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UNISON
*Response to
Ofgem Consultation
'Strengthening Retail Financial
Resilience'*

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UNISON represents over 1.3 million people working across our public services throughout the UK in local government, the NHS, education, social care, housing, policing, transport, utilities, community and environmental services. We represent approximately 25,000 members who work in the energy industry.

We are in a unique place to comment having many members who as consumers have experienced the failings in the supply industry and are having to pick up the tab for the mutualised losses incurred, because of poor business ethics, lax regulation and oversight, and a broken system.

We also have many members who work in retail supply and who have been concerned for a long time about the actions of some suppliers in destabilising the supply market, leading to a significant loss of employment and challenges to terms and conditions of employment.

While responding to the consultation questions (some of which are not applicable) UNISON would make the following points.

- 1. Customer payments made to suppliers are for the purposes of paying for energy consumed or likely to be consumed. These payments have been misused by some suppliers with the net result being significant losses. This misuse should not have been allowed to happen.**
- 2. UNISON would argue, for the most robust regulation possible to ensure that all money received from customers is protected and used for its correct form. Otherwise, the use of Direct Debit as a means for collecting payment will be called into question by consumers and simple paper billing (which would be based on past consumption, so energy actually used) will be demanded and rightly so. On that basis we believe the suppliers should operate as they would have done if paper billing was still in operation ensuring correct practices and no reckless treatment of monies received in advance.**
- 3. Customer credit balances and renewable obligations should be ring fenced and stringent mechanisms and monitoring in place to ensure this is maintained.**
- 4. Alongside the protection of customer credit balances, strong Capital adequacy rules should be in place to ensure that any supplier in this environment is robust and able to withstand pricing shocks.**
- 5. The mutualisation of losses should cease, and greater liability placed on the operators and owners of energy supply entities.**

Question 1: Do you agree with our package of proposals and overall approach?

While UNISON welcomes any proposals that strengthen financial resilience, regulation, monitoring and compliance, we consider that these proposals do not go far enough to protect consumers or workers in the retail supply industry. They also do not reflect the level of harm and damage that has already been caused, nor do enough to ensure such events never happen again. We strongly believe that this set of proposals is a missed opportunity to put right the past failings of oversight and truly protect all consumers.

We believe that the response of Ofgem should be in line with the serious level of responses made by the Bank of England and the FCA following the banking crisis in 2008. The set of proposals put forward in this consultation underplay the harm that has been caused to consumers and workers and further downplays the reckless behaviour of several energy suppliers that led us to the present crisis.

Although energy related events such as the invasion of the Ukraine clearly played a role in destabilising the energy retail supply markets, the problems were evident long before February 2022. The weakness of Ofgem in implementing more rigorous controls prior to this and despite the repeated warnings of many key stakeholders, was a significant factor in the problems that ensued.

The simple fact was that too many believed in the supposed innovative gains that sadly never really existed in any tangible sense. Far from being innovative, selling a product (energy) at less than it can be purchased for (which is what was happening and is likely to happen again) is a certain way to grow a customer base. Ultimately however such arrangements are always time limited as history has shown time and time again and the losses need to be made good. Even without the invasion of the Ukraine, many of the business that failed would have still likely failed perhaps causing even grater harm to consumers.

Of critical importance is that the consumers who have lost out the most, are the very same consumers that Ofgem should have been most zealous in protecting. They are the traditional legacy customers who did not switch to the loss leading energy suppliers and so did not gain from energy supply knowingly under-priced, and yet these very same consumers are expected to share the same pain and financial loss through the process of mutualised loss. This is simply wrong and totally unethical. It is not appropriate that consumers are on the hook for the failure of an energy supplier to which they have no relationship. The mutualisation of loss is an unacceptable practice and has allowed events to take place that should not have occurred with consequential hardship to vulnerable consumers.

UNISON strongly believes that customer credit balances should be protected, and ring fenced as they are payments made for the purchase of energy and not working capital for any other reason. We reiterate the point as we did in the first consultation that if the customer was being billed for energy used as per meter reading, working credit balances would not exist. UNISON believes that consumers are unaware of the behaviour of a number of energy suppliers in using credit balances for purposes other than purchasing energy in the first instance or ring fenced for this. This practice is misleading and while some customers may benefit in the short term from this practice the consequential loss from failed suppliers means all consumers lose. UNISON also questions if the use of credit balances derived from direct debits is in accordance with financial regulation when it is

knowingly practised and therefore not fraudulent in effect unless the customer is in full knowledge of the practice and has given their consent. Ofgem should be protecting the customer in this instance not prioritising the energy supplier. It is therefore disappointing it is not doing this when it also knows that based on the research it commissioned, a supplier who used credit balances as working capital was more likely to fail.

We fully support the right for all customers to be able to request any credit balances back and for these to be paid within 7 days of such a request being made.

Question 2: Do you agree with our proposal to enhance the FRP to require suppliers to ensure there is no significant risk that liabilities cannot be met as they fall due?

UNISON does not believe these proposals go far enough to ensure that failure risks are managed. While we would accept that the current proposals are an improvement, they remain inadequate, and do not we believe remove the risk that consumers will lose out.

Question 3: Do you agree with our proposed approach to FRP reporting, including Trigger Points and annual self-assessment reporting?

While welcoming greater oversight we again do not believe these proposals go far enough. Self-reporting is unreliable and audit requirements only partially effective. We believe energy companies seeking to operate in the retail market should be transparent and subject to regular independent audit by a specialised audit body.

Question 4: Do you agree with our proposal regarding the notification and monitoring approach for reliance on CCBs – including the proposed 50% of total assets threshold – or would it be more beneficial to set a prescriptive maximum reliance on CCBs?

UNISON believes consumer credit balances should be ring fenced and always protected and only used for the purchasing of energy which the consumer gave their consent for.

Question 5: Do you agree with our approach requiring notification by suppliers ahead of non-essential payments when in breach of the FRP, and regarding the ability to direct hard ringfencing of CCBs?

We agree that suppliers should not be able to make payments of any sort to investors or owners etc while any concerns exist that the supplier may be unable to meet its obligations. Further we also believe that a process should be created for taking back payments already within 3 years of a supplier getting into difficulty if negligence or overtly risky behaviour was taking place.

Question 6: Do you agree with our proposed approach to the minimum capital requirement, including our proposed longer-term trajectory as well as our transition minimum capital requirement for 2025? What is your view on our proposed range for the 2025 minimum capital requirement amount?

We agree with the concept of minimum capital requirements and accept that the move to introduce this is not straightforward for some weaker suppliers. We do not however accept that 2025 is an acceptable point for a transition requirement. We believe that 2025 should be the final point that all minimum capital requirements are met in full to remain an energy supplier.

Question 7: Do you agree with our proposed approach of setting the minimum capital requirement on a per-customer basis, or do you have a preference for a volumetric approach? In the case you prefer volumetric approach, what calculation method is most appropriate?

Whatever minimum capital requirement is agreed it needs to be an effective measure related to the present risks of operation and security for consumers. It seems sensible to base this in part on a combination of both volume of consumed energy and customer numbers.

Question 8: We set out a range of issues that may need to be considered in the future as we ratchet up the minimum capital requirement, including differences between tariff types and payment types. Do you agree with our proposal to consider these in future consultation, and to treat all tariff and payment types the same in our first minimum capital requirement? Do you have suggestions on how best to reflect the different drivers in the range of competitive tariffs versus SVT tariffs? Are there other elements that you think would be a significant driver of differences in capital needs across tariff offerings that we should consider?

One of the significant problems is the tendency for new suppliers to build a customer base by offering loss making tariffs to customers. In the short term this may have been acceptable but often the business model of the supplier in question was not to break even but to be offered for sale to a competitor. This is not a sustainable business model in such a key service. The risks of offering tariffs that are loss leading, are significant and required minimum capital requirements need to take account of this factor in the future. The more loss leading tariffs the greater minimum capital requirement should be in operation.

Question 9: What is your view on our proposed approach to considering alternative sources of funding

Whatever alternative sources of funding are made available they should be robust in the same way that deeds of covenant are in the provision of defined benefit pensions. These are enforceable obligations and robust.

Question 9: Do you agree that suppliers should protect 100% of their RO (attributable to domestic supply) from the 2023/24 scheme year onwards on a backwards-facing basis? If not, what do you consider to be the optimal implementation period, and why?

Yes we agree that RO's should be protected. As we believe with CCB, these are not the energy suppliers money to use as they see fit. They are to be passed on and secured appropriately.

Question 10: How, and to what extent, might our proposals for RO ringfencing impact the way in which your company interacts with other Government schemes?

N/A

Question 11: Would you envisage ringfencing your RO using a Protection Mechanism, protecting ROCs, or using a mixture of the two?

N/A

Question 12: Do you agree that the proposed price cap allowance is appropriate to account for the costs that an efficient supplier might incur in ringfencing their RO receipts? (See appendix 1)

N/A

What are your views on the minimum requirements that should be set for the Protection Mechanisms, including our proposals around minimum credit ratings?

The risks to consumers from supplier failure and the process of mutualisation of losses should be the driver in this. Those suppliers who are weakest should in theory operate to the most stringent of requirements placed on them.

Summary of UNISON response.

UNISON, while welcoming proposals to strengthen the financial resilience of energy suppliers, believe this is a missed opportunity to ensure the past mistakes and shoddy practices of a number of failed energy suppliers is prevented from happening again.

UNISON believes that it remains unacceptable that consumers are paying for the costs of failure at a time when many cannot afford to do so and actually played no part in the failings of these suppliers nor benefitted from the temporary reduction in energy bills that some customers received. We remain opposed to the process of mutualised loss and believe this is totally unethical. Further it is not right that those who operated or played a significant part in failed suppliers have remained largely unscathed, suffered little or no financial loss and can re enter the market.

UNISON believes that customers credit balances should have been fully protected (as is being proposed for renewable obligations) and only used for the purposes intended and not as working capital. We further believe that a failure to act on this will simply lead to more losses further down the line, although we recognise that minimum capital requirements if properly policed will have some positive impact.

We broadly welcome the proposals on minimum capital requirements and the protection of renewable obligations but these need to be robust.

While welcoming proposed greater oversight of supplier's finances etc, we do not believe this can be self-policed and we support specialised independent audit of suppliers to identify failure risks. Further when risk is identified the regulator needs to be prepared to act to protect customers not simply act to prevent the supplier failing.

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