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Licensing Frameworks
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Monday 17 August 2020

Dear Sir or Madam

Statutory Consultation – Supplier Licensing Review: Ongoing requirements and exit arrangements

Introduction

R3 is the association for the UK's insolvency, restructuring, advisory, and turnaround professionals. We represent licensed insolvency practitioners, lawyers, turnaround and restructuring experts, students, and others in the profession. Our members work across the spectrum of the profession, from global legal and accountancy firms through to smaller, local practices. Our members have direct experience of insolvencies and their impact on individuals and businesses across the UK.

The focus of this response is on section 5 'Exit arrangements' as it is the most relevant to R3 members who have been appointed as office holders in energy supplier insolvencies.

Overview

R3 recognises the importance of ensuring that, when energy suppliers become insolvent, the customer experience is one that is both fair and prompt. We appreciate the intentions behind the consultation, and our members are familiar with the uncertainty and unease that can be caused for customers in insolvency situations, particularly for those individuals in difficult financial situations.

However, we are concerned that the consultation, while well intentioned, continues to lack consideration of insolvency practitioners' statutory duties when acting as office holders, and does not recognise the practical difficulties that office holders often face in dealing with insolvent energy suppliers. These challenges were detailed in our letter dated 3 December 2019, which we attach to this proposal in support of this response.

Response

For completeness we note that Ofgem's final proposals, in respect of section 5, are as follows –

Customer interactions with administrators

"We intend to introduce a requirement for suppliers to include references in their contract terms and conditions that activities relating to debt recovery will be executed as outlined in relevant licence conditions.

We will also continue to engage with the relevant regulatory bodies for insolvency practitioners, and where possible consider whether there are opportunities to work together to ensure energy customers are treated in a fair and reasonable way."

Customer book sales

"We propose to introduce a new requirement for suppliers to notify Ofgem when they are planning to undertake a commercial transaction which would result in the transfer of customers. We also propose to introduce a licence condition that prevents licensees from engaging in commercial transactions that subvert or distort, or are likely to subvert or distort, the Supplier of Last Resort process; and / or make it more likely, in the Authority's opinion, that costs will be mutualised."

Other improvements to exit arrangements

SoLR commitments

"We propose to introduce a new requirement for suppliers to take all reasonable steps to honour the terms of the bid they provide as part of the SoLR selection process. We also propose to introduce a requirement for suppliers to include a clause in deemed contracts committing them to honouring customer credit balances where that contract arises from a SoLR process and the supplier has committed to honouring credit balances."

Although the consultation notes the concerns raised in our previous response, it fails to take these into account in the final proposals. For example, "...suppliers must take all reasonable steps to send final bills within six weeks of the end of a supply contract. They must also take steps to understand whether a customer may struggle to pay a debt and to take this into account when calculating any payment instalments." It is important that Ofgem recognises the unique practical challenges faced by an office holder in an energy supplier insolvency. It is the difficulty of resolving these challenges that can lead to some of the issues identified in the consultation. The state of many failed energy providers' financial or billing records, combined with staffing and financial resource constraints and the significant amount of time required to receive final meter readings, mean that it will be very difficult to guarantee that an office holder would be in a position to issue final bills within a six week period – these are factors outside of the control of the office holder.

Again, we wish to reiterate an office holder is picking up the pieces at a financially distressed company. They may be appointed with little prior notice, and they may inherit systems and processes which are not fit for purpose. The office holder did not put these systems in place; they are there to try and achieve the best outcome in the circumstances. Some of the proposed regulatory changes proposed in this consultation, alongside increased support from Ofgem, would help them do this.

It is also worth noting that the interests of office holders, the SoLR and Ofgem are aligned: given their statutory and regulatory requirements, it is in office holders' interests to finalise customers' final bills as quickly as possible. Doing so would allow the insolvency process to progress faster, keeping costs down and protecting creditor returns.

Ofgem's proposal to continue to engage with the relevant regulatory bodies for insolvency practitioners is welcomed. As per our recent engagement with Ofgem staff, we would be keen to maintain an open dialogue given our role as the trade body for the insolvency and restructuring profession..

We hope that by improving dialogue, understanding and engagement between Ofgem and the insolvency and restructuring profession, all stakeholders will be able to have greater confidence in the framework for dealing with insolvent energy suppliers.

If you would like to meet us or if you have any other queries, please contact R3's Senior Press, Policy and Public Affairs Manager, James Jeffreys, at james.jeffreys@r3.org.uk, or on 020 7566 4220.

Yours sincerely,

Colin Haig
R3 President