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Dear Giulia and Mark

Please find below our response to the consultation you issued on 13<sup>th</sup> June 2016.

This is an issue about which we feel very strongly, so if you have any queries then please don't hesitate to contact me.

Thank you for your consideration

Kind regards



Doug Stewart



## Do you agree with the approach to SoLR and energy administration set out in our revised guidance?

We would agree with the following caveats.

The issue of credit balances has been around since the market was liberalised. It's the size and the nature of those balances that has changed. Action needs to be taken to prevent upfront payments being taken from consumers.

We want thriving competition and a dynamic market, with a good range of suppliers. However, while the consultation concentrates on remedies in the event of a supplier failure, insufficient attention has been paid to why consumers' balances have built up in the first place and may need protecting in the event of a failure.

Methods that might prevent supplier insolvencies from occurring should also be addressed and Ofgem have the opportunity to do that by assessing the viability of businesses; where their 'cash in the bank' is coming from is an essential test. Making losses during a period of establishing market share is not an unusual practice, but it would be normal to have raised sufficient equity to fund this.

We see this as an opportunity for Ofgem to show leadership as a regulator, overseeing an expanding and diverse market whilst ensuring strong oversight to protect consumers' interests. Having been a driving force behind the creation of a diverse market it would be very sad to see the failure of a new market entrant in a period of financial uncertainty driving consumers back to the perceived safety of the Big 6.

It is a matter of public record from the accounts of fast growing new entrants that annual losses of between £15m and £37m have been borne while large sums of customer cash are sat on balance sheets.

Compensating SoLR suppliers so they can apply amounts to consumers accounts is in effect compensating unsecured creditors of an insolvent business. This means that other unsecured creditors are being discriminated against and is a serious legal issue.

We do not believe the industry should be called upon to pay for unsecured creditors of an insolvent supplier, even if they are consumers.



**Do you agree with our preferred approach (option 1 - no further action, i.e. case by case use of SoLR powers) to protect consumer credit balances?**

**(We would be particularly interested in hearing your views on the following factors in relation to each option: effects on innovation and potential barriers to entry, increased regulatory burdens, impact on customer behaviour, proportionality)**

We would agree that no further action is the appropriate option, however we feel prevention of a build-up of consumer credit balances is the area Ofgem should be focussed on, not reimbursing them- prevention rather than cure.

In your description of the nature of credit balances, (at paras 4 & 5) you fail to highlight a significant variable. Seasonal credit balances occur in the normal process of business utilising fixed direct debit plans. However for these balances to prove a problem in the SoLR process, all consumers would need to have signed up at the same time, (in spring for the greatest effect), in order to accumulate a significant credit balance over the summer. In reality, consumers change suppliers across the year so there is an element of 'Swings and Roundabouts' in the overall portfolio account balance. This balancing effect is significant in the decision to act as SoLR and has historically allowed trade operations to take the customers as SoLR in a timely manner.

However the nature of the credit balances is distorted if suppliers take up front payments prior to the supply of any energy (let's call them deposits). These deposits never ebb and flow with seasonality - they are permanent

The issue at present is therefore exacerbated by the current trend for new suppliers to take upfront payments prior to delivery of energy which inflates the amount of customer money at risk. This, we suspect, is where the increased risk is coming from and why the issue of compensating consumers has come to light in 2016.

Any levy or charge on the industry is a levy on all consumers which will increase the cost of their energy bill. Consumers are being asked to pay for the risky business practices of unsecured business models where consumer balances are being used as working capital



## Option 1

Our caveats are itemised above

## Option 2

### Ring-fencing and trust arrangements

Ring fencing and trust arrangements are an acknowledgement of our point that customer money shouldn't be utilised as working capital. So while we agree with the sentiment we cannot support the cost and complexity of administering such a scheme. It would merely add to the cost of bills in a bid to protect consumers who pay up front and see no cash saving in their energy bills. This is not an option we can support

## Option 3

### Insurance and bonding arrangements

While the travel business is cited, insolvencies will occur for very different reasons. We would reiterate our concern surrounding the nature of the credit balances and feel these are fully avoidable if suppliers were prevented from taking upfront payments. Making billing in arrears a SLC would prevent a build-up of consumer debt other than seasonality which has historically been dealt with satisfactorily. We fully accept such a SLC would need to be phased in.

While some may say that this will act as a barrier to entry, it merely prevents poorly funded (and hence risk loaded) businesses entering the utilities market.

Innovation using customer money as working capital is not innovation that should be encouraged. Perhaps a contemporary parallel might be the demise of BHS through its sale to a poorly funded party. The result is a loss of amenity for the public, 10,000 jobs and the ongoing effect of reduced pension payments to 20,000 pensioners. Should we not learn that poorly funded businesses can have very detrimental effects.

Add to that the increased cost and administrative burden of managing and administering such a scheme, and the corresponding pass through costs to all market participants including the consumer, and the costs far outweigh any benefits.

There is the added consideration that consumers may be attracted to poorly run businesses if they feel their money is safe and bonded, without carrying out any 'due diligence' on the supplier.

## Other Options

We agree with your conclusions that these should be discounted



**Do you consider that there is other information which would help you decide whether to volunteer to be a SoLR and on specific terms? If so, what is this information and from whom should it be sought?**

How much customer money was tied up in upfront payments prior to the insolvency.

The administrator is unlikely to have the staff to do detailed analysis post event, but this would make the process much more informed.

We are pleased to note you have requested information on historic credit balances from all suppliers, however, what is not clear, is whether this includes up-front payments before the supply commences.

The amount of customer credit balance, and the money taken in the 'payment up front' business model are key in deciding on the viability of being the SoLR.

The scale of customer money held as a result of the 'payment upfront' model is an obstacle to the SoLR taking on the normal seasonal trading risks associated with supplying energy on a fixed DD plan