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interested parties

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20 December 2022

Dear Colleague

Last Resort Supply Payment Claim from Octopus

On 10 October 2022, Octopus submitted a claim for a Last Resort Supply Payment (LRSP) for Ofgem's consent under Supply Licence Standard Licence Condition (SLC) 9. Octopus is seeking to recover additional costs incurred in complying with a Last Resort Supply Direction¹ to act as Supplier of Last Resort (SoLR) to customers of the former Avro.

On 4 November 2022 Ofgem published a minded to position in relation to that claim for consultation.² Responses to this consultation and consultations on other SoLR claims can be found within this document.

In addition, we conducted internal assurance of our minded to position.

Decision to consent

After taking into consideration the consultation responses and the results of our internal assurance process, on 20 December 2022 Ofgem consented to Octopus making a LRSP claim of up to £37,242,570.58.

This letter is the notice of reasons for Ofgem's decision to consent to Octopus making a LRSP claim from relevant network operators. Our decision will allow Octopus to claim for costs relating to:

- Additional wholesale costs incurred as a result of commitments to supply energy to SoLR customers;
- protecting the credit balances owed to former customers of Avro;
- financing costs incurred on becoming a SoLR;
- other costs reasonably incurred on becoming a SoLR.

¹ [Direction](#)

² [Minded-to-position Consultation](#)

We have assessed this LRSP claim in accordance with our policy decision on the true-up process, published 21 September 2022³, and consistent with our published *Guidance on supplier of last resort and energy supply company administration orders*.⁴ In addition, in making this decision, we have had regard to Ofgem's principal objective of protecting the interests of current and future energy consumers⁵, the public sector equality duty⁶, relevant licence provisions, and the particular circumstances of the case.

Nothing in this decision should be taken as setting a precedent for any future claims, which would also be considered on their merits and on a case-by-case basis, taking into account all relevant circumstances.

An overview of Octopus' LRSP claim together with the reasons for decision with respect to this claim are set out below.

Background

The SoLR process

Electricity and gas supply is a competitive activity in Great Britain. While competition has the potential to bring many benefits to consumers, in a competitive market, companies that are not operating efficiently may fail. This applies as much in relation to the gas and electricity supply markets as it does to other markets. The failure of a supplier may affect a range of groups including its consumers, the wider market and other consumers. Ofgem has discretionary powers that enable it to address these consequences.

It is Ofgem's statutory duty to protect customers' interests when suppliers fail including their interests in the security of energy supply to them⁷. Under Supplier SLC 8 Ofgem can issue a Last Resort Supply Direction to direct any gas or electricity supplier to take over responsibility for a failed supplier's customers.

Generally suppliers are open to taking on the role of SoLR because they acquire a large number of new customers who may remain with them over the longer-term and allow the supplier to increase its margins. As a result, suppliers may compete to be appointed.

In considering which supplier to appoint as SoLR, Ofgem must be satisfied that the SoLR can supply additional customers while continuing to supply its existing customers and to fulfil its contractual obligations for the supply of gas or electricity⁸.

Ofgem's criteria for the selection of a SoLR are set out in its "Guidance on supplier of last resort and energy supply company administration orders"⁹ and our stated policy preference is to appoint a SoLR that has volunteered for the role. To understand the terms on which suppliers are willing to volunteer as SoLR, Ofgem requires potential SoLRs to provide information about a number of issues, including customer service, how the supplier would meet SoLR obligations, whether it would make any LRSP claim and, if so, for what categories of costs and with what upper limit. This is done by way of a Request for Information (RFI).

³ <https://www.ofgem.gov.uk/publications/decision-last-resort-levy-claims-true-process>

⁴ https://www.ofgem.gov.uk/system/files/docs/2016/10/solr_revised_guidance_final_21-10-2016.pdf

⁵ s4AA Gas Act 1986 and s3A Electricity Act 1989

⁶ Equality Act 2010 Part 11 Sections 149 to 157 [Equality Act 2010 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2010/154/part_11)

⁷ See section 4AA (1A) (b) Gas Act 1986 and section 3A (1A) (b) of the Electricity Act 1989

⁸ See Supplier SLC 8(1)(b)

⁹ [Supplier of Last Resort: Revised Guidance 2016 | Ofgem](#)

Once a Last Resort Supply Direction has been issued, the responses to the RFI become supplier commitments, which under Supplier SLC 8.3 the SoLR must take all reasonable steps to honour. Under Supplier SLC 8 a supplier must comply with a Last Resort Supply Direction, whether or not it volunteered for the SoLR role.

As part of its regulatory responsibilities Ofgem has discretion under Supplier SLC 9¹⁰ to determine the amount of compensation that a SoLR can recover for additional costs incurred as a result of complying with a Last Resort Supply Direction¹¹. Ofgem's subsequent exercise of that discretion cannot be limited by any response that a supplier makes to an RFI before a Last Resort Supply Direction is issued. SLC 9 makes clear that in deciding whether or not to approve a SoLR levy claim, Ofgem must consider what it considers to be '*appropriate in all the circumstances of the case*'. In making that decision, Ofgem's principal objective is to protect the interests of existing and future consumers and we are very mindful that all amounts consented under SoLR levy claims are paid for by customers.

It is well understood by suppliers that Ofgem must make complex regulatory choices about the allocation of risks and when a supplier has failed. It must do so having regard to the future operation of the market. In particular, Ofgem must balance the need to ensure that its approach to claims for a LRSP ensures that suppliers are not disincentivised from volunteering to become SoLRs while not creating a moral hazard by encouraging suppliers to make commitments on the basis that any losses subsequently incurred could be recovered by way of a LRSP. This is a complex balancing assessment carried out by Ofgem as regulator, having regard to its principal objective to protect consumers.

Failed Supplier event

On 26 September 2021, we appointed Octopus as the SoLR for Avro gas¹² and electricity¹³ customers, following its announcement that it had ceased trading. This followed an appointment process aimed at getting the best deal for consumers. We outlined the material factors behind our decision to appoint Octopus as the SoLR to those customers in our decision letter published on 23 June 2022¹⁴.

Last Resort Supply Payment

Under SLC 9.1, SoLRs are entitled, with Ofgem's consent, to make a claim for a Last Resort Supply Payment ("LRSP") from each Relevant Gas Transporter and Electricity Distribution Operator ("network operators").

SLC 9.4 provides that the total amount of the LRSP must not exceed the amount by which the total costs (including interest on working capital) reasonably incurred by the SoLR in supplying customers under the Last Resort Supply Direction and a reasonable profit plus any sums paid or debts assumed by the SoLR to compensate customers in respect of any customer credit balances plus any additional (actual or anticipated)

¹⁰ See in particular Supplier SLC 9.5 and 9.6

¹¹ A consent given by Ofgem under SLC 9 may be varied, amended or remade and may be made subject to conditions – see Supplier SLC 2.7.

¹² [Direction to Supply Octopus as Gas Supplier of the Last Resort](#)

¹³ [Direction to Appoint Octopus as Electricity Supplier of the Last Resort](#)

¹⁴ [Appointment of Octopus as Supplier of the Last Resort](#)

interest and finance costs associated with a financing arrangement approved under SLC 9.7C are greater than the total amounts recovered by the SoLR through charges for that supply.

SLC 9.6 makes clear that Ofgem may determine that an amount other than the one calculated by the SoLR is a more accurate calculation of the relevant amount and, in such cases, the amount specified by Ofgem must be treated as the relevant amount when the licensee submits its claim to each relevant electricity or gas network licensee in accordance with SLC 9.8.

LRSPs are paid for by the relevant network operators, who then recover the cost through charges to suppliers. SLC 38B of the Electricity Distribution Licence and Standard Special Condition A48 of the Gas Transportation Licence set out the details of this.

Multi-stage claims

During winter 2021/22 we introduced a number of changes to the process for making LRSP claims, which were designed to ensure that the SoLR process continues to protect consumers in the current market conditions. The changes included the temporary introduction of a faster, multiple-claims process whereby SoLRs are able to submit more than one claim in relation to each Last Resort Supply Direction.

This involves SoLRs submitting an 'initial claim' for costs faced in serving SoLR customers (typically wholesale commodity costs) in the period immediately after appointment. SoLRs may then follow this claim with a subsequent claim (or claims) for any additional and otherwise unrecoverable costs reasonably incurred under their SoLR Direction. We refer to these additional claims as 'true-up' claims for additional costs reasonably incurred during the relevant period. SoLRs entered into a 'True-up Agreement' with Ofgem to support the faster process. Initial claim consents, subsequent claims and true-up claims are conditional on SoLRs complying with the True-up Agreement. The true-up process is intended to reconcile suppliers' initial claims with actual costs incurred and determine any additional payments or repayments that should be made.

In line with our faster, multiple claims process, by December 2021 we had consented to SoLRs making initial levy claims totalling £1.83 billion. At the time, we set out that we would give further due consideration to a number of issues and consult with stakeholders before assessing any subsequent claims by SoLRs who submitted initial claims.

On 23 June 2022, we issued a consultation seeking views on our 'minded-to' positions on the fair approach to reflecting the costs suppliers faced in providing energy to customers after being appointed as a SoLR between September 2021 and December 2021. A decision document was published on the 21 September 2022¹⁵ that set out our policy decisions on the approaches SoLR should take with regards to these true-up claims. We applied these policies in order to reach our minded-to position on this claim, which we published for consultation on 4 November 2022.

¹⁵ <https://www.ofgem.gov.uk/sites/default/files/2022-09/Decision%20on%20the%20last%20resort%20levy%20claims%20true-up%20process.pdf>

Decision-making process

Under SLC 9.5, Ofgem must decide whether it is appropriate in all the circumstances of the case for the SoLR to make the claim notified to it in accordance with Standard Licence Condition 9.3. In making this decision Ofgem has considered evidence provided by Octopus, its own knowledge of the energy markets, and responses to consultation on the minded-to position on this claim.

In exercising this decision-making function Ofgem has had regard to the interests of current and future consumers of gas and electricity, and has considered the public sector equality duty.

Ofgem published a minded-to position on this claim and invited consultation responses. Octopus was offered the opportunity to meet with us to clarify aspects of the minded-to position during the consultation period. In reaching its decision Ofgem has taken into consideration any additional evidence provided by Octopus during the consultation period and any consultation responses received in relation to the published minded-to position.

In reaching its decision Ofgem carried out:

- a. A quantitative check of Octopus methodology for each cost item claimed. This included determining how each total cost item was calculated based on data sent to us by Octopus and ensuring these costs were in line with commitments Octopus made at the time of its SoLR appointment;
 - b. A true-up and cross check of any evidence that may result in a change to the initial claim made by the SoLR;
 - c. Undertaking validation of some assumptions with other data sources, where appropriate;
 - d. Review and assurance of the calculations made in the published minded-to position; and
 - e. A qualitative and quantitative assessment of the claim for costs related to wholesale costs, credit balances, financing and other costs in accordance with our criteria and methodology, set out below.
- **Additional:** whether the costs claimed are additional to the costs to the SoLR of existing customers. In addition, we consider whether these costs would have been expected at the time of the SoLR's bid and whether any commitments were given in relation to these costs in their competitive SoLR bid.
 - **Directly incurred as part of the SoLR role:** whether the costs were incurred as a result of taking on customers in an emergency situation as opposed to normal customer acquisition routes.
 - **Otherwise unrecoverable:** whether the SoLR could have recovered the costs through other means. It would not be appropriate for us to allow the SoLR to claim for costs it could have recovered – or reasonably be expected to recover – through the administration process or customer charges, for example.

- **Economic:** whether the SoLR had made all reasonable efforts to avoid the cost in the first instance or absorb the cost.

Overview of Octopus' claim

Octopus indicated at the time of our SoLR appointment process that it would not waive its right to make a claim for a LRSP for but that it would claim for the cost of wholesale, credit balances, financing costs and certain other costs.

The initial claim(s) were consented to on 17 December 2021. Consistent with the terms of that consent and the True-up Agreement between the SoLR and Ofgem, we have taken that claim into consideration in reaching our decision on this claim.

Summary of decision

Ofgem has consented to Octopus claiming a LRSP of up to £37,242,570.58 conditional on Octopus confirming that this claim is a Subsequent Levy Claim for the purposes of the True-up Agreement and that the terms of the True-up Agreement continue to apply to this and subsequent claims in respect of the Last Resort Supply Direction.

The reasons for the decision are set out below. This decision should not be taken as setting a precedent for any future claims, which would also be considered on their merits and on a case-by-case basis, taking into account all relevant circumstances.

Table 1: Summary table

Item	Cost	Initial Claim Approved	True-Up claim (this claim)	Minded-to deductions on this claim	Decision on deductions for this claim	Amount approved for this claim
1	Wholesale	£626,836,379.44	£17,828,672.64	£28,308,038.06	£27,643,956.86	-£9,815,284.22
2	Credit balances	£25,765,261.52	£13,093,149.42	£42,069.00	£42,069.00	£13,051,080.42
3	Other costs	£1,116,077.62	£27,824,142.96	£9,026,728.28	£9,026,728.28	£18,797,414.68
4	Working capital	£27,665,711.96	£19,835,898.52	£0	£4,626,538.82	£15,209,359.70
					Total:	£37,242,570.58

General points raised in consultation

Summary

We received eight responses to our minded-to positions, with seven responses from SoLRs and one from a consumer group. We received wide-ranging support and recognition for working efficiently throughout the assessment period to ensure each LRSP claim was given due consideration whilst maintaining engagement stakeholders. We note several general points made by suppliers on the wider SoLR levy process, including the potential for further claims, and concerns regarding the policy decision to limit the additional, otherwise unrecoverable, wholesale costs that SoLRs can claim to

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the cost of energy delivered by the end of March 2022, or within six months of being appointed, whichever is later, the latter of which we have responded to in the wholesale section of this document. s. We have expanded below upon each general issue raised in consultation responses to the minded to position.

Changes in approach during consultation

Several suppliers claimed in their consultation responses that we had changed our approach during the process, including one supplier who believed that Ofgem had disallowed sums previously agreed in principle. Ofgem made it clear throughout the entirety of the claims process that we would assess each claim on a case-by-case basis, considering the evidence and circumstances of each case before making a decision. Ofgem could not have made a decision on claims before considering all the information provided by SoLRs and any responses to our consultation on our minded-to positions. This was clear from our minded-to positions, which explained that the purpose of the consultation letter was to provide interested parties with an opportunity to make any representations to us, ahead of us making our final decision and that we would take such representations into account when reaching our final decision, making changes to our minded to position if considered appropriate. We also made it clear that our decision might reflect changes resulting from an additional assurance process.

This applies to all LRSP claims made by SoLRs. Ofgem has exercised its statutory discretion to ensure all decisions are fair and reasonable, taking into account the statutory framework, the relevant licence conditions, all the relevant circumstances and no irrelevant factors. The reasons for our decisions with respect to this claim are set out in subsequent sections of this letter. This should not be taken as setting a precedent for any future claims, which would also be considered on their merits and on a case-by-case basis, taking into account all the relevant circumstances of the particular case.

Volunteering to be SoLR in the future

Several suppliers noted that, due to our positions on certain elements of their claims, they may be less willing to volunteer as SoLR in the future. We note suppliers' concerns. However, Ofgem must make complex regulatory choices about the allocation of risks and costs in the event that a supplier has failed and must do so having regard to the future operation of the market¹⁶.

In particular, Ofgem must balance the need to ensure that its approach to claims for a LRSP ensures that suppliers are not disincentivised from responding to the SoLR RFI to become SoLRs, whilst not creating a moral hazard, namely, circumstances where suppliers do not respond appropriately or take excessive risks when responding, knowing that any losses subsequently incurred could be recovered by way of a LRSP. This is a complex balancing assessment carried out by Ofgem as regulator, having regard to its principal objective to protect consumers¹⁷.

We are confident that the process we have undertaken for assessment of these claims has been appropriate, in particular to protect consumers during the current cost of living crisis. In exercising its statutory discretion Ofgem has ensured all decisions are fair and

¹⁶ see *R (on the application of Scottish Power Energy Management Ltd v Gas and Electricity Markets Authority* [2005] EWHC 2324 (Admin) paragraph 97.

¹⁷ see *R (on the application of Scottish Power Energy Management Ltd v Gas and Electricity Markets Authority* [2005] EWHC 2324 (Admin) paragraph 97.

reasonable, taking into account the statutory framework, the relevant licence conditions, and to be reasonable in all the circumstances.

Lack of sufficient evidence

One supplier noted that they were surprised by Ofgem's statements regarding a lack of sufficient evidence being provided to support claims. Where we have identified insufficient evidence, teams have worked to engage with SoLRs throughout the process to raise issues and request further information where appropriate to ensure that sufficient evidence is provided for us to consider. We are grateful for all SoLRs continuing engagement in this regard. As noted in the policy decision we published in September 2022, the consultation provided interested parties with an opportunity to make representations to us, ahead of us making our final decision. During the consultation period we engaged with SoLRs that had not submitted enough evidence initially, giving them an opportunity to provide more and better evidence for Ofgem to consider. Ofgem has carefully scrutinised the evidence provided by SoLRs in relation to each claim and where it considers the evidence provided to be insufficient, has only allowed claims if additional evidence has been provided which justifies that the costs claimed (or an element of those costs) should be approved. We believe that this was a reasonable approach to balancing the need for rigorous and robust evidence, whilst recognising the need for suppliers to be compensated for costs meeting our criteria described above as a result of acting as a SoLR.

External Assurance

The consumer group restated the view, previously put in their response to our September policy consultation, that external assurance of all LRSP claim is required. Due to the scale of the LRSP claims, they do not believe that an internal audit is sufficient. We have decided to apply the policy decision published in September and not to require external auditing of these LRSP claims. This is because we consider that adding a requirement for external audit at this stage would be unreasonable. We will, however, consider this point ahead of any future LRSP claims.

Further claims

Several suppliers voiced their view that further LRSP claims should be permitted, generally to allow further reconciliation of wholesale costs incurred. The possibility of further claims was echoed by the consumer group, which considered that further claims may be required to ensure that SoLRs are not overcompensated. However, the consumer group also pointed to the clear commercial incentive SoLRs have to use any further claims to argue that they have been undercompensated.

As part of that faster multiple-claim levy process, each of the SoLRs entered into a true-up deed with us. Under the True-up Agreement between Octopus and Ofgem, Subsequent Levy Claims may be made following the Initial Levy Claim and before a final True-up claim. As set out in the consultation for this claim, we were minded to consider this claim to be a Subsequent Levy Claim for the purposes of the True-up Agreement.

Following the consultation on this claim, we consider that this remains a reasonable approach. Accordingly, Ofgem has made its consent to this LRSP claim conditional on confirmation by Octopus that this claim is a Subsequent Levy Claim for the purposes of the True-up Agreement and that the terms of the True-up Agreement continue to apply. This includes an obligation to submit true-up information as requested and to refund any amounts by which Octopus has been overcompensated by a LRSP.

This would mean that the final True-up claim under the True-up Agreement will be made next year or later. This will allow additional time for suppliers to provide additional

supporting evidence for the limited instances where we have specified that our decision on certain costs is not final. In addition, this will allow additional time to make the final True-Up decision to ensure that the benefit of any monies recovered from the administrators of the failed suppliers can be utilised for consumers' benefit.

For the avoidance of doubt, unless we have specified otherwise in respect of certain costs suppliers are seeking to claim, our decision on each Subsequent Levy Claim is a final decision, and we do not expect suppliers to seek to revisit those final decisions.

We have made clear in this decision where we consider that we have not yet made a final decision on a particular element of this subsequent claim; and/or where we expect to make a revision to the amounts approved here under the True Up Deed (or amended or otherwise varied consent), especially should additional evidence be forthcoming or once additional validations have taken place.

Status of SoLR RFI responses

We note that when suppliers respond to an RFI to become a SoLR, they may include certain requests in their response to the RFI and ask us to consider them, for example the recovery of costs over a longer period. However, while we use the information provided in responses to the information request issued at the time of the SoLR appointment to inform our decision on which supplier to appoint, this should not be seen as an endorsement of any particular requests that a supplier included in their RFI response. The supply licences provide that the SoLR would be able to make a claim to recover its reasonable incremental costs incurred in taking on the new customers where those costs are additional to the total amounts recovered from the customers for the supply where it has not waived its right to do so. We cannot give assurance, prior to the appointment of the SoLR, as to what costs can be claimed for, or over what period. The onus is on the SoLR to submit a claim that is supported by evidence and demonstrates why the amounts claimed meet the criteria for SoLR levy claims and should be allowed. Ofgem will then take all relevant information into account in deciding on whether to consent to any claim, or not, given all the circumstances of the case.

Reasons for decision

General

Ofgem's general preference is for a SoLR not to make a claim for a LRSP for costs it has incurred carrying out its role. However, we do recognise that circumstances may exist which would justify a departure from this general rule and that the costs of this claim will ultimately be paid by consumers. In our assessment of the claim, consideration has been given to the interests of current and future consumers, particularly those in more vulnerable circumstances.

Historically, some SoLRs have waived their right to make that claim through the SoLR processes. Recent SoLRs have not waived those rights as the recent costs associated with becoming a Supplier of Last Resort have been significant. In the particular circumstances of this claim, and in line with the relevant licence conditions, we consider it appropriate to allow for the additional and otherwise unrecoverable costs summarised in Table 1 to be recovered via a LRSP.

In granting consent for this claim, the net costs incurred by the supplier acting as a SoLR in an emergency situation will be spread across all consumers, rather than borne solely by the SoLR and its customers. We consider it to be in the interest of current and future

consumers to allow this claim to ensure that the consumer safety net provided by the SoLR process remains viable into the future, and the stability of the retail energy market is not further undermined to the detriment of all consumers.

Condition

Ofgem has made its consent to this LRSP claim conditional on confirmation by Octopus that this claim is Subsequent Levy Claim for the purposes of the True-up Agreement between Octopus and Ofgem and that the terms of the True-up Agreement continue to apply to this and subsequent claims in respect of the Last Resort Supply Direction. We have made this decision because it has the effect of allowing additional time to finalise claims for LRSPs following multiple Last Resort Supply Directions in difficult market conditions. We consider that it will enable suppliers to provide additional supporting evidence for costs that have not yet been approved by Ofgem, as well as allowing Ofgem to ensure the benefit of any monies recovered from the administrators of the failed suppliers can be utilised for consumers' benefit.

Cost category: Wholesale

In our published decision on the claims true-up process¹⁸ we explained that all SoLRs appointed in the period from September – December 2021 should be able to recover additional and otherwise unrecoverable wholesale costs reasonably incurred as part of the SoLR role relating to energy delivered up until 31 March 2022 or until the end of their 6-month SoLR direction, whichever is later. This has been necessary largely as a result of a period of extreme wholesale energy price volatility and record high prices, resulting in wholesale direct fuel costs often far exceeding those assumed in the default tariff price cap over the period. The bulk of these costs were considered in the December 2021 initial claim, by which time most initial wholesale energy purchases had taken place.

In this assessment we have analysed the information provided by suppliers, to:

- Assess whether costs being claimed for are consistent with the criteria set out earlier in this letter and our September 2022 Decision on the true up process
- Assess the reasonableness of assumptions made and decisions taken, including for example demand forecasting and hedging strategies, against the criteria we consider in assessing claims
- Assess the specifics of the reported wholesale market trades, including trade date, contract type, price, and volume. -Specifically, we have considered whether trade prices are consistent with market benchmarks and price assessments
- Assess cost per MWh and cost per customer to facilitate comparisons between claims
- Assess the amounts deemed to have been recovered from customer charges, including the applicability of various price cap allowances, and hence offset against the wholesale costs incurred

¹⁸ [Decision on last resort levy claims true-up process | Ofgem](#)

Decision

The Avro true-up claim submitted on 13 October 2022 includes £17,828,672.64 in wholesale costs. Following the above assessments, and having considered the responses received to our minded to position consultation, as well as carrying out further assurance of our own calculations. We consider that the claimed amount is not fully consistent with our criteria and we have decided to consent to the claim with the following deductions:

- A deduction of £9,880,652.15 has been made for Avro as part of our final decision for the revenue received from SoLR customers in respect of the Backwardation allowances in the price cap. Our final decision is adjusted from our minded to position for the reasons set out in the following sections.
- A deduction of £9,672,651.80 has been made for Avro as part of our final decision for the revenue received from SoLR customers in respect of the Contracts for Difference (CfD) Interim Levy Rate (ILR) allowance in the price cap in cap period 7. Our final decision is unchanged from our minded to position, other than a small adjustment to reflect rounding.
- A deduction of £8,090,652.91 has been made for Avro as part of our final decision for the revenue received from SoLR customers in respect of the retrospective shaping allowances in the price cap. Our final decision is unchanged from our minded-to position, other than a small adjustment for rounding. It continues to reflect the entire £12 per customer allowance for the reasons set out in the relevant section below.

The final total deduction for Avro is £27,643,956.86, which is £664,081.20 lower than the proposed deduction of £28,308,038.06 in the minded-to decision. This results in a net wholesale true-up claim of -£9,815,284.22, as opposed to -£10,479,365.42 set out in the minded-to decision. When accounting for the initial claims made in December 2021, the total wholesale costs approved are £617,021,095.22, as opposed to £616,357,014.02 set out in the minded-to decision.

Table 2: Summary of wholesale costs

Item	Cost	Initial Claim	True-up claim	Deduction category	Deduction amount (minded-to)	Deduction amount (final decision)	Minded-to position on claim	Final position on claim
1	Wholesale	£626,836,379.44	£17,828,672.64	Backwardation	£10,519,132.77	£9,880,652.15		
				Contracts for Difference	£9,666,455.11	£9,672,651.80		
				Retrospective shaping allowance	£8,122,450.18	£8,090,652.91		
							- £10,479,365.42	- £9,815,284.22

Note: We are unable to calculate the proportion of the wholesale claim made up of backwardation, CfD and retrospective shaping. As such, we have shown the deductions above in relation to the overall wholesale claim.

Backwardation Allowances

Summary of minded to position

In February 2022 Ofgem introduced a retrospective allowance into the default tariff cap to allow suppliers to recover the systematic and unrecoverable backwardation cost for suppliers, beyond the normal basis risk inherent in the cap. An amount of £8 per customer (at typical consumption) was included within the cap for the year starting 1 April 2022, and a further allowance of £6 per customer was introduced in August 2022, to be recovered in the year from 1 October 2022.

In our minded to decision, the relevant backwardation deduction for each supplier was based on our best view (given the information submitted by the supplier as part of its claim) of:

- A) the number of SoLR customers that remained with that supplier as of the end of winter 2021/22 and
- B) the annualised demand of those customers.

We noted that we preferred this to an approach based on suppliers' own forecasts of their SoLR customers' demand in the period from 1 April 2022, because the latter approach would result in deductions that are dependent on suppliers' forecasts of future customer numbers which have proved to be highly uncertain and prone to error in this unprecedented time for the market (as seen by previous 'unexpected SVT demand' allowances). We preferred it to an approach based on the number of SoLR customers at the time of appointment, because that approach would not account for the fact that

some SoLR customers may have since switched to fixed tariffs or other suppliers which did not take on any SoLR customers in winter 2021/22.

In relation to the standardised backwardation deduction, three suppliers that responded to our consultation confirmed that they understood and did not oppose the rationale for making this deduction in principle. Respondents raised challenges regarding the specific demand-base used, suggesting that this would overstate the revenue that would be recovered under the backwardation allowance. One supplier questioned whether the deduction was consistent with Ofgem's decision not to allow claims for costs relating to supply after the six-month direction period.

Summary of Consultation Responses

In relation to the standardised backwardation deduction, three suppliers that responded to our consultation confirmed that they understood and did not oppose the rationale for making this deduction in principle. Respondents raised challenges regarding the specific demand-base used, suggesting that this would overstate the revenue that would be recovered under the backwardation allowance. One supplier questioned whether the deduction was consistent with Ofgem's decision not to allow claims for costs relating to supply after the six-month direction period.

In response to our consultation, Octopus told us that having spent time carefully reviewing the calculations, it agreed with the deductions made to reflect the backwardation allowances.

Reasons for Decision

We have decided to maintain the deduction for backwardation allowances from Avro's claim, for the reasons set out in our minded-to position.

Subsequent to publishing the minded-to letter, Ofgem has made an adjustment to ensure that the deductions relating to backwardation and retrospective shaping allowance for Avro match the intent of our policy position.

In particular, in our minded-to position, we calculated the amount to be disallowed in relation to the backwardation and retrospective shaping allowances based on our best view of annualised demand, which was used to estimate the amount recovered from SoLR customers under these allowances. For Avro we identified through internal assurance checks that we had inadvertently based our estimate of annual demand on outturn demand estimates for winter 2021/22, rather than Octopus' view of seasonally normal demand for the same period. We have therefore updated our calculations to reflect Avro's estimates of seasonally normal demand to bring the approach in line with our policy intent, and to ensure consistency with how these deductions have been calculated for other SoLRs.

We note that, in calculating the backwardation deduction for the minded-to decision, Ofgem relied on inputs which were rounded to different numbers of decimal places. For consistency, we have for our final decision used unrounded inputs, as they appear in the relevant workbook submitted by suppliers alongside their claim, or annex to the default tariff cap. This results in small adjustments to backwardation deductions for all claims.

Finally, we have decided that it will be open to SoLRs to submit a further claim in 2023 in relation to the backwardation deduction if they consider that new evidence exists to support such a claim. We note that an important consideration in assessing any such claim will be the extent to which it is appropriate to base the amount to be deducted on outturn demand, rather than seasonally normal demand (given the potential inconsistency with how costs for winter 2021/22 have been treated).

CfD Allowances

Summary of minded to position

The default tariff cap relating to electricity customers includes an allowance for costs incurred in relation to the CfD scheme, which is a government scheme aimed at supporting low carbon electricity generation. The charges that suppliers face under the CfD scheme depend on wholesale electricity prices, with higher prices resulting in lower costs for suppliers (all else equal). The allowance included in the cap is based on Low Carbon Contract Company (LCCC) forecasts of the relevant charges as they exist prior to the cap being set,² which are in turn based on forward prices observed at that time of the forecast.

The increases in wholesale prices which followed the cap for winter 2021/22 being set in August 2021 led to SoLRs paying prices for wholesale electricity for the customers of the failed suppliers which were well in excess of the direct fuel allowances included in the cap. However, increases in wholesale electricity prices also resulted in CfD costs for those customers that were significantly lower than the relevant allowance in the cap.

As we set out in our February 2022 price cap decision on the potential impact of increased wholesale volatility on the default tariff cap, for non-SoLR customers, this benefit was not realised in most cases, as suppliers had hedged their CfD risk earlier in 2021, when wholesale prices were lower. However, we consider that this is unlikely to apply to SoLR customers. This is because, where a supplier hedged their CfD exposure for SoLR customers, this would have been at much higher wholesale prices given the timing of the SoLRs, locking in a lower CfD cost than included in the cap. And where a supplier did not hedge, they would have realised the outturn CfD cost – which given high Day Ahead wholesale prices would have been a net payment back to the SoLR in question through the CfD scheme.

To avoid SoLRs over-recovering in relation to wholesale costs of their SoLR customers, we were therefore minded to deduct an amount from claims equivalent to the demand-weighted interim levy rate component of the default tariff cap for period 7 multiplied by the volume of electricity being claimed for, on the basis that the revenue generated under the CfD allowance would have offset the wholesale costs incurred by suppliers.

Summary of Consultation Responses

In relation to the standardised CfD deduction, three suppliers that responded to our consultation confirmed that they understood and did not oppose the rationale for making this deduction, and one supplier did not comment on this deduction. Some respondents

raised challenges at the demand-base used. One supplier questioned if the CfD deduction was consistent with the rest of the price cap, and that Ofgem were being selective about deductions made when some elements of the price cap may adversely affect suppliers.

In response to our consultation, Octopus told us that having spent time carefully reviewing the calculations, it agreed with the deductions made to reflect the CfD allowances.

Reasons for Decision

We have decided to maintain the deduction for CfD allowances from Avro's claim, for the reasons set out in our minded-to position.

Finally, we note that in calculating the CfD deduction for the minded-to decision, Ofgem relied on inputs which were rounded to different numbers of decimal places. For consistency and greater accuracy, we have for our final decision used unrounded inputs, as they appear in the relevant annex to the default tariff cap. This results in small adjustments to the CfD deductions for all claims.

Retrospective shaping allowance

In our minded to decision, we noted that elements of shaping were included in the claim by Octopus. Ofgem stated in our policy decision in September 2022 that, to avoid overcompensating SoLRs through the levy, any SoLR seeking to claim for further incremental shaping and imbalance costs must demonstrate that the costs for their SoLR customers were more than those faced by their non-SoLR customers.¹⁹

Based on our checks of the data submitted, and a comparison with the alternative approach of relying only on the shaping allowances in the cap rather than actual short-term shaping trades, our view was that the approach taken by Octopus showed that the shaping costs it had incurred for the SoLR customers were below those allowed for in the shaping allowance. As this did not represent 'further incremental shaping and imbalance costs' above the allowances, and aligned with our criteria for assessing claims (in particular the criteria that SoLRs should make all reasonable efforts to avoid or absorb any costs that are being claimed for), we set out our minded-to decision to accept this aspect of the claim.

In our minded to position we noted that as shaping costs were included in the claim submitted by Octopus, the additional wholesale allowances which were included in the price cap for winter 2021/22 were rightly accounted for and offset in Octopus' claim. However, Octopus' claim did not account for the retrospective shaping allowance that was introduced in February 2022 to reflect costs incurred in winter 2021/22, with a value of £12 per electricity customer (at typical consumption), and recovered in the year starting 1 April 2022.

Because this retrospective allowance would be recovered from all customers, SoLR and non-SoLR, we considered that the revenues collected under it should be offset against any claims made by SoLRs in relation to the costs of shaping and imbalance which we

¹⁹ [Decision on last resort levy claims true-up process | Ofgem](#)

were otherwise minded to allow, and we deducted an amount from Octopus' claim to reflect this.

To calculate the appropriate amount to deduct, we used our best estimate (as with backwardation) of the remaining SoLR customer accounts as of the end of winter 2021/22, combined with an estimate of annualised demand for these customers, whilst adjusting the price to account for line losses.

Summary of Consultation Responses

In response to our consultation Octopus told us that it only partially agreed with the proposed deduction. In particular, it told us that only part of the retrospective shaping allowance should be offset from its claim. This is because, while its claim included shaping costs, Octopus had not claimed for costs relating to re-hedging day ahead to reflect demand forecasts, imbalance or transaction costs. It said that the costs of these other elements had also increased during the period. Based on the percentage weightings of the different categories of cost making up the wholesale allowance in the original price cap methodology,²⁰ it therefore submitted that the £11.54 deduction per customer should be reduced to £7.94.

Reasons for Decision

We have decided to maintain a deduction from Octopus' claim such that it reflects the full amount of the retrospective shaping allowance that was introduced in February 2022. This is because having considered the points raised by Octopus, we do not consider any basis exists for breaking down the retrospective shaping allowance into parts, as proposed by Octopus.

In particular, no such breakdown was provided within the February 2022 decision (with the exception of transaction costs, which were discussed separately within that decision, suggesting that they were not included within the £12 allowance). The categories referred to in Octopus' response relate to the breakdown of the shaping allowance included in the original wholesale allowance in the cap, as published in Ofgem's 2018 decision introducing the default tariff cap. We are not aware of any particular reason to expect the same breakdown to apply to the specific conditions of winter 2021/22 which led to suppliers incurring shaping costs that were on average higher than those included in the price cap.

We reviewed the submissions by suppliers which informed the level of the £12 retrospective shaping allowance. We found that most suppliers did not break down costs into different categories in their submissions. For those that did, a large majority of the costs that were reported related to shaping rather than imbalance.

We noted that the categories identified by Octopus – imbalance and rehedgeing for weather effects – could result in either a cost or benefit to suppliers, depending on how demand out-turned relative to expectations. No evidence was provided by Octopus indicating that a cost had been incurred in this instance.

²⁰ See [Default tariff cap - Annex 2](#), tab "3a Allowances"

We note that in calculating the deduction for the retrospective shaping allowance in the minded-to decision, Ofgem relied on inputs which were rounded to different numbers of decimal places. For consistency, we have for our final decision used unrounded inputs, as they appear in the relevant workbook submitted by the supplier alongside its claim. This results in a small adjustment to the deduction for retrospective shaping allowance in the claim compared to the value set out in the minded-to position.

Finally, as we have described above in the context of the backwardation deduction, it will be open to Octopus to submit a further claim in 2023 in relation to the retrospective shaping allowance deduction if it considers that new evidence exists to support such a claim.

Wholesale claim on a per customer basis

In our minded-to letter, we set out the total amount that Octopus was claiming in relation to the wholesale costs incurred in relation to its appointment as the SoLR for Avro. In response, one supplier submitted that the wholesale element of Octopus' claim is significantly higher on average per customer than costs claimed by other suppliers under the same category and urged Ofgem to further scrutinise the claim.

Our own analysis suggests that Octopus' wholesale claim is high on a cost per customer basis, but not an outlier. We note that claims vary significantly across SoLRs based on various factors, including the level wholesale prices when the SoLR was appointed and the energy requirements of the failed suppliers' customers were hedged, as well as the energy usage of the customers of the failed suppliers. Following our assessment, we are content that Octopus' claim meets our criteria and is reflective of the costs incurred in purchasing energy for the customers of Avro (subject to the deductions described above).

Cost category: Credit balances

Under SLC 9.4(b) a SoLR can claim 'any sums paid or debts assumed by the licensee to compensate any Customer in respect of any Customer Credit Balances'.

Decision

Octopus claimed £13,093,149.42 in compensation to ex-customers of Avro for their credit balances. We consider that the claimed amount is consistent with our criteria. We have consented to Octopus claiming £13,051,080.42 for sums paid to compensate customers for credit balances, with a deduction of £42,069.00 for uncashed cheques.

Table 3: Summary of claims and decision for credit balances

Item	Cost	Initial Claim	This claim	Minded-to deduction	Decision on deduction	Decision on this claim

2	Credit Balances	£25,765,261.52	£13,093,149.42	£42,069.00	£42,069.00	£13,051,080.42
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Summary of minded-to position

Octopus requested our consent to claim £13,093,149.42 through the LRSP for the cost of refunding credit balances of customers and former customers held at the time the Avro direction was issued.

In our minded-to-position we noted that SoLR could claim sums paid or debts assumed to compensate customers of the failed supplier in respect of customer credit balances.

We were minded-to not allow claims for the value of uncashed cheques where the SoLR had compensated customers for credit balances by sending cheques. In our minded-to position we explained that this was because we did not consider that it would be appropriate to allow SoLRs to claim for closed account credit balance cheques until the point that they are actually cashed for the following reasons:

- To avoid consumers bearing the cost of compensation for credit balances never in fact received by customers of the failed supplier.
- To ensure that the SoLR does not profit from a situation where some credit balance cheques are never presented; and
- Noting that a future LRSP claim can be made so that Octopus can recover the cost of any credit balance cheques presented after the cut off point for the current claim.

In our minded-to-position we considered whether the amount Octopus is seeking to claim for credit balances is otherwise unrecoverable; it may still be the case that Octopus is able to recover some of this claimed amount through the ongoing administration process for Avro to which Octopus has, in accordance with the requirements of the LRSP process, submitted a subrogated creditor claim for the sums paid to compensate customers for credit balances. In our minded-to-position we noted that, as we propose to make our decision on the claim ahead of the conclusion of the liquidation process, the timescale of which is uncertain, we were minded-to approve this element of the claim, subject to the outcome of the Avro liquidation process.

Summary of consultation responses

We received one stakeholder response from British Gas to our minded-to-position on credit balances. British Gas stated that it supported our stance of allowing all credit balances refunded to customers to be reclaimed via the levy. It also stated that it supported the pragmatic approach for uncashed cheques that will allow it to claim any issued cheques that are cashed by customers in the future.

Reasons for decision:

Octopus requested our consent to recover £13,093,149.42 for the cost of refunding credit balances to some former customers of Avro. In our minded-to position, Ofgem

stated that in principle we are minded-to allow the claim, with deduction for the value uncashed cheques. We have considered the consultation responses, noting that no objections were raised to the approach proposed on uncashed cheques, and one supplier noted their support for this approach. We are satisfied that the claim is consistent with our criteria and have decided to consent to a LRSP claim of £13,051,080.42 for sums paid to compensate customers for credit balances, with a deduction of £42,069.00 for uncashed cheques.

Cost category: Working capital

The policy decision on last resort levy claims true-up process²¹ explained what would be required for SoLRs to claim for financing or working capital costs incurred. The policy decision also set out the requirement for suppliers to demonstrate, with evidence, that their financing cost claim delivers value for money for consumers and is the best possible rate they could achieve given their individual circumstances.

Decision:

Octopus claimed £21,178,747.12 for the cost of working capital, followed by a revised claim totalling £19,835,898.52. The calculation includes costs incurred to reflect actual costs incurred and the timescale for the recovery of those costs as set out in our published policy decision.

We consider that the claimed amount is not consistent with our criteria.

We have consented to Octopus claiming up to £15,209,359.70, which we consider to be a more accurate calculation of the amount of costs for working capital to be paid as part of a LRSP claim.

Table 4: Summary of claims and decision for working capital

Item	Cost	Initial Claim	True-up claim	Revised true-up	Minded-to deductions	Decision on deductions	Decision on this claim
3	Working capital	£27,665,711.96	£21,178,747.12	£19,835,898.52	£0.00	£4,626,538.82	£15,209,359.70

Summary of minded-to position

Octopus submitted a claim for the cost of working capital amounting to £15,209,359.70. It submitted evidence that detailed its expenditure relevant to its claim for working capital costs, as well as justification for why it had applied the interest rate that it had. Based upon our assessment of the submitted evidence against our overall criteria, which included reviewing commitments made when Octopus was appointed as SoLR and comparing the rate against all other claims submitted to Ofgem on 7 October 2022, we stated in our minded-to letter that we were not satisfied that Octopus had provided

²¹ <https://www.ofgem.gov.uk/sites/default/files/2022-09/Decision%20on%20the%20last%20resort%20levy%20claims%20true-up%20process.pdf>

adequate evidence to demonstrate the rate of interest they faced in respect of working capital costs is reasonable.

We arrived at this conclusion on the basis of comparing the rates secured for initial claims and the overall market movements since the submission of initial claims.

As noted in our minded-to letter, our decision on the reasonableness of the rate applied by Octopus applies in this case, and for this purpose only, and means that we may take a different view as to what is a reasonable rate, or approach to, financing for other purposes or in other cases.

Resubmission of claim for working capital

In our minded-to letter we stated that working capital may only be claimed on costs that meet our criteria for assessing claims²². In light of our minded-to position to make deductions to other cost categories and/or to make deductions where further evidence is not forthcoming, the total amount of working capital claimed for of £21,178,747.12 was subject to Octopus resubmitting a revised working capital claim taking into account the deductions in our minded-to position. In order to fully assess the working capital aspect of the claim, we therefore required Octopus to recalculate the working capital element of their claim using, as costs incurred, the amounts we stated we were minded-to consent to in our minded-to letter.

In our minded-to letter we also stated our expectation that Octopus should follow the same methodology, and apply the same rate, as their 7th October submission, and to clearly set out which costs have been reduced or removed. We also asked that Octopus submitted their full calculations to allow us to undertake these calculations on working capital unilaterally for our decision, so that we can work out what their working capital allowance should be, without having to revert to Octopus. In order to arrive at a decision on working capital costs we required that suppliers submit to us their calculations that we could unilaterally validate and replicate and amend for final decision, without having to revert to the supplier. In the Minded-to Position process we had been unable to replicate what suppliers had done on working capital, and could not deduct the disallowances made through the minded-to position.

In our minded-to letters we requested that the SoLRs provide further evidence which would allow us to effectively assess the costs claimed against our criteria. With the exception of one supplier, all SoLRs provided the evidence required from them in order to support their working capital claims. We thank suppliers for being so engaged with Ofgem during the consultation period.

Summary of consultation responses

Octopus did not submit a formal response to Ofgem as part of the minded-to position consultation, however they did engage in bilateral meetings with Ofgem during the consultation period and submitted further evidence for Ofgem to consider.

²² <https://www.ofgem.gov.uk/sites/default/files/2022-11/SOLR%20Levy%20true-up%20Minded-to%20position%20-%20Octopus-Avro.pdf>

On 30 November Octopus provided confirmation from a company director that the interest rate charged to Octopus Energy Limited was consistent with the rate that they had submitted as part of their True Up claim.

Octopus sought clarification from Ofgem on the likely amount that would be determined through the claims process, which would help inform their discussions on refinancing. Ofgem responded to Octopus on 7th December 2022 noting that we would be unable to provide this information to Octopus ahead of the decision publication in mid-December.

Reasons for decision:

Octopus provided confirmation from a company director of the interest rate charged to Octopus Energy Limited for the relevant period by its parent company.

Having considered the information provided to us by Octopus through the consultation period, we do not consider the rate of interest in respect of working capital costs is reasonable when compared against the range of rates secured for initial claims and the overall market movements since the submission of initial claims. As noted in our September policy decision²³, Ofgem set out that we would require suppliers to demonstrate that their financing cost claim delivered value for money for consumers. We do not believe that the rate proposed by Octopus represents value for money, as they have not demonstrated the steps that were taken by Octopus to ensure that the rate secured delivers value for money to customers and was the best possible rate they could have achieved, given their individual circumstances.

In arriving at our decision on whether the rate submitted by Octopus demonstrated that their financing cost claim delivered value for money for consumers, and considering the evidence submitted to us as part of the consultation process, we have undertaken the following approach. While Octopus have noted that they secured financing through parent company arrangements, we have looked at whether the rate secured through these arrangements could have been improved had the supplier gone to market. In order to undertake this assessment, we looked at the range of rates approved in the initial claims, and the market movements since the initial claims decision. No further information provided by Octopus following our minded-to position has set out steps that they have taken to look at better market rate options or submitted what those rates would have been.

Our decision is therefore to provisionally allow the claim for working capital costs, but with a different rate applied by us, which we have redacted for confidentiality purposes. We consider this to represent a more reasonable rate to apply, taking into account our assessment of the likely cost of financing, and broader market conditions. However, this does not represent our final decision on working capital costs in this case, and we will be willing to consider additional evidence from Octopus on the rate available to them and the steps taken by them to explore better market rate options. In the event that Octopus is able to provide additional evidence on the rate available to them, and the steps taken by them to explore better market rate options, we will consider that evidence and whether it is consistent with the criteria we set out in our September policy decision in a future True Up claim. We therefore expect to make our final decision on the

²³ Page 21: <https://www.ofgem.gov.uk/sites/default/files/2022-09/Decision%20on%20the%20last%20resort%20levy%20claims%20true-up%20process.pdf>

value of working capital to be allowed to Octopus in relation to acting as SoLR for Avro next year, or in following years.

Our decision on the reasonableness of the rate applied by Octopus applies in this case, and for this purpose only, and means that we may take a different view as to what is a reasonable rate, or approach to, financing for other purposes or in other cases.

In the event that Octopus secures a better rate through re-financing, we would expect that this benefit falls within the definition of Excess under the True Up Agreement, and that Octopus would submit a subsequent claim through the True Up process to repay the excess amount benefitted from as a result of a better financing rate. In the event that Octopus is unable to secure the rate determined through our decision in this letter, we would be open to receiving a subsequent claim from Octopus for the cost difference incurred, which we would then consider based on the evidence submitted by Octopus at the time of that claim and whether that evidence is consistent with the criteria we have set out in our September policy decision.

Cost category: "Other costs"

We understand that other costs may have been incurred when undertaking activities as part of becoming a SoLR (for example, legal fees). We have used the criteria set out in our published policy decision to assess whether these costs are appropriate and should be recovered through a LRSP. The other costs that Octopus has claimed are detailed below.

Octopus claimed £27,824,142.96 in other costs incurred as a result of complying with the Last Resort Supply Direction. We consider that the claimed amount is not consistent with our criteria.

We have consented to Octopus claiming a up to £18,797,414.68 which we consider to be a more accurate calculation of the amount of other costs to be paid as part of a LRSP claim.

Table 5: Summary of claims and decision for other costs

Item	Cost	Initial Claim	This Claim	Minded-to deductions	Decision on deductions	Decision on this claim
3	Other costs	£1,116,077.62				
	Administrator costs		£1,639,101.36	£0	£0	£1,639,101.36
	Administrator withheld funds		£9,026,728.28	£9,026,728.28	£9,026,728.28	£0
	IT costs		£6,751,162.15	£0	£0	£6,751,162.15
	Programme Fees		£10,004,765.00	£0	£0	£10,004,765.00
	Project management costs		£152,626.00	£0	£0	£152,626.00
	Indemnity Claims		£249,760.17	£0	£0	£249,760.17

Administrator costs

Summary of minded-to position

Octopus requested our consent to claim £1,639,101.36 for administrator costs incurred when onboarding former customers of Avro. Octopus had provided sufficient evidence, including invoice and an explanatory narrative to support their claim and satisfy us that these costs were additional, directly incurred as part of the SoLR role, otherwise unrecoverable, unavoidable and efficient in relation to Octopus' role as a SoLR for Avro. In our minded-to position we accepted that Octopus could recover these costs.

Summary of consultation responses

Octopus did not comment on this aspect of the claim in their consultation response. We did not receive any further responses about Octopus' request to claim for Administrator costs incurred as a result of migrating former customers of Avro to Octopus.

Rationale for decision:

We recognise that working with the administrator of a failed supplier and having transitional service agreements in place was required to allow successful transfer of customers from Avro and these costs were incurred as a direct result of Octopus acting as a SoLR, were additional and otherwise unrecoverable. Therefore, based on the information submitted as part of the claim and within the particular circumstances of this case, we consider it reasonable to allow Octopus to recover these costs and we have approved the full amount claimed.

Administrator withheld funds

Summary of minded-to position

Octopus requested our consent to claim £9,026,728.28 for funds which are being held by the administrator of Avro regarding credit balances, direct debits collected by Avro after revocation of the licence and the associated legal fees. At the time of submission there was an ongoing legal case against the administrator where Octopus is seeking to recoup these funds. Our minded-to position was not to consent to the element of the claim as our criteria states that costs claimed should be "unrecoverable" and Octopus could recover these costs through the legal process.

Summary of consultation responses

Octopus have not provided a formal written consultation response to our minded-to position, however in bilateral meetings they responded to our minded-to position understanding it was disallowed due the court case. We did not receive any further responses referencing Octopus' request to claim for a LRSP funds which are being held by the administrator of Avro.

Rationale for decision:

No decision was made in the legal case concerning ownership of direct debits collected by a failed supplier after revocation of the supply licence. Credit balances honoured by a SoLR can be claimed in the insolvency of the failed supplier. We are, therefore, still of the view that it is still open to Octopus to recover these costs from the administrators of Avro, consequently, we do not agree that this element of the claim is otherwise unrecoverable. If Octopus is ultimately unable to recover some or all of these costs from Avro's administrators, it may submit a claim on the levy in a future True-up process, and Ofgem will consider that claim on the basis of the criteria set out in our policy decision, the evidence submitted and the particular circumstances of the claim. Therefore, based on the information submitted as part of this claim and within the particular circumstances of this case, we do not consider it reasonable to allow Octopus to recover these costs and we have not approved the amount claimed.

IT costs

Summary of minded-to position

Octopus requested our consent to claim £6,751,162.15 for IT costs incurred when migrating former customers of Avro to Octopus. Octopus provided evidence to support their claim, which included invoices and an explanatory narrative verified by their submitted audit documentation. In our minded-to position, we were satisfied that these costs were incurred as a direct result of Octopus acting in its role as a SoLR for former customers of Avro, are additional to costs Octopus would have faced in the course of its normal retail operations and are not recoverable in any other way.

Summary of consultation responses

Octopus have not provided a formal written consultation response to our minded-to position, however they did provide additional evidence for Ofgem to consider and engaged in bilateral meetings with Ofgem throughout the consultation period. Other suppliers commented on our minded-to position for this element of the Octopus claim. Both suppliers noted that the IT costs seemed high with one requesting transparency of what the claim actually covers, and the other requesting that we further scrutinise the figures submitted.

Rationale for decision:

Having considered the additional evidence provided by Octopus, and the representations made by other suppliers on this component of the claim, we are satisfied that the costs were additional, directly incurred as part of the SoLR role, otherwise unrecoverable, unavoidable, and efficient.

We are satisfied that our assessment of the claim is thorough and fair. Octopus engaged with us during the assessment phase and where we requested further information prior to publishing our minded-to position; Octopus supplied this and answered any questions we had regarding the claim. In particular, we considered that the nature of the IT cost will depend upon the state of the failed suppliers IT infrastructure and data. Octopus noted that it was the state of this infrastructure and data that drove the IT costs, and not the platform that they were migrating to, when acting as SoLR for former customers of Avro. This aligns with Ofgem's understanding of the state of the IT infrastructure and data that Octopus inherited as a result of taking on customers of Avro.

We acknowledge that suppliers who responded on this aspect of the claim requested more transparency. We consider that providing more granular detail on Octopus's, or

other suppliers' claims for these types of costs, would raise commercial confidentiality concerns amongst suppliers, and we believe that we are therefore unable to publish further information that what we have set out above with respect to the costs claimed.

Having considered the evidence submitted to us, and the representations made by other suppliers, we are satisfied that the costs were additional, directly incurred as part of the SoLR role, otherwise unrecoverable, unavoidable, and efficient. Therefore, based on the information submitted as part of the claim and within the particular circumstances of this case, we consider it reasonable to allow Octopus to recover these costs and we have approved the full amount claimed.

Programme Fees

Summary of minded-to position

Octopus requested our consent to claim £10,004,765 for programme fee costs incurred as a result of becoming the SoLR for former customers of Avro. Octopus submitted evidence to demonstrate to us that the costs had been incurred as a direct result of becoming a SoLR. In our minded-to position, we stated that we were not fully satisfied that these costs met our criteria. However, we accepted, in principle, that these costs may be additional and as a direct result of acting as a SoLR and were minded-to allow these costs provided that Octopus were able to supply further evidence in support of their claim.

Summary of consultation responses

We have engaged with Octopus to get more detail and understanding of this element of the claim. We requested additional evidence to demonstrate to us that these costs were additional, directly incurred as part of the SoLR role, otherwise unrecoverable, unavoidable, and efficient in relation to acting as the SoLR for former customers of Avro. Octopus have supplied additional detailed evidence to us, including invoices which demonstrate that the cost has been incurred, a description of the type of costs and excerpts from the contract in place for these costs and why they meet our assessment criteria. Octopus answered questions we had regarding the claim and highlighted that, had they acquired these customers organically over time, then this cost would not have been required as they would have been covered by existing arrangements. The costs themselves are for additional services supplied to Octopus relating to trading activities for Avro's customers.

Octopus have not provided a formal written response to the consultation to our minded-to position. Another supplier commented on our minded-to position for this element of the Octopus claim. They questioned the programme fees and requested transparency of what the claim entails.

Rationale for decision:

We noted the comments from another supplier who had responded to the consultation for this element of Octopus' claim. Octopus have submitted evidence which has been thoroughly assessed, as we have done with all parts of all claims, and we have an assurance process in place. We have no concerns regarding our assessment procedures.

We acknowledge that suppliers who responded on this aspect of the claim requested more transparency. We consider that providing more granular detail on Octopus', or

other suppliers' claims for these types of costs, would raise commercial confidentiality concerns amongst suppliers.

As stated in our minded-to position we are minded-to approve this claim but that was on the condition that Octopus submitted sufficient evidence which would fully support the claim. Octopus have demonstrated to us that the costs do fulfil our assessment criteria and that these costs have only been incurred through Octopus acting as a SOLR. We have accepted this claim as Octopus have demonstrated that they have acted in good faith and supplied the supporting evidence. Therefore, based on the information submitted as part of the claim and within the particular circumstances of this case, we consider it reasonable to allow Octopus to recover these costs and we have approved the full amount claimed.

Project management costs

Summary of minded-to position

Octopus requested our consent to claim £152,626.00 for project management costs incurred as a result of migrating former customers of Avro to Octopus. In our minded-to position, we stated that we were minded to allow these costs on the proviso that Octopus were able to supply further evidence in support of their claim. Octopus had originally supplied invoices relating to this claim, but no clear narrative explaining why it would be appropriate for these costs to be reimbursed through the LRSP.

Summary of consultation responses

Octopus engaged with us following our minded-to position and has provided us with an explanatory narrative as to why these costs meet our criteria and that they have only been incurred as a result of Octopus acting as a SoLR.

Octopus have not provided a formal written response to the consultation on the minded-to position. We did not receive any further responses referencing Octopus' request to claim for a LRSP for project management costs incurred as a result of migrating former customers of Avro to Octopus.

Rationale for decision:

Having considered the additional evidence provided by Octopus, we are satisfied that these costs are additional, directly incurred as part of the SoLR role, otherwise unrecoverable, unavoidable, and efficient in relation to Octopus acting as a SoLR for former customers of Avro. Therefore, based on the information submitted as part of the claim and within the particular circumstances of this case, we consider it reasonable to allow Octopus to recover these costs and we have approved the full amount claimed.

Indemnity Claims

Summary of minded-to position

Octopus requested our consent to claim £249,760.17 for costs incurred from indemnity claims as a result of becoming the SoLR for former customers of Avro. These are customer payments made before the SoLR date which have not been remitted to Octopus. In our minded-to position, we stated that we were minded-to allow these costs

provided that Octopus were able to supply further evidence in support of their claim. While some evidence was submitted to support the claim, this was not accompanied by a clear explanatory narrative as to why these costs were suitable to be claimed as part of the LRSP.

Summary of consultation responses

Octopus engaged with us following our minded-to position and provided us with an explanatory narrative as to why these costs meet our criteria and that they have only been incurred as a result of Octopus acting as a SoLR.

Octopus have not provided a formal written response to the consultation on the minded-to position. We did not receive any further responses referencing Octopus' request to claim for a LRSP for indemnity claims costs incurred as a result of migrating former customers of Avro to Octopus.

Rationale for decision:

Having considered the additional evidence provided by Octopus, we are satisfied that these costs are additional, directly incurred as part of the SoLR role, otherwise unrecoverable, unavoidable, and efficient in relation to Octopus acting as a SoLR for former customers of Avro. Therefore, based on the information submitted as part of the claim and within the particular circumstances of this case, we consider it reasonable to allow Octopus to recover these costs and we have approved the full amount claimed.

Recovery of LRSP claim

Octopus will be paid the amounts specified in the Ofgem's consent documents, published alongside this letter, by the relevant licensed gas and electricity network operators. This will be recovered by the network operators in proportion to the total number of nationwide gas and electricity supply points.

Yours faithfully,

Neil Lawrence
Director of Retail