the TPI, with the customer likely have been pushed to take a contract or product that isn't suitable for their needs.

For more than 20 years Business Energy Direct have operated as a 'sales through service's' company. We don't outbound dial customers, we don't operate a call centre and we don't mass market or send spam to any potential business customers. We have a network of relationships with brands and organisations, and our services are endorsed by them, because of the support that we provide our customers with. Business Energy Direct manage and support more than 4500 businesses, the majority of which have become customers, because of they've been recommended to us, by another customer that we work with.

We've spent several decades acquiring unrivalled industry knowledge, so that we can better support potential and existing customers. We are known across the industry for being customer champions, and in relation to the energy industry, are sometimes referred to as 'the Martin Lewis of the business community'. Some suppliers take exception to this, because they have agendas and recognise that if they provide us with information that leads to detriment for them (which could be the result of, cancellation of contract, refund, pricing correction, misselling complaint, service complaint etc.) then it will cost them money, sometimes many thousands of pounds.

Ultimately the suppliers that do this always lose. They just cause huge delays and lots of trouble before that outcome is determined. Of the suppliers that have refused to provide information, whenever we've taken a case to Ombudsman Services, the case has been found in the customer / our favour.

We have witnessed this behaviour (a refusal to provide information, complete an action or raise a complaint) from the following suppliers – Supplier 6, Supplier 7, Supplier 15, Supplier 3, Supplier 5, Supplier 2, Supplier 9, Supplier 19, Supplier 11, Supplier 8 and possibly several others.



In March 2022 with OSE cases against the suppliers being raised more frequently, including cases which resulted in the customers being financially impacted because of failure or refusal to provide information required for contract renewals, Jon Lenton of Ombudsman Services Energy wrote to suppliers and issued a statement.

I highlighted this on Linked In and posted the content from the letter.



The most relevant comment from Ombudsman Services was:

Regardless of the situation, suppliers need to allow customers to nominate a third party to act on their behalf. We would consider it unfair for a customer not to be allowed to appoint a third party, or for the process to be made needlessly difficult.

Treating customers fairly is an objective laid out in the Standard Licence Conditions and failure to meet that objective, results in a failure to achieve the Standards of Conduct.

OA.1 The objective of this condition is for the licensee to ensure that each Micro Business Consumer is treated Fairly ("the Customer Objective").

Any supplier refusing to respond to a request for information or deal with any other matters presented to them by a TPI that the customer has appointed, is not behaving, or carrying out actions in a fair, honest, transparent, appropriate, and professional manner.

Whilst we understand that in certain instances (such as the one in the screenshot below which was a statement made by Supplier 15 in 2020) there may be some genuine attempts to protect customers data, we believe that there are indications that sections of the supplier market are attempting to control TPI's, by restricting the support they can offer to customers, whilst also removing a non-domestic customer's choice of who they appoint to support them. Let's not forget that in many instances (COTs) a non-domestic customer has no control over who the supplier is, but their choice to work with their existing consultant may have been removed, because of their inherited supplier's unfair, inappropriate and very likely unlawful policy.



Taking a stand against bad behaviour

So we're taking a stand and we'll no longer be accepting Letters of Authority from any broker that does not have an agreement with us, where they have not signed up to the sales standards set down in our code of practice.

Where we do have a relationship in place with a TPI we accept all LOA requests without question but for those brokers yet to sign up to our Code of Practice we'll seek our own verbal or written confirmation from the customer. This means non-registered brokers will no longer be able to access customer data or manage customers' accounts on their behalf.

I know this move may not land well in all sectors and it may reduce the amount of TPIs wanting to work with us, but we strongly believe it's the right decision. Ultimately, we hope by leading the way we can help make the energy market a better place for our customers.

Our presence on Linked In and our intent to push for the sector to be cleaned up is leading to enquires from other established TPIs, some that have experienced the same 'blocking' when trying to support a customer, with the TPIs being asked to put their enquires through an aggregator. These are attempts by the suppliers to sweep matters under the carpet, because we can confirm that aggregators will not manage complaints or queries, unless a TPI is providing sales for that supplier, through the aggregator.

Supplier 3 Letter of Authority Policy

In July 2022 Supplier 3 published their policy on Letters of Authority.

REDACTED

In it they state what constitutes a valid letter. Their policy would not stand up to even the feeblest legal challenge, but **most importantly for OFGEM to note, July 2022 is 4 months after Ombudsman Services Energy made it clear to suppliers, that 'suppliers need to allow customers to nominate a third party to act on their behalf'.** Not only would it not stand up to a legal challenge, but it's also practically impossible to adhere to even if a TPI has signed up to a TPI Agreement as they state is required, and we have extracted several key sections of the policy to comment on below.

2. What constitutes a valid LOA?

In order to constitute a valid LOA under this Policy, a LOA must meet the following requirements listed a – e.

a. Form:

i. The Third Party who submits the LOA is signed up to a TPI Agreement.

vi. The LOA must include adequate Customer contact information which enables effective verification with the Customer.

viii. The LOA must be submitted to us prior to or at the time the Contract is submitted to us.



Supplier 3 are confirming that they will only accept LOAs if sales are being provided to them by virtue of points (i) and (viii) above and it is not acceptable practice for any supplier, because it results in a failure to meet the Standards of Conduct. The policy also makes no allowance for a customer that has just taken over a premise or who is already part way through a contract because 'the LOA *must be submitted to us prior to or at the time the Contract is submitted to us.*

c. Parties:

i. The LOA must expressly state which Customer is granting authority and the name of the Customer must match the name shown on the Contract or potential Contract to which the LOA applies.

Based on the policy, a customer taking over a premise that is supplied by Supplier 3, will not be able to have a new account created for them, if they use any TPI and especially not if they use a TPI that isn't partnered with Supplier 3 to provide contract sales.

Other anti-competitive behaviour

In response to Question 3, we advised that we are aware of some industry parties sharing price information with suppliers, and also that we often see suppliers reacting to other supplier's prices, much quicker than the feedback on their prices would reach them through customer contact, which is the appropriate source of information and feedback regarding competition.

Some suppliers (or white label suppliers) that have been granted a supply licence by OFGEM, also operate as TPIs. They will be separate companies with different company directors but have in common "people with significant control". They may even operate from the same location or have the same registered address.

This should be considered a conflict of interest because they (as supplier) are able to gain other suppliers prices via themselves as a TPI. Supplier 5 and [REDACTED] are one such example of this. A further example is Supplier 12 Ltd (supplier) and [REDACTED] Ltd (TPI), the below screenshots showing the same person as the major shareholder for both companies.



Follow this company

File for this company

[Overview](#)

[Filing history](#)

[People](#)

[More](#)

[Officers](#)

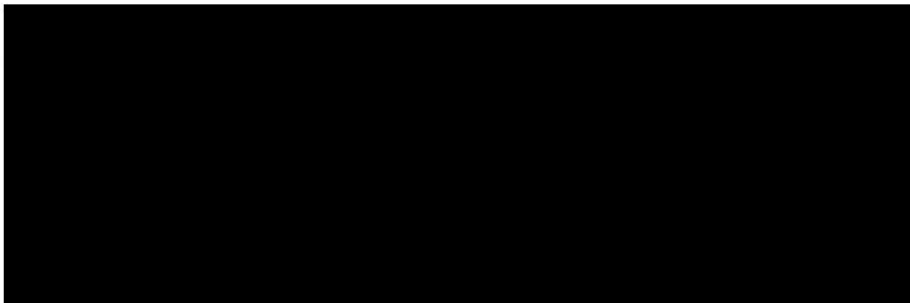
[Persons with significant control](#)

Filter officers

☐

Current officers

1 officer / 0 resignations





Follow this company

File for this company

[Overview](#)

[Filing history](#)

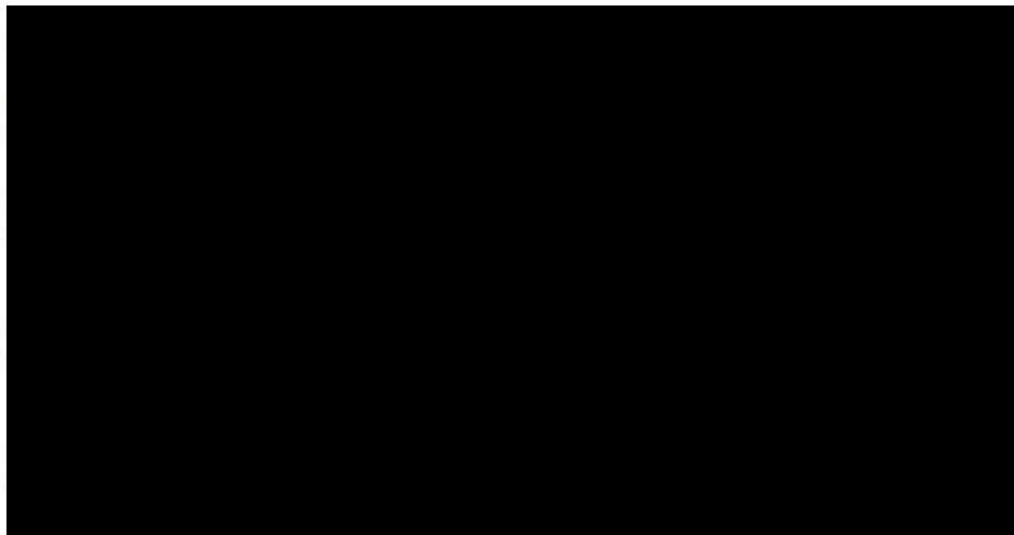
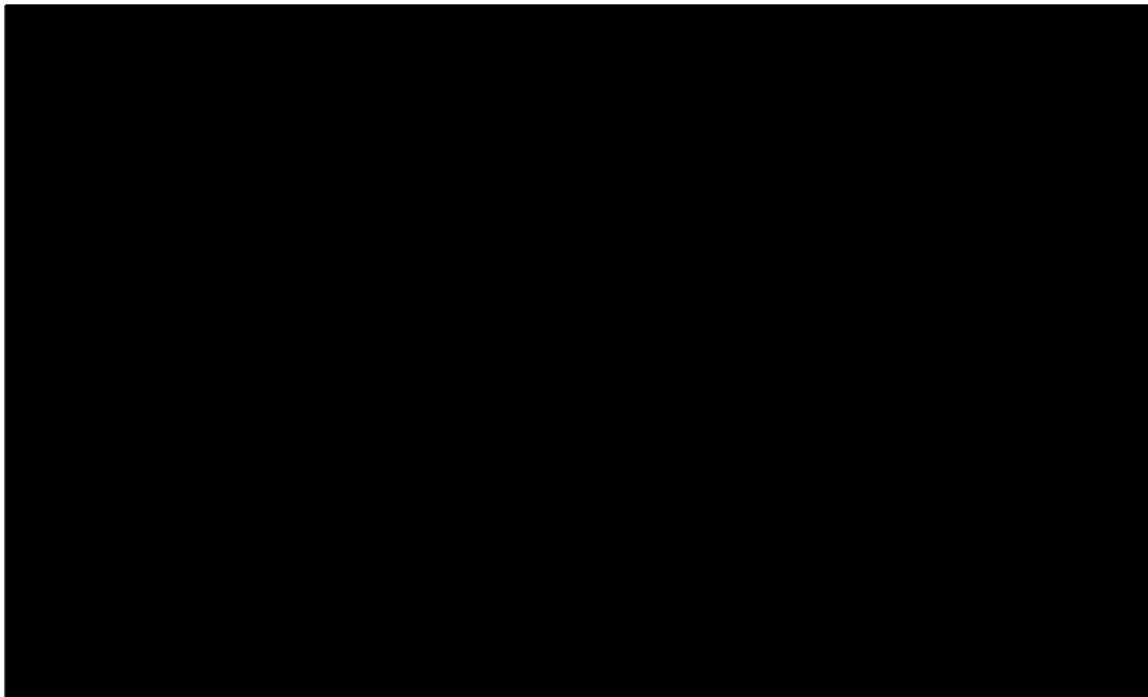
[People](#)

[More](#)

[Officers](#)

[Persons with significant control](#)

1 active person with significant control / 0 active statements





We've extensively commented on excessive deemed pricing, and this is resulting in suppliers having a different set of sales tools available, that they wouldn't have if appropriate price controls are implemented. The CMA report from 2016 identified that some suppliers had huge gross margins from one group of customers (deemed contract), in comparison to agreed contract customers. At that time, it was found that one class of customer was subsidising another class of customer, so that the supplier could win or retain more customers.

Nothing has changed since then, this cross subsidising is still happening, OFGEM need to be conducting a further exercise to extract the data to evidence it or at the very least, form an opinion on it. Delays in processing COTs or illegally objecting to supply transfers and then offering customers back dated prices as a 'favour' so that they don't have to pay deemed prices, is just one of the anti-competitive problem areas that OFGEM need to tackle.

We've posted about anti-competitive behaviour and endless regulation breaches previously. It isn't good enough for OFGEM to state that suppliers know what the regulations are, or that Micro-Businesses need to be treated fairly. Self-regulation doesn't work in an evidently broken industry. OFGEM must change this if the intention is to protect non-domestic customers. We are amazed that some of the key policies that suppliers implement, that have the potential to be hugely detrimental to customers, because they are anti-competitive, are not being scrutinised.

OFGEM assign staff as supplier account managers, to be OFGEMs eyes. The problem is if the account managers don't know where to look, they aren't going to see what they need to. OFGEM's account managers need to regularly review and scrutinise all key supplier policies and procedures, because ensuring that they are fit for purpose is a requirement of the licence conditions. The detail in our responses is a very clear indication that there are far too many broken and inappropriate processes.

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.

We have struggled to interpret exactly what OFGEM are asking in this question. It either relates to supplier competition and perhaps how suppliers may be collectively discriminating against business sectors such as hospitality or given Question 14, it relates to a yet undefined class of customer (that are non-domestic but not micro business) that may exist in future. There's also potentially another class of customer that this could apply to, customers with Half-Hourly settled supplies and we will elaborate on these first.



Low to medium usage HH settled supplies.

OFGEM are aware of the problems some suppliers are causing and the financial detriment being suffered, we remain engaged with OFGEM and Elexon regarding the inappropriate HH settlement of the 200,000 supplies that were subject to migration via P272.

In 2021 Elexon confirmed to us in writing, that during the consultation stages of P272, an important part of industry information relating to the network (DNOs) requirements to record Maximum Demand, have been missed, with neither Elexon nor OFGEM identifying the impact that error would have and continues to have.

May 2021 response from Elexon to Business Energy Direct

'we are conscious of the need to ensure (as much as possible) that stakeholders are on board – it won't help anyone if we issue revised advice that is immediately challenged or attacked. In particular we have been engaging with Ofgem, who are affected by this (as they have previously issued guidance to parties based on ours) and want to review the revised interpretation and understand what has driven the recent change to interpretation.

We met with Ofgem last week and have agreed to engage with them again this week to discuss further how this should be managed and any communication needed. We hope to be able to have a firmer idea of the next steps following that meeting.

In the course of investigating this issue, quite a few people have told us that it would have been better if WC meters had been made unambiguously outside the scope of P272'.

Business Energy Direct further reply to Elexon

'Let's be clear here. There hasn't been a recent change to interpretation. What happened was Elexon incorrectly interpreted the requirements of the DNOs many years ago, something that we have been pushing back on since at least 2015. The industry cannot be allowed to be at odds with itself at the unnecessary expense of customers. Parties are accountable to customers here'.

Since the error was confirmed and Elexon put out the industry update in June 2021, Business Energy Direct have been reversing customer supplies back out of Half Hourly settlement, requesting that suppliers correctly reclassify (where appropriate) supplies, by changing the settlement status and measurement class (COMC). These changes have been completed by around 15 suppliers to date, although not without push back from several, which has resulted in numerous Ombudsman cases, the outcomes all in favour of the customers.

Unfortunately, Half Hourly settled customers are being discriminated against by the entire supply industry, because of illogical broken charging mechanisms and cumbersome supplier quoting processes. Business Energy Direct have provided Elexon and OFGEM with significant amounts of evidence to support financial discrimination against customers with low to medium (up to around 300,000 KWh per year) contract



consumption. Three of the exercises that we have carried out below provided lots of insight. The P432 quoting exercise is most relevant to the industry and customers presently.

REDACTED

This financial discrimination has been taking place for more than a decade and we commented on it (with evidence) in the 2020 RFI regarding Marketwide Half Hourly Settlement.

Two identical customers in the same area, with the same physical meter, same consumption, operating the same business type, can be assigned different settlement statuses, because P272 forced one to be settled Half Hourly. This would only likely have been a consequence of suppliers not complying with the balancing and settlement code (BSCP 516), because they failed to correctly (re) profile a customer's supply, or the supplier assigned the incorrect profile class when first registering a supply (which could occur depending on which agent dealt with the connection request or which division of a supplier, a supply was registered by).

Note the below regarding the obligation for suppliers to reprofile supplies, from our 2021 exchanges with Elexon:

BED Question 10 – Following each DNOs removal of the requirement to record MD for 5-8 PCs, did the suppliers have an obligation to review and reprofile supplies as appears to be the case under Section S 2.7.4 (b) (i and ii) and

Elexon response - 'This section of the BSC does require suppliers to use reasonable endeavours to ensure that NHH Metering System remains allocated to the correct Profile Class. As you indicate earlier there is also a requirement on the NHHDC to annually recalculate the LF of NHH sites and send information to the supplier in the form of a report.'

In 2020, the evidence showed that based on competitive tenders that we reviewed, with appropriate setting of agreed capacity (something mostly overlooked which exposes customers to higher costs), an average customer supply point of ours (60,000 KWh) settled on a Half Hourly basis, was forced to spend around £1100 per year more, when compared against a Non-Half Hourly settled customer supply. It was seeing this happen to a customer firsthand (that one of the Business Energy Direct team have personal business relationship with), that resulted in Elexon being challenged regarding P272 in 2017.

The 2020 figure of around £1100, increased to an average of around £3500 in late March 2022 (our report to Elexon in February 22 as part of our P432 workgroup participation supports this), with the pool of suppliers to choose from, for the customers unfortunate enough to be settled Half Hourly, being minimal.

The cumbersome quoting process mentioned, requires that in order to participate in a tender process to obtain a Half Hourly quote, a customer needs to obtain their Half Hourly supply data. This needs to be



submitted with the quote request and then the suppliers will decide whether to offer a quote, which typically takes around 8 days to obtain.

Most suppliers will choose not to participate in tenders for these customers, with some suppliers unable to because their systems aren't set up to supply Half Hourly settled customers. The suppliers will cherry pick from the quotes received, typically being prepared to present offers for high consuming customers, because they present greater profit opportunities than the lower consuming ones, with the time taken to quote each being no different. The supplier quoting process can take several hours if a customer has a few sites and supplier resource is already stretched.

The Half Hourly market is broken for these customers.

Contrast this to the ability to provide 40+ contract offers, with more than a dozen suppliers, in less than a minute in the Non-Half Hourly market, with the best NHH prices being around 15% lower than typical HH ones during the later part of 2022 and still around 11% lower recently. The cost to supply customers of the same type, with the same meters is not reflecting the cost to supply.

We stated the same in our response to Marketwide Half Hourly Settlement, we've stated this to the Elexon workgroup that we are part of, and each of the suppliers (except the proposer of P432) have to date, agreed with our evidence-based findings.

The supplier market is no more ready for customers to be supplied on a Half Hourly basis now, than it was in 2014 when P272 was inappropriately approved. The same is about to happen with P432 (an attempt to mandate all CT metered customers to be settled Half Hourly) without intervention by BEIS, because OFGEM should not be trusted to make decisions that are being influenced by industry parties that want to improve back-office processes, without consideration of the huge financial impact that this will have on 50,000 non-domestic customers (around £300 million before Marketwide Half Hourly Settlement is implemented).

The post P272 implementation comments from Elexon are detailed below.

'the project and work was aimed solely at the Industry participants, rather than end customers'

'more could have been done throughout the planning and implementation stages to engage with end customers'

'The focus throughout the whole project seemed to be on 'just getting it done', not on the impacts or real benefits of the migration.'



We consider these low to medium usage Half Hourly supplied customers to be classless presently. Some may be qualifying micro businesses and others non-micro businesses, however just because one customer may have a few employees more, or a greater turnover, it shouldn't exclude them from being protected by appropriate industry regulations, without the ability to complaint to an industry appointed ADR scheme, when a supplier hasn't treated them fairly.

To prevent ongoing customer detriment, detriment that we have calculated has already cost business customers in excess of £2 billion since 2016, OFGEM should put forward a further statement to industry on Change of Measurement Class actions. To maximise savings opportunities and increase supplier choice, it would be appropriate to direct suppliers to comply with qualifying requests to migrate from Half Hourly to Non-Half Hourly settlement.

Unless a customer has elected to settle on a Half Hourly basis, it would be appropriate to issue a direction to ensure that all Whole Current metered supplies are migrated back to Non-Half Hourly settlement, without further delay. We made this same recommendation to Elexon prior to their June 21 industry statement.

Protecting non-micro businesses

If the question was intended to identify whether responders believe it appropriate to extend out the micro business qualification criteria, the answer is yes.

We've always found the existing criteria very presumptive and bizarre. It's presumptive because non-domestic customers outside of the criteria may still be small businesses, however they could operate a from a few premises, which have energy consumption and staff numbers, above the criteria threshold.

The presumption is that these customers have enough financial strength or sufficient knowledge to be able to seek their own redress. Few that work in the industry could successfully take action against a supplier, with or without use of a team of legal experts that (who are not industry trained), therefore it's illogical to believe that a small business owner that runs a few grocery stores, is going to legally challenge a supplier with the financial might that the majority have.

In 23 years, we've yet to see a customer act against a supplier that has led to a court case, even though we've worked with businesses of all sizes, including multi-billion-pound organisations during that time. The customers that don't meet the micro business criteria typically roll over and let the suppliers win, because they don't have the time or resources to fight for their right to fair treatment.

We've even received direct comments from supplier staff (that are moving divisions within the same supplier) such as *'I'm pleased to be moving to I&C, we don't have to worry about regulations in that part of the*



business'. It's the kind of statement made by someone that knows OFGEM won't be shining the spotlight on them, add they treat those customers however they deem appropriate.

We find it bizarre because OFGEM don't have a different set of rules for different domestic customer types. The owner of a £50m home in London has the same right to redress as a domestic customer renting a property in a deprived suburb of Bradford. It's a level playing field and customers haven't been pigeonholed based on their ability to understand regulation, the number of people living in their property or their financial standing.

This is exactly how it should be. The industry has many regulations and licence conditions that are designed to protect customers. The existing micro business rules should be extended to all non-domestic customer classes, with the same requirements to treat customers fairly.

If OFGEM believe it to be appropriate to allow non-micro business customers to be treated unfairly, without the relevant protection, then what is the point have having regulations at all? The arrangement and service levels between supplier and customer could be left to the contract agreement, just as they are in markets that aren't regulated.

Whilst we believe that this is the most reasoned and logical approach in a regulated energy market, we are aware that others may have a different view and that extending the criteria to qualify as a micro business customer may be more appropriate. Given so, then we have considered several factors, including that the existing criteria based on balance sheet or turnover must be changed, because it has been the same since 2008, it's outdated and was adopted when the UK was part of the EU.

(1) European Commission's definition of micro-business

The European Commission defines a micro-business as one which has fewer than ten employees and a turnover or balance sheet total of less than €2 million.

We see no reason why a British energy consumer's right to redress, should be influenced by fluctuations in currency rates (on one day a customer may qualify, the next they may not) and inflation, or a supranational political union of 27 other countries, a union that the UK is no longer part of.

Any future threshold must be in pounds sterling because that's the currency that British energy consumers use to pay their invoices.

Any figure could be picked as the threshold, however, if we compare the value of €2m in 2008 to the value of the Sterling today, when taking into consideration inflation, €2m becomes £3,558,000. All things being equal it would be entirely appropriate to use a turnover or balance sheet figure of £3,500,000.



This information isn't always available, because a company may not have been operating long enough to submit accounts or a customer's company may pay employees from a parent company account, but suppliers, from the energy supplier contracted company, (so Companies House may not show any number of employees). Companies House records can be several years out of date, so determining whether a customer qualifies using their records does not appear to be appropriate.

If new criteria are going to be set (and OFGEM don't consider all non-domestic customers as qualifying for redress via Ombudsman Services or ADR), then the data to support it must be easy to identify. The only data that could be used with any degree of accuracy, is actual energy consumption data. The default position should be, if accurate consumption data isn't available for a minimum of 12 months (with the customer being responsible for that period) at the date a complaint case is raised, then the non-domestic customer qualifies for redress via an industry ADR scheme.

We believe that the criteria should be based on site level energy consumption and not consumption for all the customer's company locations. We have identified that a Half Hourly settled supply may easily consume 350,000 KWh per year, without truly being mandated (because of maximum demand) to be settled Half Hourly, so consider that to be a suitable upper threshold for electricity. Electricity prices are generally around 3.5 times the price of gas per KWh, therefore aligning these would mean an upper gas consumption threshold of 1,250,000 KWh per year.

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.

If opening up redress to all non-domestic customers, it wouldn't be necessary to redefine micro business customer, the decision could be taken to replace all wording relating to 'micro business customers', with the wording 'non-domestic customers'.

In the event that the criteria is expanded, as advised in response to Question 13, because of the inability to accurately identify a micro business customer, all wording relating to balance sheet, turnover and number of employees should be removed. The 'new' definition wording could look very similar to the below.

A non-domestic consumer is **defined as a microbusiness** if they:

- employ fewer than 10 employees (or their full time equivalent) and has an annual turnover or balance sheet no greater than €2 million; or – REMOVE CRITERIA
- uses no more than 350,000 kWh of electricity per year; or – NEW THRESHOLD
- uses no more than 1,250,000 kWh of gas per year. – NEW THRESHOLD



As is often the case, OFGEM haven't made things clear when making statements or publishing information previously. The below extract from the OFGEM website is ambiguous and unclear, even if OFGEM didn't realise it until reading this.

*Your **business** will qualify as a micro-business for both gas and electricity if it meets the employee and turnover or balance sheet criteria. If it doesn't meet those criteria but your **business** uses no more than that the defined usage for either gas or electricity, it does qualify as a microbusiness for that fuel. If it uses no more than the defined usage for both fuels, it qualifies as a microbusiness for both gas and electricity.*

There is a difference between a business and a company. The key difference between a business and a company is the legal structure. A company is a separate legal entity, whereas a business is a person or group of people who are trading as a business name. In the non-domestic market, suppliers will mostly contract with companies, and companies operate businesses.

It is for this reason we believe that any new qualifying criteria should be applicable at site level (the location a business operates from) and not company level (the company / sole trader / partnership being the party a contract is agreed with or imposed upon).

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?

Returning to our comments in response to Question 13, the response for appropriate consideration here will be determined by what OFGEM were intending to establish from that question.

Redress being available to all non-domestic customers

There are implications and benefits of this, and we would expect most non-domestic suppliers to object to this being approved. They will almost always object when something is likely to cost more money and leave them exposed to compensating customers for short falls in service. However, the overriding objective is to ensure that all customers are treated fairly, without discriminating against others, therefore 2.5 million non-domestic customers should have a greater say in this than a few dozen commercial suppliers.

More customers able to seek redress, means that more staff would be required to handle cases that are put through an ADR scheme. However, the customers that would now be included, would typically be supplied by one of the Industrial & Commercial divisions of a supplier, and these teams generally provide better customer service, with staff having a greater ability to resolve problems, thereby reducing the number of likely cases. From a time to serve perspective, we don't believe that suppliers would be greatly impacted by such a change.

The cost implications are unidentifiable, there are too many variables, but logically, suppliers that have poor customer service or billing performance, would likely find that their average customer cost would increase (because of back billing code write offs / cancellation of contracts etc.) greater than that of a supplier with good performance.



The benefit materialises in the form of reduced customer detriment. The suppliers being more aware of their exposure if customers aren't treated fairly, or where there are shortfalls in service, so it's more likely that steps will be taken to review processes to identify where improvements can be made. Supplier staff are also more likely to receive appropriate training on key points of regulation, enabling them to better support customers with queries, reducing the number of complaints which may require redress via ADR.

Low to medium usage HH settled supplies.

The point of our response to Question 13 with regards to this class of customer, is to advise that they already exist, they just aren't recognised by OFGEM or industry yet. They are classless by definition, but in reality, in a class that shouldn't exist. The highlighting of these 200,000 customers (potentially 250,000+ if BEIS don't step in to prevent OFGEM from approving P432) that are faced with discrimination from suppliers, every time that they attempt to agree terms, will be repeated on a much wider scale in the very near future.

OFGEM need to act, and that doesn't mean defining their presently unrecognised class. It means having suppliers return the supplies to Non-Half Hourly settlement status where appropriate and / or requested, or where a customer is supplied with a Whole Current metering in situ.

We have asked OFGEM if they would like to participate in a further round of pricing exercises with us, with all data and details being made available, so that OFGEM can see first-hand the huge financial detriment being suffered by these customers. To date, OFGEM have not accepted this offer.

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.

Business Energy Direct are not actively operating in this sector so comments would be less valid.

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?

Business Energy Direct are not actively operating in this sector so comments would be less valid.

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

We believe that we have provided enough content and feedback in response to Q13, Q14 and Q15 for OFGEM to consider.

Yours faithfully



Business **Energy** Direct

A handwritten signature in black ink, appearing to read 'Simon Askew'.

Simon Askew
Managing Director