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Dear Daniel

Uswitch's response to Ofgem's consultation on the Market Stabilisation Charge licence condition

Uswitch welcomes the opportunity to respond to Ofgem's statutory consultation on reinstating the Market Stabilisation Charge (MSC) licence condition. We do not support the proposal. We set out our overarching position below and respond to the consultation questions in Annex 1.

The current moment calls for measured assessment, not emergency posture

The wholesale price volatility triggered by the conflict in the Middle East is real and requires careful management. We support Ofgem in monitoring the market closely and working with suppliers and other stakeholders to maintain stability. However, as the consultation itself acknowledges, the current price shock is materially smaller than during the 2022 gas crisis, and Ofgem is rightly not proposing to activate the MSC at this stage.

The threshold for using the 2022 emergency toolkit has therefore not been met. More fundamentally, the post-2022 stability framework that Ofgem has spent more than three years building was designed precisely for moments like this. Pre-emptively reinstating the MSC licence condition, in advance of any need to activate, signals to the market that — even with capital adequacy, the quarterly cap, the reformed cap methodology and the SoLR Levy Offset in place — Ofgem does not yet trust its own framework to do its job. That undermines, rather than supports, the credibility and stability of the regime Ofgem has built.

The MSC was a 2022-specific device. The regulatory architecture that replaced it does the work directly

The MSC was introduced in 2022 as a transitional measure to compensate for an incomplete prudential and pricing framework at a time when external conditions meant transitional protections were required to provide some degree of market stability. The supplier failures of 2021 and 2022 reflected genuine gaps in the regulatory regime: no enforceable capital adequacy regime, no

proactive financial responsibility framework, and a six-monthly cap with a wholesale methodology that did not adequately fund responsible hedging. In that environment, an inter-supplier transfer mechanism was a defensible, if imperfect, workaround.

That environment no longer exists. Since 2022, Ofgem has built four pillars that address the underlying risk more directly than the MSC ever did:

- **Capital adequacy and the Enhanced Financial Responsibility Principle.** The Enhanced FRP introduced in April 2023 obliges every supplier to maintain capital and liquidity sufficient to meet liabilities as they fall due. The Capital Target of £115 per dual fuel customer (Adjusted Net Assets) came into force on 31 March 2025, supported by ringfencing of customer credit balances and Renewables Obligation receipts. This is the primary tool for the risk the MSC was designed to address: suppliers are now required to be structurally able to absorb hedging losses, rather than relying on cross-supplier transfers funded by switching consumers, a more appropriate place for this responsibility to sit and more conducive to an energy market that gives consumers the right incentives to reduce their bills.
- **The quarterly default tariff cap.** Since 1 October 2022, the cap has updated quarterly under a 3-1.5-12[3] indexation, with a reduced notice period. This roughly halves the value of supplier hedges at risk in a falling market and the time available for switching to crystallise losses. The dynamic that drove the 2022 case for an MSC — a sharp wholesale fall combined with a slow cap reset — is materially less acute than it was when the original MSC was conceived.
- **Backwardation costs and the wholesale methodology.** Backwardation costs were brought into the cap methodology from October 2022, and the wholesale cost allowance now explicitly funds responsible hedging behaviour. Ofgem's own December 2023 wholesale cost review concluded that suppliers' actual wholesale costs between October 2022 and September 2023 did not systematically differ from the cap allowances. The mismatch between regulated revenue and the cost of hedging that the MSC partially offset is now priced into the cap directly.
- **SoLR Levy Offset and mutualisation reform.** The SoLR Levy Offset, consulted on by Ofgem in 2024, addresses the consumer-cost-of-failure rationale that was a central plank of the 2022 case for the MSC. SoLR levy costs are now recoverable from failed suppliers' insolvency estates rather than being fully mutualised across all consumers. Combined with capital adequacy requirements that reduce failure risk in the first place, the consumer protection rationale for the MSC has been substantially displaced.

Ofgem itself has previously taken this view precisely. In July 2023, Ofgem's Chief Executive wrote that the regulator was "assessing whether the market stabilisation charge is still needed" and that "under current market dynamics, it is soon expected to fall to zero." The MSC was allowed to lapse in March 2024 on the basis that the wider framework was becoming sufficient for the purposes for which the MSC was originally designed. The framework has continued to mature since then. Reinstating the licence condition now represents a step backwards from a settled and well-evidenced position.

The framework was also operationally tested in 2025 when Rebel Energy failed, and the SoLR process worked as intended. Failure events can and will continue to occur in any competitive market, but it is increasingly clear that Ofgem has, in the post-2022 machinery, developed a system to manage this without the consumer-funded inter-supplier transfers that the MSC entails, meaning there is not a credible case for reintroducing the prospect of the MSC, much less using it.

A standing MSC sends a damaging signal to capital and competitive entry

The consultation suggests that providing optionality for the MSC could support market investability by reducing extreme risk. The reality is that this optionality would undermine investability. New entrants and growing challengers are by definition the suppliers gaining new customers in a competitive market — the parties who pay the MSC, while incumbents losing share receive it. The MSC structurally transfers from new capital to incumbent capital, and it falls due in precisely the strategic moments — falling wholesale markets — in which a competitive entrant with a better cost base or hedging strategy would be expected to win market share.

A permanent licence condition with a low activation hurdle is materially different from no licence condition. Investors will price the optionality, not the current zero rate, and will therefore become less likely to put investment into innovative and growing challengers. The signal to capital looking at this market against other regulated sectors is that Ofgem is still not sufficiently confident in its post-2022 regulatory architecture to retire the 2022 emergency toolkit. That is a chilling read of the regime, and it is the opposite of what the Markets Vision and Strategy, the recent Ofgem Review, and the Government's growth duty all point toward. Ofgem's own April 2025 Powering Trust report noted that there have been no new entrants to the supply market since the Supplier Licensing Review. This is not the moment to add another standing barrier to competitive entry.

In a genuine tail event, the MSC is not the right response

We recognise that, in any framework, scenarios remain in which extreme wholesale price volatility could cause systemic stress. In those scenarios, the appropriate response is a strengthened capital framework upstream, one-off cap interventions where justified, and government action. An inter-supplier transfer mechanism funded by the consumers most actively trying to reduce their bills is not the right distributive design for a catastrophic event, as it actively punishes the kind of behaviour the Government and regulator should incentivise during a price shock. The Energy Price Guarantee precedent and the reformed SoLR machinery point to a more proportionate set of responses for genuinely extreme conditions.

Our recommended approach

We urge Ofgem not to proceed with reinstating the MSC licence condition. The right posture for the current moment is to trust the framework that Ofgem has built, monitor closely, and engage with the industry on contingency planning if conditions deteriorate.

If, despite this objection, Ofgem decides to proceed, the proposals must be amended significantly. In particular:

- A **sunset clause of no more than 24 months** should be included on the reinstated licence condition, with any extension subject to a fresh statutory process. The ability to set the MSC to zero is not a substitute for a sunset; it preserves the optionality and therefore the signal to the market that the market is not genuinely receptive to investment in growing challengers.
- A **clear set of pre-activation criteria** should be published before any activation is contemplated, covering wholesale price movements, supplier financial indicators, and the position of the wider framework. The non-exhaustive examples in this consultation are too general to allow stakeholders to assess in advance how the discretion is likely to be exercised.
- Any activation consultation should be subject to a **minimum four-week stakeholder window**, full publication of the evidence base, and a formal impact assessment distinct from the outline assessment in the current document.
- Third-party **intermediaries and consumer-facing stakeholders should be engaged** alongside suppliers in the design of any guidance and parameter revisions. The 2023 parameters should not be carried over by default, as market structure, the financial resilience framework, and consumer engagement levels are all materially different in 2026.

We respond to the consultation questions in Annex 1 below.

Annex 1 – Response to consultation questions

Q1. Do you agree that an MSC could help to manage the impact of falling wholesale prices?

Not in the post-2022 regulatory architecture. The MSC was a transitional device introduced to compensate for an incomplete prudential and pricing framework, and the underlying risk it was designed to manage is now addressed more directly by other measures. Ofgem should continue to rely on the new regulatory architecture that it has spent years developing and implementing, and not return to the MSC.

The Enhanced Financial Responsibility Principle and the Capital Target rightly place the obligation to absorb hedging losses on supplier capital. The quarterly cap reduces both the value of hedges at risk and the time available for switching to crystallise losses. The post-October 2022 wholesale methodology, including backwardation costs, directly funds responsible hedging — Ofgem’s own December 2023 wholesale cost review found that suppliers’ actual costs in the previous twelve months did not systematically differ from the cap allowances. The SoLR Levy Offset addresses the residual mutualisation cost of failure when it does occur. Each of these tools is better targeted than an inter-supplier transfer funded by switching consumers, as it addresses the challenges the MSC was designed for without the risk of distorting the kind of consumer behaviour that should be actively encouraged at times of rising prices.

Ofgem reached the same conclusion in 2023, when it allowed the MSC to lapse on the basis that the wider framework was becoming sufficient and noted that the MSC was “soon expected to fall to zero” under prevailing market dynamics. The framework has continued to mature in the two years since. The case for reactivating the MSC now would need to explain what has changed about the framework, not what has changed about wholesale prices. The consultation does not provide that explanation.

There is a separate question about how to respond to a genuinely catastrophic wholesale price event — one of a scale that would overwhelm the resilience framework. In that scenario, the appropriate tools are upstream strengthening of the capital framework, one-off cap interventions, and government action, not a permanent licence condition enabling a consumer-funded inter-supplier transfer. The 2022 Energy Price Guarantee precedent illustrates a more proportionate set of options.

Q2. Do you have any comments on the consumer impacts of an MSC?

We have significant concerns about the consumer impacts of an MSC, both distributional and dynamic. We summarise our principal concerns here.

The MSC reduces fixed tariff savings available to engaged consumers. Suppliers price the MSC into fixed tariffs, so consumers who actively switch in response to falling wholesale prices receive a smaller share of the price reduction than they otherwise would. This is acknowledged in the consultation but understated in its consequences. Switching savings are not a residual benefit; they are a primary mechanism by which consumers exercise control over their energy bills, and historically have been the principal disciplining force on supplier pricing behaviour.

The framing of “engaged” versus “disengaged” consumers that underpins the consumer impact analysis is outdated. Following the 2022 crisis, very large numbers of consumers became actively engaged with their energy bills and have stayed engaged. Treating switchers as a small, atypical group whose savings can be reduced without significant aggregate consumer impact is no longer a fair characterisation of the market.

The MSC dampens competitive pressure on suppliers more broadly. Even setting aside the direct savings effect, it reduces the incentive for suppliers to pass falling wholesale prices through into competitive fixed tariffs. Combined with the Ban on Acquisition-only Tariffs, which remains in place, the effect on consumer detriment is greater than the sum of the parts.

The consultation suggests that providing optionality for the MSC could support market investability, but the reality is that it undermines investability. New entrants and growing challengers are by definition the gaining suppliers who pay the MSC; incumbents losing share receive it. The mechanism is structurally a transfer from new capital to incumbent capital, and it bites in precisely the strategic moments — falling wholesale markets — in which a competitive entrant would be expected to win share. Ofgem’s own April 2025 Powering Trust report observed that there have been no new entrants to the supply market since the Supplier Licensing Review. A standing MSC adds a further structural disincentive to competitive entry at the moment Ofgem and the Government are publicly committed to the opposite direction of travel.

The signalling effect of a permanent licence condition is meaningful in its own right. Investors will price the optionality, not the current zero rate. A permanent provision — even one set to zero by default — communicates that the regulator does not have full confidence in the framework it has spent more than three years building. We do not consider that to be in the interests of existing or future consumers.

Q3. Do you agree with our proposed licence drafting?

Our principal position is that the licence condition should not be reinstated at all, for the reasons set out above and in our response to Q1. If, despite this, Ofgem proceeds, our specific concerns with the proposed drafting are as follows.

The absence of a sunset clause is the most significant flaw. Ofgem argues that, because the MSC can be set to zero following activation, a sunset clause is unnecessary. We disagree. A sunset clause provides three things that the ability to set the MSC to zero does not.

- **Regulatory discipline.** A sunset requires Ofgem to actively argue for retention at a defined point, rather than relying on the absence of an active reason to remove the licence condition.
- **Predictability.** It provides a clear horizon over which market participants and would-be investors can accurately know the regulatory framework.
- **Stakeholder input.** Sunset events are natural triggers for fresh consultation, including with the changing population of relevant stakeholders.

We would urge Ofgem to include a sunset of no more than 24 months on any reinstated licence condition, with extension subject to a fresh statutory consultation that explicitly considers whether the conditions justifying the MSC remain.

The drafting should also make clear the conditions for activation. The proposed paragraph 24A.2A simply provides that the MSC takes effect on a date specified by Ofgem, with no link to the conditions it considers necessary to justify activation. We suggest that the drafting cross-refer to a published set of activation criteria, with a duty on Ofgem to have regard to those criteria when making any activation decision.

We do not object to the proposed paragraph 24A.3 providing for the MSC to be reduced to zero following consultation, and for that reduction to be reversible. The same principle of consultation should apply to the initial activation, as set out in our response to Q4 below.

Q4. Do you have any comments on our intended process?

On the activation consultation. We accept that statutory consultation timing requirements may not always be appropriate for fast-moving market conditions. However, the absence of statutory timing should not mean the absence of meaningful consultation. We would urge Ofgem to commit publicly to: a minimum consultation window of four weeks (unless conditions clearly require a shorter period, in which case the rationale should be published); full publication of the evidence base supporting activation, including wholesale price data, supplier financial monitoring outputs, and forward curve analysis; a formal impact assessment at the point of activation, distinct from the outline impact assessment in the current consultation; and direct engagement with third party intermediaries and consumer groups, alongside suppliers, on the activation decision and the parameters.

On guidance and parameters. The consultation indicates that Ofgem's current expectation is to retain the 2023 parameters in the event of activation. We would welcome a separate, dedicated consultation on the guidance and parameters in advance of any activation, rather than at the point of activation, when consultation timescales will be compressed. This would allow stakeholders to engage with parameter design at a point when the discussion can be properly evidence-led, rather than rushed under live market pressure. The 2023 parameters should not be assumed to be appropriate to a 2026 activation, given the changes in market structure, the financial resilience framework, the wholesale methodology, and consumer engagement levels.

On activation criteria. The consultation provides examples of factors Ofgem may consider when deciding whether to activate the MSC. These are illustrative and non-exhaustive. We would urge Ofgem to publish a clearer set of indicative thresholds for the conditions that would, in principle, support activation. We recognise that activation will always involve regulatory judgement and that mechanical thresholds may not be appropriate, but the level of generality in the current consultation is too high to allow stakeholders to assess in advance how the activation discretion is likely to be exercised.

On Retail Energy Code arrangements. We note that REC arrangements would be required to deliver inter-supplier payments. Set-up and ongoing costs should be transparent and reported, and proportionate to the contingent nature of the licence condition. We would welcome confirmation

that any costs incurred on a stand-by basis (i.e. ahead of any activation) are minimised and ring-fenced.

We would welcome the opportunity to discuss the points raised in this response further with Ofgem.

Yours sincerely

A handwritten signature in blue ink that reads 'Richard Neudegg'. The signature is fluid and cursive, with a horizontal line underlining the name.

Richard Neudegg
Chief Corporate Affairs Officer, Uswitch & RVU