

**IN THE FIRST TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case No:**

**BETWEEN**

**ORBIT GROUP LIMITED**

**Applicant**

**-and-**

**THE RESIDENTS  
SET OUT AT SCHEDULE 1**

**OF VARIOUS PROPERTIES  
SET OUT AT SCHEDULE 1**

**Respondents**

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**STATEMENT OF CASE  
ON BEHALF OF THE APPLICANT**

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**On behalf of Orbit Group Limited**

**Solicitors acting: Shakespeare Martineau LLP**

**Address for service of documents: Shakespeare Martineau  
Waterfront House, Waterfront Plaza, 35 Station Street, Nottingham, NG2 3DQ**

**Name and Address of Respondents: See Schedule 1**

**Properties: See Schedule 1**

**Role of Applicant – Landlord**

## INTRODUCTION

1. This is an application for dispensation from consultation requirements.
2. The Applicant is a registered provider of social housing, which owns and manages a growing portfolio of over 46,000 affordable and social rent homes and support over 100,000 customers in differing stages of life, from those seeking their first home to customers looking for enhanced supported living.
3. The Respondents are liable to pay a variable service charge pursuant to either a rental or leasehold agreement. A sample of some the agreements are attached at **Appendix 1**. The type of agreement upon which each Respondent Resident resides is marked at **Schedule 1**.
4. The Applicant is concerned about the increased costs of living are putting enormous pressure on Orbit customer's household budgets. The Applicant is also aware that the uncertainty caused by not knowing how these issues may affect customers from year to year can be of concern.
5. The Applicant has worked to ensure they get the best rates possible when purchasing gas and electricity at each individual scheme, with a view that this will lead to savings which the Applicant will be able to pass directly to its customers.
6. Currently, the Applicant purchases electricity and/or gas on behalf of customers in some of its schemes and these charges are passed onto customers via the service charge. Often this relates to gas and electricity used in the communal spaces, referred to as a communal utility charge in the service charge statements passed onto customers. Sometimes this can also include utilities consumed within customers' homes, known as personal utility charges.
7. The Applicant combines all of the electricity and gas consumed across Orbit's schemes into one contract for each fuel type. Doing this means the Applicant increases its buying power and get better value for money than purchasing energy for individual addresses. The Applicant purchases these contracts every 12 months, meaning the Applicant is not required to consult with customers.

8. However, the Applicant is aware it is currently possible to get cheaper utility rates if a longer contract is negotiated – such as a two-year fixed deal. Section 20 legislation does require us to consult with customers before entering longer-term contracts, which will be addressed later in this Statement of Case.
9. The Applicant agrees and understands the importance of consulting with customers, especially when it comes to making long-term decisions about financial issues on behalf of its customers. However, the problem in these particular circumstances is when utility prices change, the Applicant needs to act quickly to secure better prices as quotations received are typically only held for a number of hours.
10. Being required to carry out a Section 20 consultation over 30 days and more means the Applicant can't act quick enough to secure the better utility prices when they become available. Being bound by these rules means the Applicant is restricted to only buying gas and electricity one year at a time in advance. These shorter-term contracts are the least competitive and ultimately mean the Applicant's customers do not get the best deal for their gas and electricity. It also means less price certainty for customers as the rates change yearly.
11. The Applicant therefore invites the Tribunal to give it dispensation, as far as necessary, from the consultation requirements in respect of the gas and electric contracts.
12. For the avoidance of doubt, the Applicant is not seeking any determination in respect of the reasonableness or recoverability of the sums themselves. It would be a matter for one or more of the Respondents to bring such an application.
13. This Statement of Case will be split into the following sections:
  - a. The Legal Framework of the Consultation Requirements;
  - b. The Consultation Steps taken by the Applicant;
  - c. The Law on Dispensation;
  - d. The Applicant's Submissions on Dispensation.

## **A.THE LEGAL FRAMEWORK OF THE CONSULTATION REQUIREMENTS**

14. References below to “LTA 85” are to the Landlord and Tenant Act 1985. References to “the Regulations” are to the Service Charges (Consultation Requirements) (England) Regulations 2003/1987.

15. Pursuant to s20ZA(2) LTA 85:

*“qualifying long term agreement” means ... an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.*

16. By way of s20(1) LTA 85:

*Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—*

*(a) complied with in relation to the works or agreement, or*

*(b)...dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.*

17. By Reg 4(1) of the Regulations:

*Section 20 shall apply to a qualifying long term agreement if relevant costs incurred under the agreement in any accounting period exceed an amount which results in the relevant contribution of any tenant, in respect of that period, being more than £100.*

18. By Reg 5(2) of the Regulations:

*Where public notice is required to be given of the relevant matters to which a qualifying long term agreement relates, the consultation requirements for the purposes of sections 20 and 20ZA, as regards the agreement, are the requirements specified in Schedule 2.*

19. It is accepted that the above provisions apply to the QLTA. The combined effect is that the Applicant must comply with the consultation requirements at Schedule 2 of the Regulations.

#### STAGE 1 – NOTICE OF INTENTION

20. Para 1 of Sch 2 of the Regulations sets out the requirement for the first step, which is the Notice of Intention as follows:

*(1) The landlord shall give notice in writing of his intention to enter into the agreement—*  
*(a) to each tenant; and*  
*(b) where a recognised tenants' association represents some or all of the tenants, to the association.*

*(2) The notice shall—*  
*(a) describe, in general terms, the relevant matters or specify the place and hours at which a description of the relevant matters may be inspected;*  
*(b) state the landlord's reasons for considering it necessary to enter into the agreement;*  
*(c) where the relevant matters consist of or include qualifying works, state the landlord's reasons for considering it necessary to carry out those works;*  
*(d) state that the reason why the landlord is not inviting recipients of the notice to nominate persons from whom he should try to obtain an estimate for the relevant matters is that public notice of the relevant matters is to be given;*  
*(e) invite the making, in writing, of observations in relation to the relevant matters; and*  
*(f) specify—*  
*(i) the address to which such observations may be sent;*  
*(ii) that they must be delivered within the relevant period; and*  
*(iii) the date on which the relevant period ends*

21. The reference above to “relevant period” is to a period of 30 days, starting with the date the notice was served (Reg 2(1)).

22. The landlord is required to have regard to any observations received during the relevant period (Sch 2 Para 3).

## STAGE 2 – THE PROPOSAL

23. Following the Notice of Intention, the landlord must prepare a proposal in accordance with Sch 2 Para 4 [“the Notice of Proposal”]. This is as follows:

*(1) The landlord shall prepare, in accordance with the following provisions of this paragraph, a proposal in respect of the proposed agreement.*

*(2) The proposal shall contain a statement–*

*(a) of the name and address of every party to the proposed agreement (other than the landlord); and*

*(b) of any connection (apart from the proposed agreement) between the landlord and any other party.*

*(3) For the purpose of sub-paragraph (2)(b), it shall be assumed that there is a connection between the landlord and a party–*

*... (omitted as irrelevant)*

*(4) Where, as regards each tenant's unit of occupation, it is reasonably practicable for the landlord to estimate the relevant contribution to be incurred by the tenant attributable to the relevant matters to which the proposed agreement relates, the proposal shall contain a statement of that contribution.*

*(5) Where–*

*(a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (4); and*

*(b) it is reasonably practicable for the landlord to estimate, as regards the building or other premises to which the proposed agreement relates, the total amount of his*

*expenditure under the proposed agreement, the proposal shall contain a statement of the amount of that estimated expenditure.*

*(6) Where—*

*(a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (4) or (5)(b); and*

*(b) it is reasonably practicable for the landlord to ascertain the current unit cost or hourly or daily rate applicable to the relevant matters to which the proposed agreement relates, the proposal shall contain a statement of that cost or rate.*

*(7) Where it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (6)(b), the proposal shall contain a statement of the reasons why he cannot comply and the date by which he expects to be able to provide an estimate, cost or rate.*

*(8) Where the relevant matters comprise or include the proposed appointment by the landlord of an agent ... (omitted as irrelevant)*

*(9) Each proposal shall contain a statement of the intended duration of the proposed agreement.*

*(10) Where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, the proposal shall contain a statement summarising the observations and setting out the landlord's response to them.*

24. The Notice of Proposal must be given to the leaseholders (Sch 2 Para 5). It must include the Proposal itself, or specify where the Proposal can be inspected.

25. The Notice of Proposal must also invite written observations in respect of the Proposal from the leaseholders, with such observations to be sent within 30 days of the date of the Notice of Proposal (Sch 2 para 5(2)(b)).

26. The landlord must have regard to any such observations (Sch 2 para 6). The landlord must then provide a response to the person making the proposal within 21 days (Sch 2 para 7).

### STAGE 3 – NOTICE OF WORKS

27. Once the primary consultation process above is complete, an abbreviated consultation process must be carried out in respect of any qualifying works being performed under the agreement. This process is set out at Para 1 Sch 3 of the Regulations [“the Notice of Works”], as follows:

*(1) The landlord shall give notice in writing of his intention to carry out qualifying works—*

*(a) to each tenant; and*

*(b) where a recognised tenants' association represents some or all of the tenants, to the association.*

*(2) The notice shall—*

*(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;*

*(b) state the landlord's reasons for considering it necessary to carry out the proposed works;*

*(c) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;*

*(d) invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure;*

*(e) specify— (i) the address to which such observations may be sent; (ii) that they must be delivered within the relevant period; and (iii) the date on which the relevant period ends.*

28. The landlord must have regard to any observations sent in response to the Notice of Works (Sch 3 Para 3). The landlord must provide a response to any such observations within 21 days (Sch 3 Para 4).



## **B.THE CONSULTATION STEPS TAKEN BY THE APPLICANT**

29. The Applicant wrote to the Respondents on 22/23 May 2025 explaining the current process in which it purchases gas and electric and then the proposal of how the Applicant proposes to purchase gas and electric going forwards. This letter also included a Question-and-Answer Sheet. A copy of the letter and Question-and-Answer sheet are attached to this Statement of Case at Appendix 2.
30. The letter invited Respondents to complete a short survey so they could share their views in respect of the Applicant's proposal.
31. In addition to the survey, the letter also included contact details for the Applicant's Energy Team should any Respondent wish to discuss further.

## **C.THE LAW ON DISPENSATION**

32. Pursuant to s20ZA(1) LTA 85:

*(1)Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.*

33. The jurisdiction to grant dispensation was interpreted by the Supreme Court in *Daejan v Benson* [2013] UKSC 14 as follows:

*44. Given that the purpose of the requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the [Tribunal] should focus when*

*entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements.*

*45. Thus, in a case where it was common ground that the extent, quality and cost of the works were in no way affected by the landlord's failure to comply with the requirements, I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be—ie as if the requirements had been complied with.*

*46. I do not accept the view that a dispensation should be refused in such a case solely because the landlord seriously breached, or departed from, the requirements. That view could only be justified on the grounds that adherence to the requirements was an end in itself, or that the dispensing jurisdiction was a punitive or exemplary exercise. The requirements are a means to an end, not an end in themselves...*

*...*

*52 As already indicated, I do not agree with the courts below in so far as they support the proposition that sections 20 and 20ZA were included for the purpose of “transparency and accountability”, if by that it is intended to add anything to the two purposes identified in section 19(1)(a)(b). ... I consider that there are no grounds for treating the obligations in sections 20 and 20ZA as doing any more than providing practical support for the two purposes identified in section 19(1). The sections are not concerned with public law issues or public duties, so there is no justification for treating consultation or transparency as appropriate ends in themselves.*

34. The effect of *Daejan v Benson* therefore is that:

- a. The purpose of the consultation requirements is ultimately to ensure that residents do not pay unreasonable sums, or for unreasonable quality of works (para 44);

- b. Whilst the legal burden rests on the Applicant to make the dispensation application, the factual burden will lie on individual Respondents to identify any prejudice caused by the breaches (para 67);
- c. Whether a breach of the requirements is serious or trivial is only relevant insofar as it causes more or less prejudice to the Respondent (para 46);
- d. Respondents, who should have had the benefit of consultation, will be treated sympathetically by the Tribunal (para 67);
- e. The residents have been deprived of responding to a consultation. They will accordingly be treated sympathetically by the Tribunal (para 67). However is therefore incumbent on them, in any response to a dispensation application, to set out what they would have said (para 69);
- f. Whilst the Tribunal should not accept any prejudice, no matter how farfetched, if some legitimate prejudice is demonstrated by the residents, it will fall to the Applicant to rebut it (para 68)
- g. The Tribunal is empowered to grant dispensation on conditions. The simplest example would arise where residents can demonstrate that, if they had been consulted, they could have found a cheaper quote for the works. The natural condition of granting dispensation would be that the landlord cannot recover the difference between the residents' quote and the actual costs (Para 57).

#### **D.THE APPLICANT'S SUBMISSIONS**

35. The legal burden is on the Applicant to bring this application, and so it seeks to establish a prima facie case that dispensation is appropriate. It submits as follows

- a. It would be impossible for the Applicant to comply with the consultation requirements in full for this type of agreement due to the pricing changing on an hourly basis and any quote will have therefore changed by the time the Applicant had consulted.
- b. The Respondents are likely to benefit from a significant saving if the Applicant is able to enter into a contract for gas and electric for a period spanning over 1 year.
- c. The Respondents have been invited to make observations in respect of the Applicant's proposal in their letter dated 22/23 May 2025. Annexed to this Statement of Case and marked Appendix 3 is a copy of the survey results obtained following the letter sent which demonstrates general support for this Application.
- d. It remained and remains open to residents to make observations in respect of the QLTA;

36. If any of the Respondents object to this application, the Applicant will provide a detailed response in respect of any prejudice a Respondent can demonstrate.

37. If the Tribunal takes the view that any Respondent has suffered material prejudice because of any breaches, that prejudice can be addressed by way of conditions attached to any dispensation granted.

## **CONCLUSION**

38. The Tribunal is invited to grant dispensation in respect of the QLTA, on any conditions it deems fit.

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**-and-**

**-and-**

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**Respondents**

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**SCHEDULE 1  
TO APPLICANT'S STATEMENT OF CASE**

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**APPENDIX 1  
TO APPLICANT'S STATEMENT OF CASE**

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**APPENDIX 2  
TO APPLICANT'S STATEMENT OF CASE**

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**Date:** dd/mm/yyyy

**Name.**

Address Line1.

Address Line2.

Address Line3.

Address Line4.

Address Line5.

**Orbit**

PO Box 6406

Coventry

CV3 9NB

**Web:**

[orbitcustomerhub.org.uk](http://orbitcustomerhub.org.uk)

Dear <customer name>,

## We are working to get the best rates on your gas and electricity contracts

We know that current world issues and the increased cost of living are putting enormous pressure on people's household budgets. We also understand that the uncertainty caused by not knowing how these issues may affect you from year to year can be very worrying.

We want to let you know about some important work we are doing to try to ensure we get the best rates possible when we buy gas and electricity at your scheme. We hope that this will lead to savings which we will be able to pass directly to you.

### The current process

We purchase electricity and/or gas on behalf of customers in some of our schemes and these charges are passed onto customers via the service charge. Often this relates to gas and electricity used in the communal spaces, referred to as a communal utility charge. Sometimes this can also include utilities consumed within customers' homes, known as personal utility charges.

We combine all of the electricity and gas consumed across Orbit's schemes into one contract for each fuel type. Doing this means we increase our buying power and get better value for money than purchasing energy for individual addresses. We then buy these contracts every 12 months. Section 20 legislation says buying energy on short-term contracts does not require us to consult with customers.

However, we know it's currently possible to get cheaper utility rates if a longer contract is negotiated – such as a two-year fixed deal. Section 20 legislation does require us to consult with customers before entering longer-term contracts. This would involve us carrying out two periods of 30-day consultation with our customers on the prices of gas and electricity before we enter into a contract with a supplier.





We agree that consultation is important, especially when it comes to making long-term decisions about financial issues on behalf of our customers. However, the problem with this is when utility prices change, we need to act quickly to secure better prices as these are typically only held for a number of hours.

Being required to carry out a Section 20 consultation over 30 days means we can't be quick enough to secure the better utility prices when they become available. Being bound by these rules means we are restricted to only buying gas and electricity one year at a time in advance. These shorter-term contracts are the least competitive and ultimately mean you don't get the best deal for your gas and electricity. It also means less price certainty for you as the rates change yearly.

## **What we would like to do to improve the situation for you**

We would like to apply to the First Tier Property Tribunal for legal dispensation which would mean we would no longer be bound by the rules of Section 20 when agreeing new gas and electricity contracts. If we are granted dispensation, it would allow us to secure longer term deals for gas and electricity for you, which would give greater price stability and would mean better value for you.

We have shared our proposal with engaged customers.

John Bennett, said: "We have considered everything the team has presented to us and we do think that this is a good idea and I very much hope that customers will buy into this."

## **What happens next**

We want to make sure that you broadly support this plan before we apply to the Tribunal. In order to get an idea of your opinions, we're inviting you to complete a short survey so you can share your views with us.

You can use this QR code to access the page or find it here: [emea.dcv.ms/40aCRSF6yn](https://emea.dcv.ms/40aCRSF6yn)



The survey closes on Friday 20 June, and the results will help us understand if you have any worries or concerns about this course of action.

After we have processed your feedback, and addressed any questions or concerns, we will apply to the Tribunal. When this happens, you will receive a formal letter in the post letting you know that the application has been submitted.



## Answering any questions you may have

We want to be completely transparent about this process and make sure you understand and support this way forward. We know you will have questions, and we hope we can answer these in a clear and understandable way. We have attached a Q&A sheet with this letter, and this will be updated and available on **(WHERE WILL WE HOST THE Q&A)** throughout the process.

You can ask any questions through the survey, or alternatively you can contact the Energy Team directly by emailing [energyadvice@orbit.org.uk](mailto:energyadvice@orbit.org.uk)

Yours sincerely,

Daniel Welch  
Group Energy Manager



## Section 20 dispensation

### Customer Q&A

#### How much money will I save if Orbit achieves a Section 20 dispensation?

We can't guarantee that this process will save you money year on year, because it all depends on world utility prices at the time. We do know that the longer-term deals tend to offer the best value, so seeking the dispensation is about having the flexibility to be able to achieve the best deal on behalf of customers at the time of contract renewal.

##### As an example:

We asked suppliers to provide us with up-to date prices for gas and electricity in May. We requested prices for utilities from April 2026 until March 2028 and found that purchasing gas on a two-year contract was on average 3% cheaper than a one-year deal. In addition, electricity was between 1% and 3% cheaper on the two-year deal, depending on supplier.

Our energy broker (EIC) explained that longer-term deals have the potential to be cheaper, especially during periods of instability. Global conflicts, tariffs and political uncertainty all make short-term wholesale prices difficult for suppliers to estimate so they increase their prices to factor in this risk. These wholesale prices typically make up 40% of your bills. The other 60% consists of taxes and infrastructure charges. Longer-term contracts also protect you against any increases in these costs over the contract length, again saving you money.

#### What is an energy broker?

Orbit is responsible for over 1,800 separate electricity and gas meters across all its schemes. To manage these, we use an energy broker who is responsible for finding the most competitive utility rates on our behalf. They are also responsible for checking the utility bills are accurate and raising any disputes with the utility suppliers on our behalf. At the moment our energy broker can only purchase 12-month contracts and can't use their full expertise to get the best deal for us.

#### What happens if a short-term deal is better value?

We would only ever use the dispensation powers if it meant we could secure more favourable rates. We make decisions in the best interests of our customers and always seek the deal that offers the best value for money and the most stability at the time of renewal. If a 12-month contract was the cheapest and best value at that time, we would select it.

## **Why can't I have a direct account with a provider and pay my utility bills myself?**

While the exact set-up is different at every scheme, usually the communal electricity and gas charges relate to energy use in the communal spaces. As this needs to be fairly divided between all homes at a given scheme, we pay the utility bill and then charge all properties impacted in a fair way.

In some cases, we bill customers for the electricity or gas used in their home. This is because the scheme was built without individual metering connections for each home.

Whilst we cannot change the metering set-up, we can achieve a cheaper rate for customers by buying as a group, rather than as individual addresses. We bill you at the same rate and we don't take any cut or profit.

## **What are the rates for 2025-26?**

For any property with a gas supply the unit rate charged by our supplier is 4.7455p/kWh (excluding VAT) and applies to all gas consumed from 1 April 2025 until the 31 of March 2026.

As we aggregate the gas consumption from 90 of our schemes we are able to get favourable rates from utility companies. Our rates are 32% cheaper than the domestic price cap which is currently set at 6.99p/kWh (April – June 2025).

The electricity rates charged at each of our schemes vary by region and postcode. However, the average unit rate for the portfolio is 23.27p/kWh. This is 14% cheaper than the domestic price cap rate of 27.03p/kWh.

## **Why are gas and electricity prices so high?**

The UK is very dependent on natural gas for heating and electricity generation. Following Russia's invasion of Ukraine, gas supplies to Europe were severely disrupted, and this increased prices.

In the UK, a large portion of electricity is still generated using gas-fired power stations which is why the situation impacts both gas and electricity prices.

There are also additional costs because, between 2021 and 2022, over 30 energy suppliers went bust, mainly due to poor risk management and the unexpected spike in wholesale prices.

The costs of compensating affected customers and redistributing their accounts added pressure to the overall system.

## **What can I do if I am struggling with my bills?**

If you are having difficulty paying your energy bills there is help available. Our dedicated webpage is full of advice and support and can advise you on the steps best for you.

[www.orbitcustomerhub.org.uk/help-support/your-energy-our-support/](http://www.orbitcustomerhub.org.uk/help-support/your-energy-our-support/)

## **Why is Orbit only doing this now?**

Until relatively recently energy prices were much lower and made up a smaller part of your service charges. In addition, energy prices were less susceptible to sudden price rises. This meant there was less need, or benefit, to lock into longer-term contracts.

### **How can I have my say?**

We want to hear your views on our plan to seek Section 20 dispensation. You can complete our survey by Friday 20 June and one of our team will respond to any questions or concerns you raise.

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**APPENDIX 3  
TO APPLICANT'S STATEMENT OF CASE**

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17/07/2025

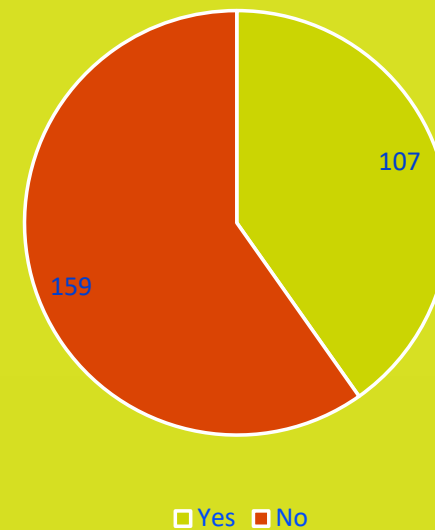


# Communal gas & electricity contracts section 20 consultation survey results



- 266 customers responded to the survey
- Of those, 107 were aware that communal gas and electricity contracts are renewed annually, with 159 not aware of this.

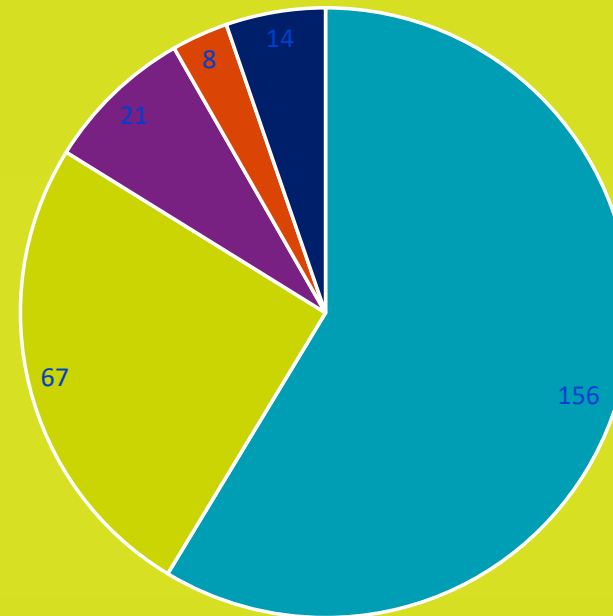
Before reading our letter, were you aware that communal gas and electricity contracts are renewed annually?





How strongly do you agree with the following statement: "Orbit should be allowed to agree longer-term contracts if it helps secure better value for customers."

- Most respondents strongly agreed with the statement that orbit should be allowed to agree longer term contracts if it helps secure better value for customers (59%)
- Only 14 (8%) of Responses disagreed with the statement to some extent.



■ Strongly Agree ■ Agree ■ Neutral ■ Disagree ■ Strongly Disagree

- When asked On a scale of 1–10, how comfortable do you feel about Orbit applying for a Section 20 dispensation? Customers scored an average of 7.4 with 161 scoring 8-10
- 123 Participants wanted to be followed up with directly on the back of completing the survey

