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The Office of Gas and Electricity Markets  
10 South Colonnade  
Canary Wharf  
London  
E14 4PU

23 January 2019

Dear Lisa,

### **Consultation on Supplier Licensing Review**

I write in response to the consultation on Supplier Licensing Review.

#### **About Ombudsman Services:**

Ombudsman Services is a not-for-profit private limited company established in 2002 which runs a range of discrete national ombudsman schemes across different sectors including energy and communications. Each scheme is funded by the companies under our jurisdiction and our service is free to consumers. In 2017 we received 172,865 initial contacts from complainants and resolved 92,110 complaints.

For consumers, we offer a free and accessible way of resolving complaints, with a focus on swift, impartial resolutions based on principles of fairness. We also use the insights and data we gather through our casework and other sources to help bring about wider improvements which deliver benefits to all consumers, not just those who have turned to us for help.

For businesses, we help resolve disputes with customers in a fast and non-adversarial way, helping with customer retention and brand loyalty. We go beyond individual complaints to identify broader trends which can be a source of innovation. We also use our expertise to help companies identify opportunities for improvement, which can sharpen competitiveness and help build reputation.

#### **General comments:**

We agree that the proposals outlined in this consultation are right and form part of Ofgem's wider consideration of the implications of the changing energy market and conditions that suppliers have to operate in and the need to continue to build consumer trust and confidence in the sector.



We think that getting the entry process and requirements right is key to enable new entrants not only to have the best chance of being successful but also building the right behaviours within the new entrant to help it meet its wider regulatory commitments – so working constructively with Ofgem but also Citizens Advice, the Extra Help Unit and the Energy Ombudsman. Focusing on entry requirements will help to reduce the risk of new entrants going into liquidation and causing consumers detriment and placing additional burdens on other supplier and key stakeholders in the sector.

By reducing the chances of suppliers going into liquidation then the focus can be much more on ensuring that consumers are offered a truly 360-degree form of protection on the rare occasions when a supplier does go into liquidation – as the consultation highlights it is important that exit remains a feature of the market. We think that 360-degree protection for consumers must go wider than just customer account balances. It needs to cover issues such as vulnerability, the warm home discount and other allowances, switches in process and complaint resolution including cases that are being considered by the Energy Ombudsman. A 360-degree approach to consumer protection in the event of a Supplier of Last Resort (SoLR) being appointed will help to maintain consumer trust and confidence in the sector.

From our experiences of working with consumers, suppliers, Ofgem and other stakeholders where a SoLR has been put in place, a 360-degree approach to consumer protection works best where Ofgem strongly indicates in the criteria for appointing a SoLR that certain consumer protections are prioritised. We think that these requirements need to be formalised as part of the review on exit arrangements and the SoLR process so that factors like vulnerability, financial discounts, switching and complaint resolution are a mandatory requirement that the appointed SoLR has to meet in full.

We responded to the previous Ofgem consultations on the proposed modifications to the SoLR and supply licence conditions. We raised several general comments in those responses which are relevant to this response, for example:

- it is right to place consumers at the heart of the SoLR/licensing arrangement to ensure they continue to have an energy supply, that any credit is protected, any benefit a consumer might receive, for example, the warm home discount is not lost and that consumers can switch when they are clear what the SoLR arrangements are if they wish to do so, and that consumers can continue with raising a complaint to the Energy Ombudsman and obtain redress;
- prevention is better than cure and that entry and on-going requirements on energy providers are appropriate to ensure sustainability both in terms of financial stability and good consumer service are in place. We want to play our part in this by developing the tripartite working with Ofgem, Citizens Advice and the Extra Help Unit to use key metrics to spot energy providers that may be struggling with financial stability and customer service as early as possible to act in a preventative way; and
- the focus when looking at the licensing and SoLR structure should be holistic in that it enables cost recovery from stakeholders in the sector that are affected.

We agree that it is appropriate to make sure that the financial costs of having to appoint a SoLR does not fall disproportionately on any one part of the energy landscape. We welcome the proposals in this consultation that are aimed at reducing the occurrence of suppliers going into liquidation. By focusing on the whole life cycle of a supplier, from entry into the market, continuing to operate in the market and exiting the market is right. By reducing the chances of suppliers exiting the market due to liquidation we think there is more the sector can do to fully protect consumers, for example insurance schemes of last resort that we discuss towards the end of our response.

We appreciate that the primary focus of this consultation is to review the criteria and process for market entry for suppliers but welcome the fact that Ofgem is seeking views on high-level options for new on-going requirements on suppliers, and that initial thoughts around better protecting consumer account balances when suppliers exit the market are being sought.

With the increase of new entrants to the energy market, we have seen an increase in a lack of understanding of industry rules from some new market participants. From our experience, some of the new entrants to the energy market have little understanding of their regulatory obligations. For example, some have been unaware that they should not block a domestic customer transfer if the customer's debt has been outstanding for less than 28 days. Other examples include a lack of understanding of the rules on back billing and frequency of billing. Of concern has

been the instances where new entrants have lacked the flexibility in their processes to deal effectively with the issues facing consumers in vulnerable circumstances.

As we have highlighted in some of our previous responses, when we look at trying to place consumers at the heart of what we do, we know, there will be consumers who will have made a complaint about the failed supplier and that complaint will be with the Energy Ombudsman to consider. We will always consider a complaint made to us by a consumer, even if this means that that we are not able to recover our costs for that complaint. However, the implications of having to appoint a SoLR go wider than consideration of our costs in that:

- individual consumers with a complaint, despite the fact they will have a decision from the Energy Ombudsman, may have no way of obtaining implementation of the remedies and are at best reliant upon the goodwill of the SoLR around remedy implementation; and
- the impact on our service and the knock-on effects for potential savings we can offer to the energy sector. For example, we have reduced our costs of handling cases in the energy sector and will continue to do so in 2019 by an estimated £5 million per year due to increased efficiencies in our service. These are significant savings that will be impacted by failing energy providers.

#### **Answers to the specific question raised:**

#### **The case for change and our aims.**

#### **Q 1: Do you agree with the principles we have set out to guide our reforms?**

We agree that the four principles set out are sensible to take forward the proposed reforms on the supplier licensing review. There is a balance between supplier responsibility, effective and proportionate regulation and placing consumers at the heart of the reforms.

To ensure the principles are met we think it is even more important that the wider regulatory landscape works together to help ensure risks are identified early and work is undertaken to mitigate those risks and that different stakeholders work with suppliers to help promote good consumer care and service and reduce consumer detriment. This is just as important before new suppliers enter the market as it is on an on-going basis and when suppliers exit the market.

Continuing to work across the sector sharing and using data to identify key risks, for example, via the tripartite working between Ofgem, Citizens Advice (including the Extra Help Unit) and the Energy Ombudsman, is a good way to ensure a proportionate approach is taken to the regulation of suppliers, help to facilitate effective competition and innovation, and also raises consumer trust and confidence in the sector.

#### **Entry criteria: policy options.**

#### **Q 2: Do you agree with our proposal to introduce new tougher entry requirements and increase scrutiny of supply licence applications? Do you agree this can be achieved with increased information requirements and qualitative assessment criteria?**

We think option 2 proposed is right. This provides a balance between increasing the entry requirements and scrutiny around supply licence applications but also takes a proportionate approach in accepting that these checks are at a point in time and not an absolute guarantee for the future performance of a supplier once in the market. However, when coupled with the on-going obligations suppliers will be subject to once they enter the market and the obligations to work with key stakeholders in the sector, such as Citizens Advice, the Extra Help Unit and the Energy Ombudsman – this provides a more holistic approach on the performance of a supplier on an on-going basis.

**Entry criteria: initial proposals.**

**Q 3: Do you agree that our proposed assessment criteria for supply licences applications are appropriate?**

The three proposed assessment criteria appear appropriate as a basis to consider approving licence applications, however, we think that:

*under the resources criteria:*

- the 'sufficient provision for human resources' the reference to maintaining customer service standards should include specific reference to consumers in vulnerable circumstances; and
- under the 'understand key risks of operating in the market' there should be specific reference to working with other key stakeholders in the sector such as Citizens Advice, the Extra Help Unit and the Energy Ombudsman. So, for example, potential and new suppliers are fully aware of the costs of complaint handling and the implications if consumers take their case to the Energy Ombudsman in terms of implementing remedies and case fee obligations.

*Under the regulatory obligations:*

- we think it should be made clear what all the regulatory obligations are for suppliers coming into the market and what their on-going obligations are. As well as highlighting what this means for how suppliers engage with Ofgem it should also highlight how suppliers engage with other key stakeholders such as Citizens Advice, the Extra Help Unit and the Energy Ombudsman.

**Q 4: Do you agree that applicants should provide evidence of their ability to fund their activity for the first 12 months, and provide a declaration of adequacy?**

Yes, we agree with this requirement.

**Q 5: Do you agree with the specific information we would generally expect applicants to provide (in Appendix 1)? If not, why/what would you add or change?**

Yes, we agree with what is contained in Appendix 1, however, we think the comments we have made in answer to Question 3 above should be incorporated into Appendix 1.

**Q 6: Do you agree that applicants should provide a narrative in respect of their key customer-related obligations under the licence?**

Yes, we agree with this and think the narrative should highlight how the supplier intends to engage with key stakeholders such as Citizens Advice, the Extra Help Unit and the Energy Ombudsman.

**Q 7: Do you agree with the areas we would generally expect applicants to cover (in Appendix 1)? If not, why/what would you add?**

Yes, we agree with what is contained in Appendix 1, however, we think the comments we have made in answer to Question 3 above should be incorporated into Appendix 1.

**Q 8: Do you agree that we should ask additional 'fit and proper' questions as part of the application process (as set out in Appendix 1)?**

Yes, we agree with this and it makes sense to ask for additional disclosures around insolvency; previous SoLR events and compliance/enforcement history as these areas are in direct alignment with many of the risk areas that this review is looking to reduce and mitigate.

### **Timing of licensing: initial proposals.**

#### **Q 9: Do you agree that Ofgem's licensing process should be undertaken closer to proposed market entry? Do you identify any barriers to this approach or any adverse impacts of this change?**

We agree with the proposed approach. With the timelines indicated in the consultation paper around systems testing in electricity taking the time it does, it is proportionate to seek information requirements from the potential supplier closer to the Controlled Market Entry stage. As the Ofgem proposals in this consultation will require more information and grater detail it is only fair to enable a potential supplier to have a better-informed view of the information required and that position is more likely to be reached closer to market entry.

We also agree that this approach will help to firm up the 'off the shelf' model of market entry and mean that the real engagement is between the people/entity that will operate the supply business and Ofgem and other key stakeholders such as Citizens Advice, the Extra Help Unit and the Energy Ombudsman.

### **Ongoing requirements.**

#### **Q 10: Do you consider that suppliers should report on their financial and operational resilience on an ongoing basis? If so, do you have any initial views on the content of these reports/statements?**

We do consider that suppliers should have an on-going obligation to report on their financial and operational resilience. However, we think that a key part of this is what Ofgem will do with that information both in terms of on-going review of that information and how Ofgem may share that information with other key stakeholders in the regulatory landscape such as Citizens Advice, the Extra Help Unit and the Energy Ombudsman.

We think it may be useful to seek information from suppliers around the deals that they offer consumers (i.e. what the mix is of historic fixed rates and variables) as well as the energy units the supplier has committed to buy from the energy market. This should enable a comparison to be made between the average price the supplier has committed to sell energy to their consumers against the average price they have agreed to buy from the energy market. Looking at this spread should enable an analysis of which suppliers are at most risk.

We agree with the points identified at point 7.2 in the consultation paper. We think that a supplier should have plans in place for the growth in customer numbers that they aim to obtain. It would also seem sensible to have a requirement on suppliers to highlight where their consumer growth is higher than expected and what plans they have in place to ensure customer service standards can be met.

#### **Q 11: Do you have any initial views on the potential introduction of targeted or strategic monitoring/requirements on active suppliers**

We also think that there should be targeted and strategic monitoring requirements on suppliers as well. This provides a much more targeted and risk-based approach. The two broad areas outlined – when a supplier is expected to reach a certain consumer threshold and if growth or key metrics are materially different to expectations or there is a change of control seem right.

#### **Q 12: Do you have any initial views on the potential introduction of prudential/financial requirements on active suppliers?**

We agree that the potential measures listed do represent a more interventionist approach but given the seriousness of a supplier going into liquidation in terms of consumer detriment, a growing lack of consumer trust and confidence in the sector and the impact on the wider sector, such as other suppliers and key stakeholders such as Citizens Advice, the Extra help Unit and the Energy Ombudsman we think such requirements do have a place.

Perhaps a combination of cyclical, targeted/strategic requirements and prudential/financial requirements may work within a risk framework. This would mean that all suppliers provide certain information on an on-going basis and some suppliers provider further information where they come into the risk profile/matrix.

Again, we also think that it is key that the wider regulatory landscape works well together sharing information and data to identify risk areas and suppliers at risk so that early action and intervention can take place to reduce, where possible, suppliers becoming financially at risk.

**Q 13: Do you consider that Ofgem should introduce a new ongoing requirement on suppliers to be 'fit and proper' to hold a licence?**

Yes, we agree with this being an on-going requirement.

**Exit arrangements: managing supplier failure.**

We agree that as part of the future work that Ofgem undertakes around suppliers exiting the market that more protections are required around consumer credit balances. The initial measures outlined at point 8.8 are a good starting point. We certainly think that client/consumer monies – credit balances should be protected. In other sectors there are clear rules and requirements on firms and individuals around how they hold client monies. Certainly, these resources cannot be treated as working capital by the firm or individual holding them. For example, in the property sector, for many firms and individuals working in that sector they must have in place ring-fenced client accounts. This is irrespective of the size of the firm and many firms in the property sector are small firms - partnerships or sole traders.

We also wonder whether there is scope to consider a type of insurance scheme to protect client monies. So, in effect, you could have a scheme of last resort that would protect any consumer credit balance or monies owed. Given that the proposed measures contained in this consultation would be aimed at reducing the risk or amount of consumer credit balances or monies at risk; therefore, an insurance scheme of last resort would only cover the part of consumer credit balances or monies not covered by the extra protections highlighted. The coverage would be relatively small and only kick-in when a supplier goes into liquidation. As the paper highlights, whilst the proposed measures are aimed at reducing the number of events where a supplier does go into liquidation, but that supplier failure is still a factor in a competitive market then an insurance scheme of last resort has attractions. For example, it will help to maintain consumer trust and confidence in the sector, and it could be funded by all suppliers – based on size so that the cost does not fall disproportionately on suppliers and other stakeholders.

The same approach could be taken with other elements that lead to direct consumer detriment when a supplier goes into liquidation. For example, when it comes to complaint handling and redress. An insurance scheme of last resort could ensure that complaints against a supplier that goes into liquidation can be taken to the Energy Ombudsman and redress provided – so any financial redress is covered by the insurance scheme as well as the cost of the case being fully considered by the Energy Ombudsman.

Please do not hesitate to contact us if you would like further information regarding our response.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. Vickers', with a long horizontal flourish extending to the right.

Matthew Vickers  
Chief Executive and Chief Ombudsman

**For more information regarding this consultation please contact:**

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