Business Energy Direct (UK) Limited
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16th July 2026

Re: Changes to Guidance on Deemed Contracts - Consultation Response

Dear Colleagues,

Further to the publication of the consultation on 19 June 2026, the following is the response from the team at Business Energy Direct.

Business Energy Direct (UK) Limited (BED) is a multi-award-winning non-domestic energy consultancy and third-party intermediary with more than two decades of experience supporting commercial energy users. BED works with organisations across a wide range of sectors, from small businesses and charities to major corporate groups, including several NASDAQ-listed companies, as well as trade bodies and associations.

BED provides support throughout the full lifecycle of a customer's energy requirements. This includes new connections, utility infrastructure and project management, procurement, contract management, billing and metering support, dispute resolution, changes of tenancy, site closures, lease-end arrangements and the disposal or demolition of premises.

The breadth of organisations we serve and services we provide means that our work touches most parts of the energy industry. This gives Business Energy Direct a unique and practical insight into the non-domestic market and the way in which suppliers apply deemed contracts.

Q1. Do you agree with our proposals on situations when we will generally view a deemed contract to exist depending on a customer's ability to consume energy? Please provide your reasons.

We agree that the guidance needs to distinguish between premises where a customer is, as a matter of fact, physically capable of taking a supply and premises where this is impossible. However, we do not agree that the presence of a connected meter should, without more, be treated as establishing either that physical capability or the existence of a deemed contract, or as justifying a deemed standing charge.

Paragraph A1.39 repeats Ofgem's 2010 view that gas or electricity would need to be consumed for a deemed contract to arise, while also recognising that the interpretation of the legislation is ultimately a matter for the courts. Paragraph A1.42 then appears to move beyond that position by suggesting that a deemed contract can arise merely because a connected meter exists, even where no energy has been consumed. Those positions create an unresolved tension that the final guidance should expressly address.

Only the relevant statutory provisions can create the deemed relationship. Guidance can explain how Ofgem intends to approach compliance and enforcement, but it cannot amend the Electricity Act 1989 or the Gas Act 1986, or create a contractual liability that does not otherwise arise under those Acts. The final wording should therefore make clear that physical availability is a relevant fact, but is not necessarily the statutory trigger in every case.

The guidance must recognise the different operational states of a supply

Business Energy Direct supports landlords, property developers, asset managers and property managers. These organisations frequently acquire vacant premises where the meter has been removed, the electricity supply has been de-energised, the gas meter has been capped, or the metering equipment is present but the service has never been energised or commissioned.

The same issue can arise where a smart meter has been remotely disabled or placed into a mode that prevents a new occupier from taking supply, where a new occupier cannot obtain access to top up a prepayment meter because the change of tenancy has not been completed, where current transformer (CT) metering has been installed but the service is not live, or where a meter fault prevents consumption. In each of these situations, the physical presence of metering equipment does not mean that the customer can actually consume energy.

A further example arises where an electricity meter is installed and may itself be energised, but no customer-side meter tails connect its outgoing terminals to an isolator, switchgear or distribution board. In those circumstances, there is no completed electrical path through which the premises can consume electricity. The physical presence of the meter, or an industry record showing the MPAN as energised, does not alter that factual position. Remedial work is required before supply can be used and, where no existing means of isolation is available, the supply will ordinarily need to be safely isolated by the DNO or another appropriately authorised operative, commonly through removal of the service cut-out fuse, so that an isolator and the necessary customer-side tails can be installed. The supply should therefore be treated as physically unavailable until the customer-side connection has been completed and safely energised.

The final guidance should distinguish clearly between:

1. a supply which is, as a matter of fact, energised and through which the customer is physically capable of consuming energy;
2. a temporarily de-energised, capped, remotely disabled, uncommissioned or incompletely connected supply that remains registered to a supplier and/or connected to the network but cannot physically be used by the customer; and
3. a permanently disconnected supply where the physical connection has been removed.

Whether a customer is physically capable of consuming energy is a question of fact, determined by the actual physical condition of the supply at the premises. It should not be determined solely by the status recorded on industry systems or by what the supplier understands the position to be. For example, ECOES may record an MPAN as energised even though the supply is physically incapable of use because the service fuses have been removed, or because the relevant industry data flows and records involving the Meter Operator, network operator and supplier have not been completed or correctly updated. The guidance should therefore distinguish between recorded energisation status and actual physical availability. It should make clear that neither the existence of a deemed contract nor liability for a deemed standing charge may be presumed solely from industry data where the factual evidence shows that the customer could not consume electricity.

A temporarily de-energised electricity supply or capped gas supply is not necessarily the same as a permanently disconnected supply from an industry-registration perspective. However, the practical position for the customer is the same: energy cannot be consumed. We do not believe that a customer should be charged deemed rates, including a deemed standing charge, for any period during which the supply is not physically available for use.

Costs that may remain when no energy can be consumed

The continued registration of an MPAN or MPRN to a supplier does not establish that the supplier continues to incur the cost stack associated with a supply that is physically energised, available for use and capable of recording consumption. The broad cost position is summarised below. Precise industry costs may vary according to the meter type, charging arrangements and network configuration, but the existence of any residual cost does not, by itself, establish that a deemed contract exists or that the occupier should be charged.

The table is intended to illustrate the broad distinction between costs associated with actual energy consumption and any limited residual costs that may remain while a supply is registered but physically unavailable; it is not intended to suggest that every listed cost will arise in every case.

Cost or charge	Energised and physically available, but with no consumption	De-energised / capped and physically unavailable	BED position
Wholesale energy and losses	No, where no units are consumed	No	There is no energy volume to purchase or settle.
Volumetric network and system charges	Generally no	Generally no	Volumetric DUoS, BSUoS and consumption-based levies should not arise without consumption.
Fixed or capacity-related network costs	May arise depending on the supply and meter type	May cease or materially reduce, depending on the relevant charge and network arrangement, once the physical status is correctly recorded.	Any continuing cost must be identified, attributed to the particular supply and evidenced; it does not justify applying a normal deemed standing charge.
Metering, data and DCC costs	Some costs may continue	Limited costs may continue	These are residual industry costs and should not be used to impose full deemed charges on a customer unable to consume.
Supplier administration	Limited administration may arise	Limited administration may arise	Ordinary overhead is not a justification for treating the site as fully supplied.
Bad debt, risk and margin	Only where a lawful deemed relationship exists and the allowance is evidenced and reasonable.	None where the inability to take supply means that no deemed contract exists.	There should be no double recovery or profit arising from a supplier- or network-created inability to consume.

The table demonstrates that the continued registration of a supply does not mean that the supplier continues to incur the full cost stack associated with an energised and usable supply. For those reasons, Ofgem should not treat the existence of some residual metering, data or administrative cost as sufficient justification for billing a full standing charge. If Ofgem considers that any charge may remain during de-energisation, suppliers should be required to identify the actual third-party cost, demonstrate that it continues for the particular supply, and charge no more than that evidenced amount. Business Energy Direct's primary position is that the occupier should not be charged where no supply service is available to them.

Supplier-caused de-energisation and new connections

The guidance must also deal with situations where the supplier or network has caused or prolonged the customer's inability to consume. We see suppliers continue to levy standing charges after de-energising a site for the previous occupier's debt, and suppliers charging from the proposed contract start date during a new connection project before the meter has been installed or the supply is live. A supplier should not be permitted to profit from a period in which it has not made a usable supply available.

The position should be even clearer where a new legal entity acquires the premises. The new occupier should not inherit the consequences of the former occupier's payment history, disconnection or failure to complete account processes.

We recommend that A1.41 to A1.43 be rewritten so that, where a customer cannot physically take supply because the meter is absent or faulty, or because the supply is disconnected, de-energised, capped, remotely disabled, uncommissioned or incompletely connected, Ofgem will generally view no deemed contract as existing.

Where a supply is physically available for use but no energy has been consumed, the existence of a deemed contract should remain a fact-sensitive legal question and should not be presumed solely from the presence of a connected meter.

Q2. Do you agree with our proposal around the reasonable recovery of bad debt? Please provide your reasons.

We agree that a supplier may face a higher risk of non-payment when serving some deemed customers and that a reasonable, evidenced allowance may form part of a lawful deemed rate. However, the proposed guidance is still not sufficiently specific and does not reflect some of the practices that we see in the market.

A1.66 allows reasonable levels of bad debt recovery and risk to be reflected where the supplier can justify and provide evidence of the additional cost. That principle must be accompanied by a clear reconciliation requirement. Otherwise, a supplier can embed a high bad debt assumption within its deemed rates for years without demonstrating that the allowance bears any relationship to the debt that is ultimately incurred and irrecoverable.

We have also seen suppliers outsource collection activity to another company within the same corporate group. In those circumstances, it is possible for internal collection charges to be created, allocated or recharged without any transparent relationship to the work actually carried out. Costs paid to a connected company should only be recoverable through deemed rates where the supplier can evidence the activity, the arm's length basis of the charge and the amount actually incurred.

The same principle applies where debt is later written off. A supplier may legitimately recognise a bad debt provision or obtain the normal accounting and tax treatment that follows a genuine loss. It should not, however, repeatedly recover the same risk from deemed customers through an unreconciled pricing allowance and then retain the benefit when the actual outcome is materially better than the assumption.

A transparent and reconciled bad debt allowance

Ofgem should require suppliers to record and disclose the bad debt element included within each deemed-rate cost stack, the evidence used to set it and the outcome of periodic reconciliation against actual bad debt experience. The comparison should distinguish between debt arising from deemed customers, debt arising from contracted customers and historic debt that is no longer representative of the current customer base.

The review must also consider the effectiveness of the supplier's collection processes. A supplier that chooses not to bill accurately, does not process changes of tenancy promptly or takes little meaningful recovery action should not be allowed to pass the resulting inefficiency back to compliant deemed customers through higher rates. There is presently too little incentive for suppliers to improve collection activity where the expected loss can simply be loaded into deemed pricing.

Business Energy Direct previously proposed that Ofgem publish a non-domestic deemed-rate reference or guidance price, supported by transparent information on wholesale, non-commodity, bad debt and reasonable margin assumptions. This would not prevent suppliers setting their own prices, but it would provide customers, TPIs, ADR bodies and Ofgem with a credible benchmark against which clearly excessive rates could be identified.

Q3. Do you agree with our proposed text that reminds suppliers of their obligations around customer transfer blocking and delayed switching? Please provide your reasons.

We support the proposed text because inappropriate objections based on deemed-contract debt continue to occur in practice. In July 2026, we received written statements from suppliers including:

> *"As soon as payment is made for that period, the MPANs will be free to switch."*

> *"We object to the transfer due to your debt. The debt from the time that your client started to consume the electricity must be covered prior to switching."*

The proposed reminder is therefore necessary, but Ofgem should go further. This should be framed as confirmation of existing licence obligations rather than as helpful clarification. SLC 7.6A prevents a deemed contract from requiring notice before a customer can change supplier, while SLC 14.2 does not permit a supplier to object to the transfer of a non-domestic customer on the basis of debt arising under a deemed contract. Ofgem should monitor objection data, require the immediate removal of any objection based on non-domestic deemed-contract debt and take enforcement action where the conduct is repeated.

The guidance should also address effective transfer blocking caused by defective change-of-occupier processes, even where the supplier has not raised a formal objection. A customer may agree to a contract with a new supplier but remain trapped on deemed rates because the incumbent supplier has failed to create the correct account or recognise the correct legal entity, has demanded unnecessary or disproportionate evidence, has not updated the relevant industry records, or has failed to resolve a genuine dispute. The absence of a formal debt objection does not prevent substantial detriment where the supplier's own acts or omissions frustrate or delay the transfer.

A1.96 should also be widened. The example of a dispute concerning "the meter reading" is too narrow and may suggest that only consumption disputes qualify. A genuine dispute may concern any material element of the bill, including the identity of the liable customer, the period of responsibility, the meter reading or consumption, the applicable unit rates, the standing charge or whether a deemed contract existed at all. The guidance should make clear that suppliers must act promptly to resolve each of those matters.

A1.98 should apply whenever a supplier's act or omission delays the resolution of a dispute, the creation of the correct account, the completion of a change of occupier, the commencement of an agreed contract or a customer transfer. The phrase "has been paying the deemed rates" is too narrow. A customer may dispute the first invoice and make no payment precisely because the charges are incorrect. The protection should therefore apply wherever the customer has been charged or invoiced deemed rates during a period of delay for which the supplier is responsible.

The retrospective remedy should also be mandatory and clearly defined. The supplier should be required to re-bill the account, or apply an equivalent credit, from the date on which the relevant dispute, account correction, contract or transfer should reasonably have been resolved or completed. The calculation should use the rate that would have applied had the supplier acted promptly, including an agreed contracted rate where the supplier's delay prevented that contract from taking effect. The phrases "work with the customer" and "look to retrospectively reduce the rates" are insufficiently certain and risk leaving redress to the supplier's discretion.

Q4. Do you agree with our proposal around the circumstances in which suppliers should ask for security deposits? Please provide your reasons.

We agree with the principle that a deemed customer has not chosen the incumbent supplier and should not ordinarily be required to provide a security deposit. Where the supplier's deemed rate already includes an allowance for bad debt and credit risk, requiring an additional deposit risks recovering twice from the customer in respect of the same risk. Any deposit must therefore be exceptional, objectively justified and separate from risks already reflected in the deemed-rate cost stack.

The wording must, however, avoid unintended consequences. A frequent problem arises where a customer purchases or leases premises without knowing that the previous occupier's supply was de-energised or disconnected for debt. The incumbent supplier may then require a substantial deposit before arranging reconnection. Moving to another supplier is often not a practical alternative because suppliers almost universally decline to register disconnected or de-energised supplies. The new occupier can therefore be left in a stalemate: unable to transfer because the supply is not live and unable to reconnect without satisfying a substantial or potentially disproportionate demand from the incumbent supplier.

A1.100 also requires important qualification. The fact that there have been previous disconnections at the premises, or that the supply was due to be disconnected for non-payment, must not be treated as evidence that a new and unrelated legal entity presents a heightened credit risk. The guidance must distinguish between the payment history and conduct of the current customer and events attributable to a former occupier. A site's historic disconnection status is not, by itself, a legitimate basis for imposing a security deposit upon a new occupier.

For that reason, the recommendation at A1.103 that the incumbent supplier should encourage the customer to move to another supplier is not a workable answer in many reconnection cases. The guidance should require the incumbent supplier to distinguish clearly between:

1. an actual and itemised third-party network or metering charge genuinely incurred in reconnecting the supply;
2. a security deposit based solely upon the evidenced future payment risk presented by the current customer; and
3. any debt, cost or perceived risk associated with a former occupier, none of which may be transferred to or attributed to the new legal entity.

A previous occupier's debt, disconnection history or consumption must not be treated as evidence that a new and unrelated occupier is high risk. Any exceptional deposit must be based solely upon the new customer's circumstances, be proportionate to an evidenced risk and be separately and clearly recorded as customer credit. Before taking the deposit, the supplier should explain in writing the reason for requiring it, how the amount has been calculated, how and when the continuing need for it will be reviewed, and the circumstances and timescale in which it will be returned.

Ofgem's existing non-domestic good-practice guidance states that, where repayment of a credit balance is fair and reasonable, it should be made promptly and ideally within 10 calendar days of the customer's request. The domestic framework provides a further established benchmark: suppliers must take all reasonable steps to issue a final bill within six weeks of a supplier transfer or termination of the domestic supply contract, and any resulting credit balance must then be refunded automatically within 10 working days of the final bill. Although those domestic protections do not presently extend to non-domestic customers, they provide an appropriate regulatory benchmark for security deposits taken from deemed customers.

The wording in A1.104 that a deposit should be returned "as soon as possible" is insufficiently precise. A1.104 should require the deposit to be refunded automatically within 10 working days of the final bill, less only any undisputed amount properly due under that bill. Where the reason for holding the deposit ends before the account is closed, it should be returned automatically within 10 calendar days of that date. The customer should not be required to request the return of money that the supplier no longer has any proper basis to retain.

Ofgem should also consider how security deposits are protected while held by a supplier. A deposit is taken for a defined security purpose and should not be treated as ordinary supplier revenue or working capital. It should be separately accounted for and appropriately protected so that it remains identifiable and available for return to the customer when the reason for holding it ends.

Q5. Are there any potential implications for domestic customers that the proposed guidance on deemed contract rates may impact on?

Business Energy Direct works primarily with non-domestic consumers, so our direct evidence is concentrated in that market. However, the proposed guidance expressly applies to both domestic and non-domestic suppliers, and there are several potential implications for domestic customers that should be addressed clearly.

Particular care is required where the classification of a supply is not straightforward, including mixed-use premises, landlord-held supplies, communal areas and accounts administered by managing agents. The presence of residential occupiers does not necessarily mean that every associated supply is domestic. Equally, where a supply is properly classified as domestic, the identity of the account holder or the administrative arrangements used to make payment must not result in the loss of domestic protections.

Some RICS-regulated managing agents tell us that their client-account procedures prevent or discourage payment by Direct Debit. Suppliers may consequently apply a different payment-method rate. Any such difference must reflect the supplier's costs of providing the different payment methods, as required by SLC 27.2A, and the charges must remain within the price-cap level applicable to that payment method. A supplier should not impose an additional or unregulated premium merely because payment is made by a landlord or managing agent from a client account.

A1.94 also requires important qualification. Although SLC 14.4(a) permits a domestic supplier to object to a transfer where qualifying Outstanding Charges are due, this is not a general entitlement to block a switch on the basis of any amount appearing on the account. Outstanding Charges must have been demanded from the customer in writing at least 28 days previously and remain unpaid. In addition, SLC 14.7 and 14.8 restrict transfer blocking where the charges consist entirely of a Disputed Amount or Supplier Error Amount and require the supplier to facilitate the transfer once the relevant circumstances are identified. Those safeguards should be set out expressly alongside A1.94 so that the paragraph is not interpreted as an unrestricted permission to block domestic deemed customers from switching.

The factual principles raised under Q1 should apply equally to domestic premises. Where a property is genuinely de-energised, capped, remotely disabled or otherwise physically incapable of taking supply, the customer should not be treated as receiving a usable supply merely because a meter or industry registration remains in place. Recorded energisation status must not displace evidence of the actual physical condition of the supply.

The scope of A1.100 to A1.104 should also be clarified. Those paragraphs are framed principally by reference to non-domestic customers, but the consultation states that the guidance applies to domestic and non-domestic suppliers. If the security-deposit provisions are intended to apply to domestic deemed customers, the final guidance must expressly preserve the protections in SLC 27.3 and 27.4: a domestic deposit must not be required where it would be unreasonable in all the circumstances and must not exceed a reasonable amount. The proposed guidance must not be understood as diluting those existing protections.

Finally, A1.53 states that, while the domestic price cap remains in force, compliance with the price cap alone will be sufficient for compliance with SLC 7.3 and 7.4. The final guidance should make clear that this conclusion concerns the level of the deemed charges only. Price-cap compliance does not determine whether a deemed contract exists in the first place and does not displace suppliers' separate obligations concerning fair treatment, billing, transfer blocking, security deposits, vulnerability or disconnection. Ofgem should also explain how domestic deemed rates will be assessed if the price cap is materially amended or removed.

Q6. Do you have any further comments on our proposals for the deemed contract guidance?

Yes. We support greater clarity, but the final guidance must also address the enforcement and redress gaps that have allowed potentially unduly onerous non-domestic deemed rates to persist for many years. Prospective guidance will have limited value unless it is accompanied by effective compliance monitoring and a route through which affected customers can obtain redress.

The legal status and enforceability of the guidance must be stated accurately

Paragraph 1.10 of the consultation states that the final guidance will be "binding and enforceable" for domestic and non-domestic suppliers. That description is difficult to reconcile with A1.1, which records that SLC 7.14 requires a licensee to "have regard to" guidance, A1.2, which describes the document as explaining Ofgem's approach to compliance and enforcement, and A1.71, which states that the guidance is

illustrative, is not a substitute for regulation or law and will be applied as appropriate on the merits of each case.

The final decision should identify precisely what Ofgem means by “binding and enforceable”. In particular, it should explain whether departure from the guidance is intended to constitute an independent breach, or whether the guidance will instead be treated as relevant evidence when Ofgem assesses compliance with the underlying licence conditions.

Ofgem can enforce the statutory and licence obligations and use guidance to explain its interpretation and enforcement approach. The guidance should not, however, be presented as an independent source capable of creating a deemed contract, imposing a new payment liability or altering the substantive requirements of the Acts or the licence. This distinction is particularly important given the proposed interpretation in A1.42.

Relevant classes of customers and appropriate comparators

We support the principle in A1.74 to A1.76 that a supplier should not apply one generic deemed rate across a materially different non-domestic customer base. However, broad descriptions such as Micro Business, SME or I&C should not automatically be treated as the relevant classes for pricing purposes. Those descriptions may be useful starting points, but they do not necessarily reflect the characteristics that determine the actual cost of supply.

Relevant classes should be defined using objective cost-to-serve factors, including meter classification, HH or NHH status, consumption level and profile, network region, agreed or reserved capacity, the applicable network charging or TCR band and other material industry costs. Historic consumption must also be used cautiously because it may relate to a former occupier operating an entirely different business from the current customer.

We remain concerned that A1.58 and A1.67 confine Ofgem’s comparison to the supplier’s own contracted rates. A supplier whose contracted and deemed portfolios are both unusually expensive should not be permitted to establish its own compliance benchmark. Ofgem should consider the supplier’s actual cost stack, the revenue and margin earned from the generality of its non-domestic customers and relevant market-wide evidence. An Ofgem reference price or cost benchmark would provide a valuable independent check without preventing suppliers from adopting their own lawful pricing methodologies.

Reviews must operate in both directions

The proposed quarterly review must operate as a minimum review frequency, not as a safe harbour that permits suppliers to delay necessary reductions. During a rising market, suppliers may update deemed rates monthly or more frequently. Where the underlying costs fall materially, the same responsiveness should be required in the opposite direction.

Suppliers should apply consistent review triggers in rising and falling markets, record the cost movements considered, explain any decision to change or retain the rate and implement any necessary adjustment promptly. A supplier should not be permitted to respond immediately to cost increases while retaining the benefit of reductions until the next routine quarterly review.

Ofgem should obtain and audit those review records as part of routine compliance monitoring rather than relying solely upon supplier self-certification.

Independent selection and verification of comparator evidence

A1.57 states that, when analysing equivalent contracted rates, Ofgem will work with suppliers to identify appropriate comparator contracts. Suppliers will necessarily be an important source of their own pricing and cost information. However, the supplier whose compliance is being assessed should not be permitted to control or selectively curate the comparator evidence placed before Ofgem. That creates an obvious risk of selection bias and an incomplete picture of the supplier's contracted portfolio.

Ofgem should require suppliers to provide complete and appropriately segmented datasets for the relevant customer class and period, rather than asking them to select individual contracts that they consider suitable. Ofgem should then determine the sample and methodology used for the comparison.

The supplier evidence should also be independently tested against information available from established TPIs, customers, historic quotation documents, signed contracts and other available market evidence. Established TPIs frequently hold extensive records of historical supplier quotations, contract offers and agreed prices and could provide a valuable independent source against which supplier submissions can be verified. This evidence should supplement, rather than replace, the complete information obtained directly from the supplier.

Principal terms, publication and notification of price changes

The draft guidance should say more about the information that must be made available to a deemed customer. We regularly review cases where a supplier cannot produce evidence showing when the customer was informed that a deemed contract had arisen, what principal terms were provided, which rates applied or whether any welcome communication was issued before invoices were generated.

The final guidance should require suppliers to retain clear evidence of compliance with SLC 7.7, including the information supplied, the address or electronic destination to which it was sent, the date of communication and the version of the terms and prices that applied. The mere existence of current rates somewhere on a supplier's website should not be treated as evidence that the affected customer was properly informed.

The problem becomes more serious where a customer remains on deemed rates for an extended period. Where the unit rates or standing charges change, the customer should be notified directly and in sufficient time to understand the charges that will be applied. Suppliers should retain evidence of each notification and provide it to the customer or Ofgem upon request.

The statutory deemed-contract schemes, and any revisions to those schemes, must also be published and supplied to the statutory recipients required by the Electricity Act 1989 and Gas Act 1986. Where a change to deemed prices forms part of a revision to the applicable scheme, the supplier should be required to evidence compliance with those statutory steps. Supplier websites should retain version-controlled historic schemes and rates so that the terms and prices applying on any given date can be established. A supplier should not be permitted to rely upon revised prices where it cannot evidence the necessary publication **and** notification steps.

There remains no effective route to individual redress

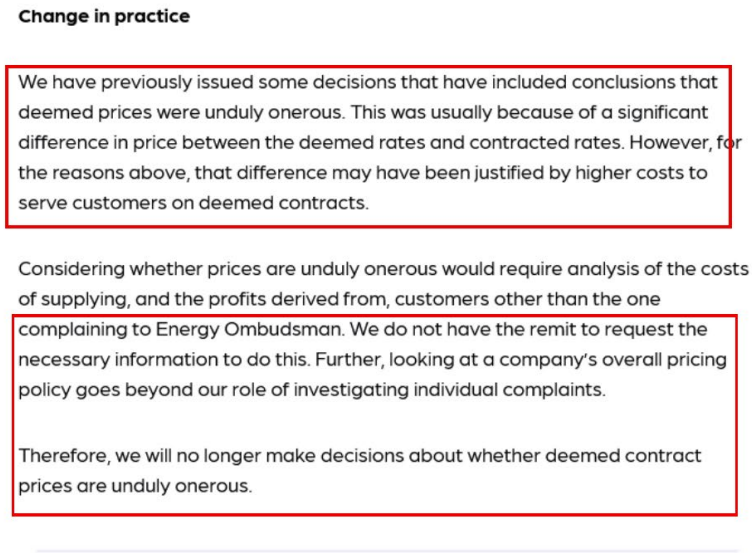
This is one of the most important omissions from the consultation. In June 2020, following the issue of a series of determinations relating to deemed-contract price complaints that resulted in favourable outcomes for customers, several suppliers simultaneously challenged the Energy Ombudsman and its jurisdiction to investigate such complaints. Business Energy Direct understands that those challenges resulted in the Energy Ombudsman publishing a change of practice explaining that, although it had previously issued determinations in which the available evidence indicated that deemed prices were unduly onerous, it would no longer determine that issue because the assessment required information that it did not have the remit to obtain.

Ofgem should verify the circumstances surrounding that change of practice by requesting and obtaining from the Energy Ombudsman the relevant supplier correspondence, submissions, meeting records and internal decision-making documents. That evidence should establish which suppliers challenged the Ombudsman's

jurisdiction, the grounds upon which those challenges were made, the extent to which those challenges influenced the decision to cease determining whether deemed-contract prices were unduly onerous, and whether the resulting loss of ADR scrutiny created or perpetuated the regulatory and redress gap identified in this response.

The Energy Ombudsman may therefore accept a complaint concerning a deemed-contract account but decline to determine the central question of whether the supplier's prices breach SLC 7.3 or 7.4. This leaves even customers who otherwise fall within the Ombudsman's jurisdiction without an accessible ADR determination of the principal pricing issue. Larger non-domestic customers are already generally dependent upon private legal proceedings.

The result is a significant regulatory and redress gap. Ofgem may issue guidance and expect suppliers to comply, but a customer who has paid an unduly onerous rate may still have no accessible forum capable of obtaining the supplier's cost information, deciding the issue and ordering an appropriate remedy. Prospective guidance alone does not close that gap.



Change in practice

We have previously issued some decisions that have included conclusions that deemed prices were unduly onerous. This was usually because of a significant difference in price between the deemed rates and contracted rates. However, for the reasons above, that difference may have been justified by higher costs to serve customers on deemed contracts.

Considering whether prices are unduly onerous would require analysis of the costs of supplying, and the profits derived from, customers other than the one complaining to Energy Ombudsman. We do not have the remit to request the necessary information to do this. Further, looking at a company's overall pricing policy goes beyond our role of investigating individual complaints.

Therefore, we will no longer make decisions about whether deemed contract prices are unduly onerous.

Evidence: Energy Ombudsman, "Deemed contracts and rates", June 2020 — change of practice.

Meaning of "case-by-case" assessment

A1.63 states that Ofgem will consider whether deemed rates are much higher than equivalent contracted rates, and whether any difference is justified, on a case-by-case basis. A1.69 similarly states that whether deemed rates are unduly onerous will be assessed by Ofgem on a case-by-case basis.

Those statements require clarification. Ofgem should explain whether a "case" means an individual customer complaint, a defined class or cohort of customers, a supplier pricing methodology or a formal supplier-level compliance or enforcement investigation. If Ofgem does not intend to investigate and determine individual customer complaints, the guidance should say so expressly rather than using wording that may reasonably be understood as offering an individual assessment.

Ofgem should therefore confirm which body will determine individual complaints about unduly onerous deemed rates, what information that body will be able to require from suppliers and how historic overcharging will be remedied. It should also confirm the circumstances in which supplier methodologies, cost stacks or published prices will trigger a systemic compliance or enforcement investigation and how affected customers will receive redress following any finding.

Guidance alone will not resolve historic detriment

Business Energy Direct has raised concerns about non-domestic deemed pricing with Ofgem for more than 15 years. Clearer prospective guidance is welcome, but it does not answer the question raised in our 2023 consultation response: what happens to customers who have already paid prices that were unduly onerous or otherwise non-compliant?

The final decision should be accompanied by a defined and time-limited compliance review. Ofgem should issue formal information requests requiring suppliers to provide their historic deemed-rate cost stacks, pricing methodologies, comparator data, rate-review records and evidence of publication and customer communication. Ofgem should publish the material findings of that review and establish a redress framework where breaches are identified.

Without those steps, suppliers that have complied will be placed in the same prospective position as suppliers that may have over-recovered for years, while affected customers remain without compensation. That would not provide an effective regulatory response to the historic detriment that has prompted the need for revised guidance.



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