

Rob Salter-Church
Consumers and Competition
Ofgem
9 Millbank
London
SW1P 3GE

29 July 2016

Dear Rob,

PROPOSED APPROACH TO DEALING WITH SUPPLIER INSOLVENCY AND ITS CONSEQUENCES FOR CONSUMERS

Thank you for the opportunity to respond to the above consultation which sought views on Ofgem's proposals for dealing with supplier insolvency and the impact on consumers. Our responses to the consultation questions are in the annex to this letter.

We welcome Ofgem's updated guidance which provides clarity on the approach Ofgem would take where a supplier suffers an insolvency event, and in the event that Ofgem invokes the Supplier of Last Resort (SoLR) process, the approach Ofgem would take in appointing an SoLR.

We agree with Ofgem's view that a trade sale is the preferred option for management of a failing supplier's customers as we believe this will generally provide for a much better customer experience than either the SoLR or energy administration schemes. We are aware that the only experience of a large scale supplier insolvency (TXU in 2002) was managed via a trade sale.

We note Ofgem's preference to consider use of the SoLR process ahead of the energy administration scheme. However, we would note that under the SoLR process there are likely to be a number of challenges in maintaining a good level of customer service in addition to the potential impact of loss of credit balance. For example, the SoLR is unlikely to have access to the failing supplier's systems and this lack of continuity of customer service may lead to a large number of customer queries particularly at a time when customers are likely to have concerns due to the failure of the supplier. As such, we believe there are likely to be cases where, to provide a satisfactory customer experience, Ofgem should seek approval to appoint an energy administrator in preference to using its SoLR powers. This is particularly likely to be the case where large numbers of customers are affected.

Although complex and expensive, appointment of an energy administrator would allow for the continued management of customer accounts on the failed supplier's systems until subsequent sales could be organised to other parties as the energy administration is unwound. Ofgem may find it helpful to engage with industry stakeholders to understand the numbers of customers that could be managed under the SoLR process without significant risk to customer experience.

We agree with Ofgem's aims to give some protection to consumers' credit balances in the event of a supplier failure, and agree with Ofgem's recognition that this protection

may not always cover all the credit balances of all customers of the failed supplier, particularly as without full access to the failing supplier's systems identifying exact credit balances for each customer could be a challenging, if not impossible, task.

In choosing an option to do this, we believe it is important that any approach is proportionate, taking account of the risks of supplier insolvency and does not result in significant increases in costs across the industry as a whole, which would be likely to be reflected in increases on all consumer energy bills.

We can see the attraction that Option 1 (case by case use of SoLR powers) provides as we believe that this offers the most cost effective approach where supplier insolvency is an infrequent occurrence. With increasing numbers of new entrants into the energy market, there is however a role for Ofgem in ensuring that the risk of supplier insolvency does not increase significantly. If it were to become a more common occurrence, then we think that Ofgem should consider another option that provides for the costs to fall where the risk of insolvency lies. For example, there could be a requirement to protect customer balances with collateral in a manner broadly similar to the approach used in the wholesale market. We do not consider that proportionate measures to protect consumers from insolvency risk can be described as a barrier to entry.

We recognise that, in the event of expected supplier failure, there will be a need for action to be taken quickly to ensure satisfactory service for customers of the affected supplier. I can confirm that we are happy to be considered within any trade sale process that Ofgem may promote and also as a potential SoLR. We have provided appropriate contact details in response to the request for information issued by Ofgem alongside this consultation.

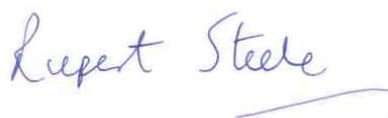
We have considered the information set out in the revised guidance and believe there are some other areas where Ofgem should consider asking the failing supplier for additional information to support potential SoLRs responses. In particular:

- Information regarding credit balances of the failing supplier's customers so that potential SoLRs can assess their approaches to protecting such balances
- PSR information at a level that allows potential SoLRs to identify customers that would be most exposed as a result of losing any credit balance and can focus their approach appropriately
- Additional information on both SMETS1 and SMETS2 customers, and contractual and security arrangements to ensure such customers can retain their smart services on transfer to the SoLR

In addition, it is unclear from the guidance how detailed the information provided to potential SoLRs would be, and would ask that Ofgem provide as detailed information as possible without breaching any data protection or privacy obligations, to allow a more informed response.

Should you wish to discuss any of the above points, please contact me via the details provided [REDACTED].

Yours sincerely,



Rupert Steele
Director of Regulation

**PROPOSED APPROACH TO DEALING WITH SUPPLIER INSOLVENCY AND ITS
CONSEQUENCES FOR CONSUMERS
SCOTTISHPOWER RESPONSE**

Question 1: Do you agree with the approach to SoLR and energy administration set out in our revised guidance?

When a supplier suffers an insolvency event, it is important that actions by all third parties aim to reduce any impact to customers of the failing supplier. Ofgem's consultation is focusing on the impact to customers of the loss of credit balances when the SoLR process is used, which we agree is important. However, there will be a number of other challenges in mitigating customer impact at this time and therefore we believe that consideration should also be taken of how customer service arrangements can be maintained through this challenging time. We think this will be particularly important where larger numbers of customers are affected by an insolvency event.

We agree with Ofgem's view that a trade sale is the preferred option for management of a failing supplier's customers as we believe this will generally provide for a much better customer experience than either the SoLR or energy administration schemes. We note Ofgem's preference to consider use of the SoLR process ahead of the energy administration scheme. However we would note that under the SoLR process there are likely to be a number of challenges in maintaining a good level of customer service in addition to the potential impact of loss of credit balance. For example, the SoLR is unlikely to have access to the failing supplier's systems and this lack of continuity of customer service may lead to a large number of customer queries particularly at a time when customer are likely to have concerns due to the failure of the supplier. As such, we believe there are likely to be cases where, to provide a satisfactory customer experience, Ofgem should seek approval to appoint an energy administrator in preference to using its SoLR powers. This is particularly likely to be the case where large numbers of customers are affected.

Although complex and expensive, appointment of an energy administrator would allow for the continued management of customer accounts on the failed supplier's systems until subsequent sales could be organised to other parties as the energy administration is unwound. Ofgem may find it helpful to engage with industry stakeholders to understand the numbers of customers that could be managed under the SoLR process without significant risk to customer experience.

Question 2: 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 agree with Ofgem's aims to give some protection to consumers' credit balances in the event of a supplier failure, and agree with Ofgem's recognition that this protection may not always cover all the credit balances of all customers of the failed supplier particularly as without full access to the failing supplier's systems identifying exact credit balances for each customer could be a challenging, if not impossible, task. Where exact credit balances can be established we would note that this protection should apply only where a customer holds a genuine credit balance with a supplier. Where a customer has made payments in advance for consumption that has yet to be billed, there should be no expectation that a potential SoLR should cover this full credit amount without some assessment being made of the energy consumed by that customer up until the relevant date.

We believe it is important that any approach to protecting credit balances is proportionate, taking account of the risks of supplier insolvency, and does not result in significant increases in costs across the industry as a whole, which would be likely to result in increases on all consumer energy bills. As noted in the consultation, we recognise that it is not Ofgem's responsibility to intervene to prevent suppliers failing. However, with increasing numbers of new entrants into the energy market, we believe Ofgem has an important role in ensuring that the risk of supplier insolvency does not increase significantly.

In reviewing the options considered by Ofgem to protect consumer credit balances, we can see the attraction that Option 1 (case by case use of SoLR powers) provides as we generally believe that this offers the most cost effective approach where supplier insolvency is an infrequent occurrence. Suppliers offering to act as a SoLR can make an assessment on the level of protection they can offer to the failing supplier's customers based on the information provided to them, and we generally think that this approach is likely to have little or no impact on other consumers. However we have some concerns about unintended consequences of this option, as by effectively asking other industry participants (and ultimately their customers) to take on the risk of covering credit balances in the event of supplier failure, this could erode the incentives for suppliers to ensure that they are financially robust. In turn, this could lead to more instances of supplier failure.

If supplier insolvency were to become a more common occurrence, then we think that Ofgem should consider another option that provides for the costs to fall where the risk of insolvency lies. For example, there could be a requirement to protect customer balances with collateral in a manner broadly similar to the approach used in the wholesale market. We do not consider that proportionate measures to protect consumers from insolvency risk can be described as a barrier to entry.

Finally, we agree with Ofgem's assessment and decision not to take further consideration of seeking amendments to primary legislation to give preference to customer credit balances on insolvency, or to the provision of information to customers relating to the effect and risk of insolvency and maintaining a credit balance.

Question 3: 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?

As we have noted in our response to Question 1, there will be many challenges for new suppliers in reducing the impact to customers of the failing supplier whether they become the new supplier of the customers through a trade sale or the SoLR process. In particular, a SoLR is unlikely to have access to the failing supplier's systems, creating a lack of continuity of customer experience, as well as a potential lack of knowledge of a customer's account balance at the point of moving to the new supplier.

It will therefore be helpful in inviting companies to be SoLR for Ofgem to set out what information it has about access to the failing supplier's systems and to the data stored therein. It is likely to be appropriate for Ofgem to obtain copy data from the failing supplier which can be made available to the new supplier in order to help manage customer service and perhaps estimate credit balances. However, it is unclear what recourse there is if the data extract cannot be done in a timely fashion, becomes out of date, or turns out to be defective.

In relation to Ofgem's revised guidance for the SoLR process and the detail this includes on information that would be requested from both the failing supplier and third parties. While the information set out in the guidance out in Appendices 1, 2 and 3 will generally be sufficient for us to respond to Ofgem if asked to consider acting as a SoLR, we would make the following points:

- As set out in this consultation Ofgem will ask potential SoLRs how they intend to protect consumer credit balances. As such it would be helpful to receive information regarding credit balances of the failing supplier's customers
- It appears from the information request published alongside this consultation, and the revised guidance that asks the failing supplier for number of customers on the Priority Services Register (PSR), that Ofgem are using the PSR as an indicator of customer vulnerability that potential SoLRs may use in the assessment of protecting customer credit balances. We would note that in many cases customers eligible to be on each supplier's register would not necessarily be financially vulnerable and therefore most exposed to the loss of any credit balance. Ofgem is currently consulting on revised proposals for the PSR that would significantly widen the number of customers eligible to be on each supplier's PSR, and while it is up to each potential SoLR to propose their own approach to protecting credit balances of all consumers, or subsets of consumers; using the full PSR as the indicator of vulnerability could result in SoLRs proposing to cover a lower amount of each customer's credit balance than they would otherwise cover based on an indicator of only financial vulnerability.

We believe an indicator of financial vulnerability would be a more appropriate assessment of those customers most exposed to the loss of a credit balance, and for large suppliers the eligibility for the Warm Home Discount (WHD) would provide this. However we are aware that the majority of smaller suppliers do not offer the WHD therefore the PSR is the only cross industry register of customers in vulnerable circumstances. As part of the data sharing element of the revised PSR, agreed needs codes are being developed to provide for a consistent identification of those PSR customers most in need of support. Providing the PSR information at this level allows potential SoLRs to propose approaches to covering credit balances tailored to protect those most at risk

- With regard to customers with smart meters, there are a number of challenges that a potential SoLR could face in supplying such customers and we would ask that Ofgem take further consideration of this. In particular:
 - o Within the body of the guidance document it states that Ofgem will, where a failed supplier has meters enrolled in the DCC, request details from the DCC of the number of meters enrolled and relevant details including the number of meters operating in prepayment mode. We note that currently this would not include SMETS1 meters and therefore it would be helpful if Ofgem also asked the failing supplier to provide similar details in relation to their customers with SMETS1 meters.
 - o In addition, without further details of contractual arrangements with third parties (for example the failing supplier's Smart Metering System Operator) for SMETS1 meters, and confirmation that the SoLR will be able to access the meters in accordance with the security arrangements for SMETS2, SoLRs could face challenges in providing smart services to customers with smart meters.

In addition, it is unclear from the guidance how detailed the information provided to potential SoLRs would be, and would ask that Ofgem provide as detailed information as possible without breaching any data protection or privacy obligations, to allow a more informed response.