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5th September 2023

Re: Non Domestic Market Review - Consultation

Dear Colleagues,

Further to the release of the consultation in July 23, 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 agree with our proposal to agree voluntary improved pricing transparency and if so, please include comments on the particular areas you would like to see made more transparent? (p27 2.24)

It isn't possible to 'voluntary agree' pricing transparency across a sector. The terminology is an oxymoron and making something voluntary across an industry sector that frequently ignores licence conditions, will only result in many suppliers completely ignoring any 'voluntary agreement'.

We would welcome OFGEM publishing information that clearly informs customers the makeup of prices that they are being charged (looking at both commodity and non-commodity costs). Whilst many suppliers offer broadly similar services and send generic communications, it would help create greater transparency across the sector if this information was provided directly by OFGEM, by being published on the website. This may also prevent supplier bias or remove the possibility of 'misinterpretation', when setting price points.

It would also be helpful for all parties (including OFGEM) to see a continuation of the published wholesale (reference) price, as used for the EBRS and EBDS, because this would allow customers to bench mark the retail

price v the wholesale price (especially if typical non commodity elements were also published). This could help eradicate excessive profiteering by suppliers and provide a "base line" for customers, empowering them to make more informed decisions about their energy supply arrangements.

Customers having access to such information may also result in a reduction of excessive TPI commissions and excessive supplier margins being built into contracts, something frequently talked about in the industry.

Mandating suppliers to signpost customers to OFGEM's website to view the published information on wholesale prices, would create more consumer confidence and can only result in a more competitive market, suppliers recognising how easy customers would be able to identify unduly onerous deemed prices.

Q2. Do you agree with our proposed definition of 'significantly exceeds'? Please provide your reasons. (p36 2.60, p81 -89)

We support OFGEM in providing more clarity for suppliers and customers in this area, as the terms Unduly Onerous and Significantly Exceeds have previously been open to (mis)interpretation by suppliers.

Appropriate benchmarking needs to take place when considering what the definition of 'Significantly Exceeds' should be, because presently, we don't believe that OFGEM have a clear understanding of how to judge this. Suppliers shouldn't be permitted to use their own agreed contracts as a benchmark to be judged on, this needs to be much broader and any comparison of deemed prices, needs to be against ALL other suppliers deemed price points, whilst also considering the suppliers true cost base.

To align with Q1, if OFGEM maintained publishing the wholesale reference prices element (or DESNZ continue to do so beyond the end of EBDS) in line with what we have seen with EBRS and EBDS, along with publishing a view on non-commodity charges (as outlined in Q1) it could be extended to give a view on bad debt.

The consultation document includes findings that OFGEM estimates that there is approximately £700 million of bad debt for Micro Business Customers in Q1 2023, which is broadly in line with residential total debt for the same period. (https://www.ofgem.gov.uk/publications/debt-and-arrears-indicators). Within the residential price cap OFGEM allow a provision for bad debt, so something similar could established for non-domestic deemed contracts, so that deemed contract customers and industry parties have a view of this further element (bad debt provision) that is included as part of the make up of a supplier's deemed price.

Q3. Do you agree with our proposal that suppliers should review deemed contract rates quarterly? Please provide your reasons.

Asking suppliers to voluntarily review deemed prices is difficult, due to the volatility of the wholesale markets, which we saw consistently in 2022 and still in some parts of 2023. The concerns with having a regular review period, instead of a specific mandated review period, would be that in a falling market a supplier may choose

to review every quarter, but in rising market they may move to a weekly or monthly price review. It would result in deemed contract customers receiving swift price increases, but much slower price decreases, which is both unfair and illogical.

Any proposal needs to mandate the price review timeframes, with OFGEM monitoring supplier compliance with any new regulation. We believe review every calendar month would be appropriate.

As OFGEM have commented, *'it is not an option to do nothing.'*

Q4. Are there any potential implications for domestic customers that the proposed guidance on deemed contract rates may impact on?

Some landlords / managing agents that are RICS registered should follow RICS best practice for recharging utilities, which means they are prevented from paying invoices by direct debit. We note that many suppliers offer supply contracts which require payment by direct debit, and others may offer significant discounts (7% and above) for payment by DD. This results in some residential customers being exposed to higher prices because the landlord / managing agent complies with RICS rules.

The deemed prices published by a supplier should be the deemed price charged, regardless of the method of payment. We have seen suppliers issuing a deemed price and then charging a premium when a customer doesn't pay by Direct Debit (and many deemed contract customers have just moved into the property, so won't pay by DD for the first billed period at least). This practice needs to stop, and we would ask that OFGEM intervene to prevent further detriment to the impacted domestic customers.

Q5. Do you have any further comments on our proposals for the deemed contract guidance?

The definition of 'guidance' is - *advice or information aimed at resolving a problem or difficulty, especially as given by someone in authority.*

It isn't 'guidance' that's required, it's prescription with obligations created within the licence conditions. If OFGEM issue guidance only, all licenced suppliers could choose to ignore it, because it's only guidance. New guidance or obligations, whatever form such takes, doesn't provide an answer to the biggest question that must now be answered by OFGEM.

Following the release of the guidance (or introduction of new obligations), which will no doubt highlight the industry wide overcharging (and breaches of SLC 7.4), what happens to the non-domestic customers that have been exposed to (and paid) unduly onerous prices historically for more than a decade?

Furthermore, with the levels of deemed prices some suppliers charge (and have been charging for more than a decade), why has OFGEM not already opened formal investigations into supplier's deemed charges and is the intention to now do so?

Will OFGEM also ensure that the Energy Ombudsman can investigate case complaints where a customer or their representatives complain about unduly onerous prices a question that we have been asking OFGEM since January this year?

Q6. Do you have any other comments on the other proposals in this Pricing and contract behaviour section?

Whilst we believe increased transparency can only be a good thing for non-domestic customers and the industry, however, we do have concerns about how some suppliers would (and in some cases already do) publish pricing information.

We have previously provided OFGEM with evidence of both [REDACTED] and [REDACTED] publishing deliberately misleading information on their websites, which is suppliers gaming to make direct offers appear cheaper, when that isn't the case. Several screenshots below evidence this.

We would like to refer OFGEM back to our previous response in April 23 for more detailed evidence and feedback.

[REDACTED]

Business Energy Direct

TPI PRICE
[REDACTED]

Q7. Which documents, or combination of documents do you believe would provide a robust evidence base to demonstrate a genuine CoT/CoO?

Due to the complexities of commercial property law, general business laws and the different circumstances that identify when a legal entity can be legally responsible for energy costs, it is almost impossible to create a solution that covers every eventuality.

Presently, many suppliers continue to be inappropriately fixated with the provision of a lease, even when one isn't always available (or a there hasn't been a change to the party that retains the lease) and such isn't the only often unnecessary 'evidence' being requested.

There are hundreds of thousands of instances where an individual signs a lease (on the instance of a landlord or a brand if applicable) and not a company (limited or otherwise) and almost all suppliers do not understand how the leaseholder isn't the party responsible for charges. It's just one of the complexities and something we expanded on in detail in our April 23 response.

The below is an example of the information or documents that could be produced to evidence that a party is legally responsible at a supply address.

- Lease.
- Under lease / Sub Lease.
- Property licence / licence to occupy
- Tenancy at will document
- TR1 form
- Solicitors letter of confirmation
- Insurance documents (insurance isn't always a legal requirement so may not be in place)
- Business rates letter or invoice from local authority
- Bank statement or letters from a bank relating to the party responsible (if it shows the supplied property address)
- Accountant letter (for changes of entity – one limited company to another with the same or similar directors)
- Other utility invoices or letters (water / telecoms / broadband)
- Other documents that have been subject to legal execution

- Produce or other service charge invoices

We also believe that if a solicitor's contact information is provided. because they can confirm any change, or which party has taken responsibility, then this should be accepted by the supplier, with the supplier having the ability to validate directly. The same should apply if an accountant can confirm that a restructure resulting in a change of legal entity has taken place.

Whilst a supplier can request documents, presently a new entity has no obligation to provide them, however the supplier does have a responsibility to comply with industry rules and treat the customer fairly. Documents aren't the only method of establishing that a possible change may have occurred and we believe that OFGEM should insist that suppliers consider all available information (publicly available or provided by a responsible party).

New businesses often market the opening of the business (or relocation perhaps) via social media channels or local press (published on the internet) and properties being successfully let are frequently identifiable on letting and property agent websites. A quick search of the property address using Google can result in a confirmed change being identified (a match for what the supplier may have been informed by a TPI or customer) within seconds. As a TPI we do carry out our own diligence checks in many instances, before we notify suppliers of changes of tenancy.

Local authority planning portals will also detail applications for change of use (again an indication that a change may have taken place) and parties applying for alcohol licences (which hundreds of thousands of hospitality businesses and convenience store operators require) is also information that is available to the public, and if a local authority is contacted, the information can be provided under the Freedom of Information Act.

Whilst the provision of documentation is desirable and we understand the potential for fraudulent activity by some customers and TPIs, OFGEM must ensure that suppliers are absolutely bound to act in accordance with the Standard Licence Conditions and any other industry codes or introduced industrywide obligations introduced in future. Failure to ensure such will result in a continued supplier free for all and they will not care whether their processes are fit for purpose or not, or whether the customer is treated fairly, they will only look after their own interests, as they continue to ignore their obligations.

We believe OFGEM should introduce a maximum timeframe for suppliers to process a COT and would suggest this needs to be in line with how the industry has been designed, whist ensuring compliance obligations are met (treating customers fairly).

Faster switching was introduced in July 2022 and prior to implementation it was obvious that it would only be beneficial to customers in certain, limited circumstances (e.g., a customer doesn't wish to renew with an existing supplier and a quick switch is required to avoid high out of contract charges, or someone has recently moved into a premise and they want to move away from deemed prices quickly).

Taking this into consideration and the opportunity to mandate a COT timeframe (OFGEM should consider the fairness test that you publish – does action or in action by a supplier favour the supplier more than it does a customer, if so then it would be deemed unfair), we would suggest introducing Guaranteed Standards of Performance (with performance assurance monitoring).

Should a supplier receive a loss notification in this (mandated) timeframe, that the supplier then chooses to object to (because they aren't satisfied that the COT is legitimate or they haven't bothered to action such) then they must honour the prices the customer has gained with the new supplier that they are switching to, for any extended period on supply with the incumbent supplier.

Why should a customer that has just acquired a property or become responsible for energy charges, be exposed to delays in transferring their supply, when they've taken action to obtain the benefit of a contract and typically improved prices?

When OFGEM consider this logically, appropriate steps can be taken to resolve this huge industry problem.

Q8. Are Micro Business Consumers aware they can contact Citizens Advice for support? Do we need to introduce a rule requiring suppliers to signpost them more specifically?
n/a

Q9. Is an obligation requiring efficient and timely complaints handling needed? If so what are the costs and benefits associated with introducing this? (p44 3.16 onwards)

The obligation already exists under The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008, however "efficient and timely" are open to interpretation. We do see many suppliers repeatedly failing to manage customer complaints, with little or no follow up from OFGEM's enforcement team which has been provided evidence and examples (a high volume) of the repeat offenders.

We do believe OFGEM need to remind suppliers of the obligations under The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008, we see many parts of it not complied with, even the easy to understand sections such as 3.1c which states that a supplier must:

> "allow for consumer complaints to be progressed through each stage of the complaints handling process orally (by telephone or in person at the regulated provider's business premises) or in writing (including by email)".

We have evidenced to OFGEM previously that some suppliers are attempting to "streamline" processes and only allow a customer to contact them by a particular method (i.e., web chat or web form). This often creates a problem because such methods aren't necessarily suitable for all non-domestic customers. Many business owners don't own PC's let alone have time to raise a complaint via webchat or web forms during working

hours, and these methods typically don't offer the customer visibility of what they have raised and when, therefore it makes it more difficult for the customer to evidence (the raising of the complaint and any exchanges) if it becomes necessary to escalate a complaint to the Energy Ombudsman, or if they need it for any other reason at a later date.

An additional area of detriment which is recognised by OFGEM, occurs when a supplier just refuses or fails to acknowledge a complaint. This is an almost daily occurrence with some suppliers, and it presently leaves many customers (and TPI's when a supplier refuses to deal with a TPI because they don't provide them sales – expanded on in our April 23 response) unable to resolve often simple billing problems or any other matters arising.

The Energy Ombudsman terms of reference states three instances when complaints can be escalated to them.

1) After 8 weeks and the supplier has failed to resolve the complaint
2) When a supplier issues a deadlock letter
3) When the complainant has encountered sustained difficulty in registering a complaint with a Participating Company

However, the Energy Ombudsman's website only details the 8 weeks having passed and the deadlock letter.

Front line staff at the Energy Ombudsman are entirely unaware of instance 3 above and if a customer of a TPI attempts to raise a complaint with the Energy Ombudsman, before 8 weeks have passed since a complaint was raised (or attempted to be raised) EO will only state that it is necessary to wait 8 weeks after raising it with the supplier, before they will consider accepting the complaint, even if the supplier is refusing to open a complaint.

Some suppliers are deliberately disregarding their own published complaints procedures and ignoring complaints handling regulations, to frustrate customers and TPIs, which results in non-domestic customers being unable to access ADR, for an extended period. This is also an attempt to manipulate the true scale of complaints (the suppliers that do this) a supplier is faced with, complaints data that is of course shared with OFGEM, by the suppliers.

We believe that OFGEM should obtain confirmation from the Energy Ombudsman that their front line staff have received the appropriate training to ensure that they accepted complaint cases, where the microbusiness customer can evidence sustained difficulty in registering a complaint with their supplier.

OFGEM could consider applying Guaranteed Standards for supplier complaint handling performance and where a supplier breaches The Gas and Electricity Consumer Complaints Handling Standards, because they haven't provided a copy of their complaints handling process and a complaint reference number to a complainant, by the end of the next working day, the supplier should be obliged to credit the customer a specific sum.

A business owners time is valuable and a £30.00 credit (as per the current Guaranteed Standards for metering appointment failures for example) does not act as a sufficient deterrent to prevent suppliers' poor complaints handing performance (or deliberately obstructive behaviour), and it doesn't cover the detriment (lost time) suffered by a customer, that has been caused by a supplier's failure to address a complaint. We believe the amount to be paid should be reviewed and take into consideration that business owners are taking time out of their business day to raise a complaint.

There won't be any additional costs associated with making any of these suggested changes, suppliers should already have appropriate provisions in place to ensure that they comply with The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008.

Q10. Is an obligation requiring recording, handling and processing of complaints in accordance with consistent rules needed? If so, what are the costs and benefits associated with introducing this?

Please see our comments in response to Q9.

Q11. Do you have any views on what (if any) threshold should apply on business size for complaints handling requirements, or views on which requirements set out in the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 should not be expanded to apply to all non-domestic customers?

We believe that all non-domestic customers should be offered the same level of protection, regardless of size and we stated the same in our April 23 response. Suppliers shouldn't be permitted to treat a large business poorly because they are a large business, however large businesses will often have greater resources and internal legal advisors, which enables them to level the playing field somewhat if they intend to challenge a supplier.

We therefore believe a logical step would be to extend the current protection to cover all businesses outside of those defined as 'large', which are companies with more than 250 employees.

Whilst initially it could be viewed that there will be additional costs associated with implementing a change, logically it would be expected that improvements in supplier performance would at least partly neutralise those, and expanding the ADR scheme to a wider group, which has a greater energy spend (which may result in greater cost detriment awards), may be seen by some suppliers as the stick they need to improve performance.

Q12. We are seeking stakeholder views on our suggested proposals to government around increasing access to the Energy Ombudsman. Should there be a threshold on who can access the Energy Ombudsman? If so, where should this be set? Consultation - Non-domestic market review: Findings and policy consultation 101

As per Q11 – except for 'large' businesses.

Business Energy Direct

Q13. We are seeking stakeholder views on the proposed changes to the rules requiring suppliers work with TPIs who are members of a redress scheme. Additionally, what are your views on the costs and benefits associated with the different proposals?

Since the ADR redress scheme for TPIs has been rolled out, we believe the number of micro businesses that have sought redress following a complaint against a TPI to be very low (around 300 cases in 9 months). This appears to be good news for our sector, however it is also cause for concern, because the Energy Ombudsman (who are a not for profit making organisation) has received £571,200 to date from the sector in membership fees alone, from the 1,904 TPI's who were obliged to register in year 1.

For each case reviewed by EO, the TPI will have been charged directly for the case management fee, so for the 300 cases it would be an additional £102,000. This means that the cost to TPI's is £673,200 (equalling a cost of £2,244 per case for the 300 cases).

EO don't publish details of the detriment awarded to complainants, we believe that they should be obliged to do so. Of the complaints raised, OFGEM stated that 71% were upheld for the customer, (which is a far lower rate than complaints raised against suppliers which are found in favour of the customer, which was 92% in 2014 - Lucerna report conducted on behalf of OFGEM in 2015).

This makes the cost per case concluded in favour of the customer, £3160.56, which is a ludicrously high amount that absolutely cannot not be justified economically. Our main concern is that the revenue derived from TPIs will result in a surplus that won't be refunded to registered TPIs, but instead reallocated to another part of the EO organisation, likely employing more staff to manage the much higher number of direct supplier complaints.

This would be wholly unacceptable, and **we urge OFGEM and EO to immediately review the membership cost for TPIs**, preferably removing it entirely and instead, adjusting the case management fee to reflect the cost of managing the low number of cases (approximately 1 per day should be around £20k per year – case handlers will be managing multiple cases per day usually – consider the average case handler salary).

Those TPIs that already have low, or no complaints raised against them by customers (Business Energy Direct haven't received a valid complaint in more than 15 years) are paying a membership fee for nothing.
Whilst OFGEM promote Energy Ombudsman as a 'free service to customers', collectively it isn't, in fact it is detrimental to our customers (and those of many other TPIs) because it increases our cost base and we can only recover that from higher customer charges, which we always try to avoid.

Our customers are paying more, even though we don't have complaints to answer and the same will apply with most TPIs that have been obliged to register with EO's ADR scheme.

Presently the evidence shows that from an economic perspective, the scheme isn't successful, contrary to OFGEM stating in point 3.53 that use of ADR through the Energy Ombudsman is 'helping customers achieve

good outcomes'. These outcomes (which can be redacted) aren't shared with the TPI community so that TPIs which may be falling short, yet haven't received a complaint case to date, can potentially identify where they need to improve, to prevent complaints in the first instance. Nor does EO share evidence of any financial detriment that has been awarded, either at case level or collectively.

Please remember that OFGEM published a document (Approval criteria for redress schemes in the energy sector) many years ago and 5.1 in the Transparency section states that the redress scheme (EO) is *'publicly accountable*' and *'the scheme is transparent about all aspects of its operations, including its decisions and any statistical information that informs the public about the performance of the scheme'.*

There's zero evidence of EO being held publicly accountable and likewise following the introduction of the scheme, the organisation hasn't provided any statistical information, either publicly or directly to TPIs, and this isn't good enough.

Whilst 71% of the decisions relating to complaints against TPIs are determined in favour of the customers, we know that many of those decisions will not have been correct. On behalf of customers, we regularly find it necessary to appeal incorrect decisions and contact the head of EO's regulation team, because a case handler has failed to consider evidence or facts, with decisions almost always being reversed when we do so.

We can evidence that EO staff are not sufficiently trained to deal with many types of complaints, especially mis-selling complaints, because they haven't received sufficient training regarding contract law, only the Chief Ombudsman is likely to have any knowledge of such. If a case handler doesn't understand what the definition of mis-selling or misrepresentation is, then they cannot be permitted to manage complaints relating to such.

Most complaints to EO from customers working with TPIs, will relate to mis-selling.

Q14. What are views from stakeholders on how long it would take to set up and register for a wider TPI ADR scheme, one that goes beyond Micro Business Consumers?

Most TPI's are already signed up to ADR scheme, so the time taken to expand to those that meet a new criteria would be minimal, the number of TPIs that don't work with any Micro-Businesses will be very low, likely less than 50. Consideration needs to be given to the requirement for TPIs to rewrite complaint handling procedures (to incorporate all non-domestic (excluding large business) customers into such) and how long it will take to communicating this to affected customers, in addition to sharing evidence of the written procedure with EO.

Q15. What are your views on our proposal to expand SLC 0A (non-domestic Standards of Conduct)? Do you have any views on which consumers they should or should not apply to? Please provide any views on costs and benefits of making this change. (p51 3.46 onwards)

As per Q11 all non-domestic customers except those identified as large business.

Business Energy Direct

Q16. Do you have any further comments on the proposals in this section on Competition in the market and customer complaints?

OFGEM need to remind ALL industry suppliers that it's the customer that decides whether they manage their account, whether a member, or members of staff are given the task, or if a TPI is appointed to manage it for them. Suppliers do not get to dictate that a customer cannot use a Third Party, regardless of what their internal policy may be.

If a customer assigns a TPI to support with utility matters, customer service enquiries and complaints must be dealt with in the same way as they would be if it was a matter raised by the customer (or a nominated customer point of contact). We elaborated on this in the April 23 response, many suppliers take the stance that if they don't have a sales agreement with a TPI then they refuse to deal with service queries submitted by the TPI. The findings of a recent survey of members of the Energy Consultant Association, supported our view that this problem is widespread across the supplier sector.

We also believe Ofgem should expand SLC5A.2 so that a supplier must disclose (self-report to OFGEM) any likelihood of detriment that may have been caused to non-domestic customers, as well as domestic customers. We believe making this a requirement historically is an oversight by OFGEM.

> "5A.2 In complying with paragraph 5A.1, the licensee must disclose to the Authority in writing or orally any circumstance relating to the licensee of which the Authority would reasonably expect notice in order to perform its statutory functions, particularly actions or omissions that give rise to a likelihood of detriment to Domestic Customers. Such disclosure should be given as soon as the circumstance arises, or the licensee becomes aware of it."

Q17. What are the views of Distribution Network Operators (DNOs), Independent Distribution Network Operators (IDNOs), Gas Distribution Networks (GDNs), and Independent Gas Transporters (IGTs) on the potential issues of targeting support to vulnerable end users supplied through non-domestic contracts? (p62 4.17

n/a

Q18. What changes to the Maximum Resale Price direction would improve its effectiveness and what are the potential downsides to any changes?

n/a

Q19. What are the costs and benefits associated with the proposal to expand TPI commissions disclosures to all non-domestic customers? How long would it take suppliers to implement this policy? (p68 4.40)

As commented on in our April 23 reply and further evidenced in Q6 of this response, we already see some suppliers deliberately publish false information relating to TPI products, on their own websites (showing

cheaper direct prices, than known TPI prices (even with commission) with the same supplier), therefore the concern is that more suppliers would misrepresent or mislead non-domestic customers regarding TPI pricing.

TPI's also help facilitate a competitive marketplace, whilst taking away direct costs from suppliers that would otherwise find it necessary to employ direct sales teams. Without good TPIs much of the industry knowledge disappears and by maintaining a competitive marketplace, it enables business customers to compare multiple offers easily and on a like for like basis, which no supplier is capable of.

TPIs help drive down costs for customers and many TPIs disclose their commissions to non-domestic customers already, both because it's the right thing to do and it's also a legal obligation created by existing legislation, where a TPI is acting as an Agency Broker. These are fiduciary duties, with the broker being obliged to act in the interests of the client.

The expansion to cover all non-domestic customers doesn't protect customers any more than the existing law already does, however introduction of such may create an anti-competitive market, because suppliers won't be measured by the same standard, after all, there's no obligation for them to include their expected profit in contract offers put forward to customers that they directly engage with.

Where is the evidence from OFGEM that since fee transparency was introduced, that it has been beneficial to customers, as stated in 4.46 of the consultation?

OFGEM are also publicly accountable and have an obligation to provide appropriate data or information, therefore we would like to see published information that supports OFGEMs comments, because without supporting evidence, the comments cannot be taken at face value.

Q20. Are there views on how commissions disclosure is best presented to be understood by consumers?

To be 100% transparent, the **only** accurate way to communicate the commission is the basis on which it will be paid, so in 98% of cases it will be a pence per KWh uplift or a pence per day uplift to the standing charge.

A simple example (that shows a calculation) of what this means to a customer can be offered in guidance for customers on contracts so that they can calculate themselves what a projected commission fee will be.

Disclosing an annualised or a total contract commission value is misleading in many ways:

- TPIs don't get paid if the customer fails to pay the supplier (so wouldn't receive commission – we suspect that OFGEM aren't aware of this)
- If the full duration of the contract isn't completed, then only part of the projected commission may be paid (e.g., where a COT takes place)

- If a customer's consumption changes then the stated commission fees will be incorrect

- A customer implements energy saving measures, therefore (all things being equal) consumption will be lower than what is stated on the contract.

- There are too many different consumption data sources used by suppliers. Which figure is the one to use for the calculation of the commission fee?

    - An industry D19 obtained from Electralink?
    - The consumption figure that the supplier retains (where it's a renewal) which could be based on actual or estimates?
    - The consumption billed for as detailed on invoices over the previous 12 months?
    - Where it's a newly built location, the consumption isn't known, there's no history so is the consumption based on the customers, the suppliers, or the more experienced TPIs projection?

Some TPIs will also participate in gaming given the opportunity. They may build in large uplifts and state on contracts that they populate, a low annual consumption, to make the projected commission appear much lower than it may truly be.

The further consequence of this could be that the supplier initially (which could be for an extended period) invoices the customer based on lower consumption that they are actually using, resulting in in a shock bill at a later date. This could also expose the supplier to the Back Billing Code and the need to write off large balances if they haven't been able to obtain accurate meter readings from the customers meter for an extended period.

This would be an extra cost burden that needs to be absorbed by the supplier, increasing costs unnecessarily.

By disclosing an annual, or total contract commission value in £, it has a consequential effect and exposes customers to a new and different type of claims culture, whereby a TPI can impose their own agreed terms on customers that accept supplier contracts through their service.

Terms of the contract between the TPI and the customer (not the supplier and the customer) can state that the **minimum** commission fee, is that stated on the supplier contract presented by the TPI, and that should the commission received from the supplier be less than the expected **minimum** fee, then the TPI reserves the right to invoice the customer for the difference. directly

Presently, for the most part, the suppliers contract paperwork (for micro businesses) details the expected commission amount that will be paid to the TPI per year, or over the contract duration. Therefore, where the customer has accepted a TPIs terms with the aforementioned condition, should the TPI invoice the customer (because they haven't received the minimum commission fee) then the customer would have the opportunity to attempt to recover that additional cost by counter claiming against the supplier (for finding it necessary to pay an additional fee), something which has directly resulted from incorrect information being added to the supply contract, at the point of agreement.

If commission fee disclosure is going be introduced for all non-domestic customer contracts, then OFGEM must ensure that it implements the only true way that the fee is transparent. Disclosure of the uplifts only, which removes all ambiguity and potential for gaming by any parties, suppliers included.

Q21. Should we expand commissions disclosure to all non-domestic customers or a subset of customers, and if a sub-set do you have views on how to define this?
As per Q19

Q22. Do you have any further comments on the proposals in this section on focussed consumer support

2.30

In section 2.30 we noted that OFGEM has been provided with information by suppliers, relating to requests for security deposits. The figures quoted are entirely unreliable and they do not reflect the actual position that suppliers are taking individually or collectively.

We believe that the numbers quoted refer to actual requests following the agreement of a contract with a customer, and that they do not include requests for deposits as part of the contract review process that customers undertake. There are many suppliers requesting deposits, and customers that do not wish to pay one, will find a supplier that they can contract with that doesn't ask for one.

Many of our customers have received requests for security deposits if they intend to accept a particular contract, and they almost never do so because of this. We believe that the real picture would show that the true figure is in the tens of thousands of deposit requests per month, although it's very doubtful that the suppliers keep records of such requests when a quote is issued, or an agreed contract rejected before being registration commences.

OFGEM should carry out more analysis and seek further information from the TPI sector regarding the frequent deposit requirements of many non-domestic suppliers.

2.36

Much of this consultation relates to transparency and how the industry may improve with greater transparency, however OFGEM generally refuse all requests for information when industry parties are seeking the very information that OFGEM should be publishing, by being transparent.

OFGEM cannot expect transparency from suppliers, TPIs or other industry parties, if the organisation itself refuses to be transparent. It is stated in 2.36 that '*A number of suppliers paid into Ofgem's Voluntary Redress Fund in recognition of their failure to fully implement the above QFDC legislation.'*

Why has OFGEM not published which suppliers made payments?
There's evidently a problem with the way that many suppliers implemented the core EBRS legislation. We have informed OFGEM separately of our findings. There are customers that aren't going to be aware that their supplier has been overcharging them because of these failings, yet OFGEM have not disclosed who the failing suppliers are, which prevents customers and their representatives from specifically checking for the overcharges.

We are requesting that OFGEM publish the details of each supplier that has paid into the redress fund.

2.37

OFGEM have failed to adequately protect customer interests following the peak of the energy crisis and introduction of the EBRS scheme. We are very disappointed that OFGEM has stated in the consultation that there was no clear evidence of suppliers gaming the scheme, because Business Energy Direct provided irrefutable evidence to show that it is exactly what happened and DESNZ have asked that we share further information with them on the matter.

We are aware that OFGEM did ask for further information from Business Energy Direct following discussions that took place, after the provision of the evidence, and we can advise that time constraints meant that we couldn't dedicate the resource to complete what is essentially a task that OFGEM themselves should be proactively undertaking. Apathy and failure by OFGEM to be diligent is the reason why consultations such as this have become necessary.

2.51

It has been stated that investigations are being carried out because OFGEM is concerned that a number of suppliers have not complied with SLC 7.3 and 7.4, which relates to unduly onerous deemed prices. The words used here by OFGEM are clear, it isn't suggested that the suppliers may have failed to comply, OFGEM is stating that they have failed to comply.

We have noted that OFGEM do not published details of the investigations on the OFGEM website, which again is a failure to be transparent. For the benefit of non-domestic customers and their representatives, please disclose which suppliers OFGEM are investigating for the stated compliance breaches.

2.58

This point relates to Guidance on Deemed Contracts and we have provided comments on 'guidance' being issued in one of the questions. History tells us that 'guidance' will be ignored by suppliers. We can evidence that important guidance has and still is being ignored every day by suppliers across the industry.

The document GD28 – Guidance for the use of the Change of Tenancy Indicator, was published by the MRA around 2010. OFGEM reference this document in the 2013 discussion paper for COSEG – Change of Tenancy

Flag. It's a document that goes into detail and it was supposed to assist suppliers in helping identify what may constitute a COT and therefore help facilitate the correct use of the COT indicator. This in turn should have helped an existing supplier to establish what diligence they needed to complete before choosing to object to a transfer of supply, when a new supplier has sent registration having set the indicator to True.

Most suppliers didn't even know that the document existed (prior to Retail Energy Code taking over from Gemserv - The company, which administered the Master Registration Agreement and the Smart Energy Code unit late 2021), and where they did or even when it was provided to them, they ignored it anyway.

Business Energy Direct were astounded to establish in 2021, [REDACTED] during the entire time that Gemserv were appointed the code operator, which we believe was around 20 years prior.

Guidance will not prevent non-domestic customers from being subjected to deliberately damaging supplier behaviour, prescription and mandating is far more likely to do so and OFGEM should make this the objective.

SLC 20.5B (Electricity) & SLC 20.6B (Gas)

OFGEM included some draft licence conditions in the consultation and on page 92 we have noted proposed amendment to the above SLCs. We believe that it is appropriate to highlight to OFGEM that with regards to dispute resolution, TPIs are now being held to a higher standard than suppliers, because of this condition within the SLCs.

There isn't a condition that states suppliers MUST provide customers with information that it holds or controls which in view of the customer, is relevant to a dispute between the supplier and the customer. We believe that this is an oversight by OFGEM and such a condition must be introduced if SLC 20.5B and SLC 20.6B is to remain in the licence conditions.

Referring to the low number of ADR complaint cases that have been raised against TPIs to date, in comparison with those raised by TPIs and non-domestic customers, against suppliers (likely at least 100 times greater), it's imperative that customers and their representatives have access to information that supports a customer's complaint against the supplier.

Prime examples of this are supplier mis-selling and a refusal or failure to provide evidence of an agreed contract, evidence such as call recordings when a contract has been agreed over the phone, or alternatively account notes and letters that have been generated, that can be used as part of a complaint review by a customer, TPI or the Energy Ombudsman.

We can evidence that the biggest suppliers are repeatedly guilty of such obstructive behaviour (OFGEM are already in possession of evidence), when it becomes clear that providing information could be detrimental to

the supplier. Suppliers are regulated and therefore can only be held to a higher standard than a TPI sector that isn't regulated presently.

Therefore, for the benefit of non-domestic customers, OFGEM must introduce a licence condition that imposes on suppliers, the requirement to provide any information that a customer or their appointed representative deems relevant to a dispute.

Yours faithfully

Simon Askew
Managing Director