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Dear Ofgem Supplier Licensing Review Team,

Citizens Advice Response to Ofgem's Statutory Consultation – Supplier Licensing Review: Ongoing requirements and exit arrangements

This submission was prepared by Citizens Advice. Citizens Advice has statutory responsibilities to represent the interests of energy consumers in Great Britain. This document is entirely non-confidential and may be published on your website. If you would like to discuss any matter raised in more detail please do not hesitate to get in contact.

Citizens Advice welcomes Ofgem's recently-published final proposals on ongoing requirements and exit arrangements as part of the supplier licensing review. We were glad to see that many of our suggestions for protecting consumers have been taken on board.

The final proposals broadly aim to address four areas: promoting better risk management, more responsible governance and increased accountability, increased market oversight, and exit arrangements. Overall, we support these final proposals.

The final proposals are largely risk-based and their success in improving consumer outcomes will depend on Ofgem's judgement on where suppliers could be causing consumer harm. This approach should enable flexible regulation in the retail energy market, so that companies causing more consumer risk are more closely scrutinized. However, successful implementation will depend on Ofgem's ability to monitor compliance and take swift action against suppliers early on when they are posing consumer detriment. This will require additional resource and smarter processes making full use of the data available.

Alongside the final decision, we think it would be useful for Ofgem to publish a timeline for any further consultations - including any prescriptive measures that may

follow from the financial responsibility principle, and any further consideration of exit requirements and supplier portfolio splitting.

While the steps Ofgem is taking will mean the regulator can better manage the risk of high mutualised costs, some features of the market mean they will continue to be too high. The Renewables Obligation scheme has contributed the largest single mutualised cost resulting from supplier failures, and is due to remain in place until 2037. We continue to call for the government to reform this scheme, so that suppliers pay towards it more frequently. Ofgem should also continue its work to consider how the cost of mutualised credit balances can be reduced.

We remain disappointed by the relative deprioritisation of microbusiness consumers in the review. This is particularly the case around the treatment of microbusiness credit balances - at a time when many businesses are struggling due to COVID-19, and suppliers serving this sector may be at higher risk of failure.

Similarly, many domestic customers are more likely to have fallen behind on their bills due to the effects of COVID-19, and to have debit balances should their supplier fail. It is vital that these customers are treated fairly by administrators of failed suppliers in these circumstances. We think there is more that the government and Ofgem could do to help resolve these issues for customers.

Given the additional risks and financial pressures caused by COVID-19 - and the various schemes that are in place to defer supplier costs until 2021 - we urge Ofgem to put these new rules in place as soon as possible in order to mitigate the risks of higher mutualised costs and customer service failures that could emerge.

Below, we will detail our views on each of the final proposals by chapter in the consultation document.

Chapter 2: Promote more responsible risk management

Financial responsibility principle

Over £255 million are estimated to have been socialised as a result of supplier failures in 2018 and 2019, with £47 million socialised through the SoLR levy alone¹. We agree with the financial responsibility principle and believe that it can give Ofgem a tool to identify financial mismanagement at an early stage, and take compliance and enforcement action. However it is likely to be of much more limited use in tackling issues at firms that are in significant trouble. Other measures are required to significantly lower the mutualised cost of supplier failures in future. In particular, BEIS

¹Citizens Advice [Picking up the Pieces](#) (Updated Dec 2019)

should require the Renewable Obligation - the largest single driver of costs - to be paid more frequently. Ofgem should also continue to give consideration to measures to reduce mutualised cost of credit balances, and set out its next steps for doing so.

In monitoring this principle, Ofgem mentioned that it will focus on suppliers and practices that appear to pose the greatest risks of a disorderly exit, where the costs to be mutualised may be higher. We agree with this approach. Ofgem mentioned that it is initially interested in suppliers making use of network charge deferral schemes. Suppliers who request delays to meeting their financial obligations under government schemes should also be considered for extra scrutiny.

We estimated that based on energy supplier failures in 2018 and 2019, £97 million in costs were mutualised due to unpaid Renewables Obligations and £6 million from unpaid capacity market payments in 2019². In addition to focusing its monitoring on suppliers which seem to pose the highest risk for cost mutualisation, Ofgem should consider regularly requesting information from all suppliers about how they plan to finance their regulatory obligations in order to identify where consumer harm might arise.

The risks of below-cost pricing have been particularly apparent with supplier failures in the past. For example, in our Picking up the Pieces report (June 2019), we identified that failed suppliers were offering tariffs ranging from £35 - £220 cheaper than the market average. We would support Ofgem introducing guidance on how to meet the new principle, and that a key part of this should be for the risk of below cost pricing to sit with investors (in addition to evidence around existing rules, schemes and good governance). This will be particularly important as more innovative models enter the market.

Ofgem also mentions that “since SoLR payments don’t allow for recovery of non-dom credit balances, Ofgem’s monitoring of credit balances may be proportionately lower for non-domestic suppliers”. However, we think this review is a clear opportunity to improve protections for microbusinesses.

Our report [Closing the Protection Gap](#) showed that the financial impact of a microbusiness losing its credit balances can be severe. In the event of a supplier failure, microbusinesses have to join the queue of non-priority creditors waiting for their money back from the administrator. This process can take upwards of 12 months. For non-domestic suppliers, it is therefore particularly important that Ofgem

²Estimates taken from [Picking up the Pieces](#) (Updated Dec 2019). In our June 2019 report, [Picking up the Pieces](#) we found that 75% of direct costs of supplier failures were due to failure to pay the Renewables Obligation

monitors the financial responsibility principle to ensure that the size of customer credit balances is appropriate, so that less of their money is put at risk if a supplier fails. Ofgem should also immediately extend requirements for suppliers to refund domestic customers on request (unless it is fair and reasonable not to) to microbusiness customers and, in the longer term, introduce a credit balance protection scheme for microbusinesses.

Operational capability principle

We agree that suppliers should have internal systems, processes and governance in place to serve all their customers well and meet their regulatory obligations. In the past, we have highlighted that failed suppliers have often had poor customer service outcomes, as demonstrated by the Citizens Advice Star Rating results. This has led to consumer detriment while the supplier was operating as well as after failure, when poor records made the process of being billed by their new supplier more difficult.



Figure 1: Last Citizens Advice rating published before suppliers failed³

The aspect of this principle calling for suppliers to proactively identify and mitigate risks of consumer harm is crucial. Suppliers should take account of risks that may disproportionately affect certain groups. For example, suppliers should be required to demonstrate how they have considered the risks that consumers who are digitally disengaged may face when changes to customer service and billing are implemented. As such, we support the current drafting that suppliers should 'efficiently and

³ Citizens Advice, [Compare domestic energy suppliers customer service](#), 2019

effectively serve **each** of its Customers'. Ofgem should monitor this outcome closely through its regular compliance engagement with suppliers, as well as when it is notified about 'significant' operational changes under the new monitoring and reporting requirements.

Milestone assessments at 50,000 and 200,000 domestic customers per fuel

We are supportive of the milestone assessments and agree that they should help Ofgem effectively monitor suppliers and ensure they are adequately prepared for further growth.

Ofgem highlights the possibility that if a supplier passes the threshold by acquiring a failed supplier through the Supplier of Last Resort (SoLR) process, then the milestone assessment can be delayed to account for the quick turnaround. Ofgem would need a high degree of confidence before taking such a decision during a SoLR. This is because it could lead to an underprepared supplier becoming a SoLR, and may result in poor outcomes for customers. This risk could be mitigated if Ofgem takes forward proposals regarding portfolio splitting following a supplier exit, which could allow more time for a milestone assessment, ahead of customers being moved to an enduring supplier.

Dynamic assessments in response to specific concerns about a supplier's financial sustainability or ability to serve their customers

We strongly support dynamic assessments, which are likely to be a valuable way of investigating instances where an energy supplier might be causing harm to consumers.

One of Ofgem's mechanisms for monitoring the market includes the Tripartite arrangements⁴, where Ofgem, Citizens Advice⁵ and the Extra Help Unit as well as Ombudsman Services: Energy share market intelligence. Evidence and insights shared during Tripartite working should be among the criteria Ofgem considers when deciding where a dynamic assessment is required. Swift action from Ofgem to initiate and complete an assessment when there are early signs of detriment will be necessary to avoid prolonged harm to consumers.

Chapter 3: More responsible governance and increased accountability

Ongoing fit and proper requirement

⁴ Ofgem [Tripartite Group Engagement Diagram](#) (2017)

⁵ Citizens Advice [How we monitor energy suppliers](#) (2020)

We agree with the implementation of a fit and proper requirement, which will complement requirements placed on new energy supply license applicants from July 2019.

This principle relies on suppliers setting out processes to ensure that relevant individuals within the organisation meet the fit and proper requirements. Ofgem should consider how this principle will be enforced in cases where the leader of an energy supply company, who would be responsible for ensuring compliance with the principle, may not pass the principle themselves.

Principle-based requirement for suppliers to be open and cooperative with Ofgem

We see firsthand in our work that openness and cooperation by suppliers with statutory bodies are vital to ensure that consumers are protected effectively. We believe that this principle may have value in ensuring cooperation from suppliers who are not at severe risk of exiting the market, and set clear expectations of supplier behaviour. Since this principle makes cooperation with Ofgem an enforceable requirement, it can help ensure swift responses to Ofgem investigations from suppliers who may be causing consumer detriment.

But the principle is unlikely to be effective in some circumstances. For example, suppliers who are on the brink of failure or are causing consumer detriment, may not be open and cooperative and could prioritise rescuing their business over avoiding potential enforcement action.

Overall, this principle is unlikely to create additional burden on the majority of suppliers, who are already compliant.

Chapter 4: Increased market oversight

Customer Supply Continuity Plan

Overall we support this principle and agree it could mitigate impacts of supplier failure on consumers and the market. Ofgem should consider how this requirement will be monitored and enforced, and how information provided in the continuity plan will be assessed for accuracy. This is particularly important since information can change quickly and a failing supplier may be less likely to comply.

Draft licence condition 19C does not include any requirements of the specific information which should be included in the suppliers' continuity strategy. Ofgem's policy consultation lists some specific requirements for the supply continuity plan such as information on arrangements to ensure service continuity by key providers, key staff contact details, and customer account information. Ofgem should set out

how it expects to achieve this outcome - for example through formal guidance or prescriptive requirements that sit under the principle.

In addition to suppliers having to provide detail of arrangements with third-party service providers, in order to ensure continuity of services, a contingency plan in the event of a SoLR should be arranged with any third party providers. Metering arrangements should be in place during the period between supplier failure and SoLR appointment. In several SoLR situations, there is a risk that if the agreement with the metering operator is suddenly terminated, customers may be left off supply, especially those who pay using prepayment meters.

Independent audits

We broadly support this proposal and particularly support that audits can be requested to investigate financial status as well as customer service systems and processes. Audits can be a valuable method of examining issues that Ofgem or the supplier may not have effective oversight of. They can identify the root cause of poor consumer experiences if suppliers are unable to accurately identify the underlying problem of issues such as service or billing. By identifying what is required to resolve any issues, audits can avoid the exacerbation of problems that can lead a supplier to exit the market in an uncontrolled manner.

In cases where a supplier is likely to fail even after an audit, the findings of the audit may still be useful in identifying poor customer account management, and finding a solution which can prevent further consumer detriment during the administration process. In past supplier failures where a supplier did not have their finances in order, consumers were pursued for a higher debt than they believed was owed by the administrators.

In the case of one supplier failure, many consumers were pursued for debts as high as £7000, some for debts they did not believe they owed during the administration process. According to the administrator's reports, nearly £70 million of debt was owed to the supplier, much of which was disputed or significantly aged (overdue). Consumer contacts to Citizens Advice and the administrator showed that in some cases, customers were pursued for debt that was over a year old, which the failed supplier had not pursued and collected in a timely manner. An audit before the company failed could have helped identify the issue so that more time was available to resolve it.

We recognise that requesting an audit could entail potential costs for suppliers, which would likely be passed on to consumers. We are confident that Ofgem will apply a similarly robust approach to requesting audits as it does to its other compliance and enforcement work. We believe audits are only likely to be requested when other steps have failed (for example, if suppliers have not been cooperative) and where there is a high likelihood that the benefits to consumers outweigh the potential costs.

Additional reporting requirement

We agree with the aim of this principle, and with the proposal that suppliers should promptly inform Ofgem on issues which may impact financial stability.

Chapter 5: Exit arrangements

Requirement that supplier contract terms and conditions state activities relating to debt recovery will be executed as outlined in licence conditions

Ofgem and Government need to work together to ensure that consumers whose accounts have been passed on to administrators are not unfairly pursued for debt. Since 2018, energy supplier failures have led to consumer debts of £153 million⁶ being passed to administrators. As we have previously called for in our policy report [Picking up the Pieces](#), legislation is needed so that administrators of failed suppliers have to consider consumer interests and follow Ofgem rules. Access to alternative dispute resolution should also be made available for customers of a failed supplier affected by the administration process.

In the absence of such reforms, this requirement may have some positive impact for consumers, and we will monitor its effects on administrator debt collection activity in future SoLRs.

We have also seen many consumer contacts or complaints related to debt that is collected by the SoLR on behalf of the administrator, or where consumers received incorrect amounts for credit balance refunds. While these issues can be outside of the new supplier's control, there are also cases where the SoLR is responsible for problems. In these cases we would expect customers to be able to seek redress and would recommend that Ofgem consider favouring SoLR bids that include commitments to maintain access to alternative dispute resolution. In some cases the activities of SoLRs in collecting these debts on behalf of the administrator may also fall within the scope of Ofgem regulation, and be subject to enforcement action.

Requirement to notify Ofgem when suppliers are planning customer book sales

We support this proposal. In addition to its intentions of avoiding potential distortions of the SoLR process, we believe that implementing this requirement should ensure that any customer book sales are not detrimental to consumers. In previous cases of a company taking on a trade sale and failing shortly afterwards, we have seen a poor customer journey for consumers of both companies involved.

Additionally, Citizens Advice has received increased contact to the Consumer Service as a result of poorly executed trade sales in the past. In several customer transfers, we have had concerns that consumers might not receive the appropriate information about changes to their tariffs, payment methods, and supplier contact details. The

⁶ Based on administrator reports

requirement to notify Ofgem can be an opportunity to ensure that the suppliers involved are prepared for the increased customer contact, and that all appropriate third parties, including Citizens Advice, have been engaged in advance of the sale to ensure that consumers are appropriately informed.

Requirement for suppliers to honor SoLR commitments

We support this requirement and agree that suppliers should be held accountable to the promises they make to consumers during the SoLR bidding process, and in particular to protecting credit balances. We also agree with the aims of the requirement to provide a clearer route for enforcement by consumers of the SoLR's commitments and to recoup costs of the SoLR where possible through the failed suppliers' liquidation and through its investors.

We would expect that to some extent, the limited information about a failed suppliers' situation and accounts would be addressed by the other measures in this proposal, such as audits and Customer Supply Continuity Plans. This should help bidding suppliers to make an informed decision about what they can offer to consumers, make firm and binding decisions in this regard, and minimise the need to rely on more of the Last Resort Supplier Payment Claim than initially included in the SoLR bid.

Yours sincerely,

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