

Emailed to: Licensing@ofgem.gov.uk

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

11 July 2018

Dear Lesley,

Proposed modifications to SoLR supply licence conditions

I write in response to your proposed modifications to the Supplier of Last Resort (SoLR) licence conditions.

About Ombudsman Services

Established in 2002, Ombudsman Services (OS) is a not-for-profit private limited company which runs a number of discrete national ombudsman schemes across a wide range of sectors including energy, communications, and property. Each scheme is funded by the companies under our jurisdiction and our service is free to consumers. We currently have in the region of 10,000 participating companies. Last year 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 with Ofgem that it is timely to look at updating the licence conditions surrounding SoLR. We also note that if Ofgem decides to take forward modifications then it will issue a statutory consultation on the proposals. As well as answering the specific questions asked in this consultation we have provided general comments which help to put our answers into context and the two should be taken together.

From our experience of working with providers appointed as SoLR, the customers affected by an energy supplier that has gone into liquidation, Ofgem and other stakeholders, it is clear that there are a whole range of issues that need to be factored in when looking to put in place an effective SoLR process. We think that

the whole process of a SoLR needs to be looked at from start to finish, with a clear focus on the customer journey, and actually building an effective system of checks and balances aimed at preventing the need for SoLR arrangements to be required in the first place. Key factors include:

Putting customers at the heart of the SoLR arrangements:

It is important to ensure that appropriate protections are in place to guard against poor customer service and financial instability of providers in the energy sector. It is right for this to include looking at licensing arrangements for market entry, on-going review and monitoring of providers by Ofgem and, of course, how suppliers exit from the market. A holistic view does need to be taken and these different parts of a functioning and competitive market should not be looked at in isolation.

Whilst a focus should be on protecting all affected customer credit balances and that includes existing customers and former customers, we think that this is only part of the picture. By mapping the customer journey during a SoLR process it will be possible to identify other areas of detriment that customers may have experienced and, of course, that will vary from customer to customer. Some examples of possible scenarios include where a:

- customer was receiving the Warm Home Discount but the SoLR isn't required to provide its customers with the Warm Home Discount;
- customer has an ombudsman decision that the failed supplier hasn't yet implemented;
- potential customer was in the process of switching to the failed provider because they were offered a better deal, that potential customer may have detriment; and
- customer on a pre-payment meter.

We would welcome being part of the work to look at mapping the customer journey through the SoLR process with Ofgem and other stakeholders in the energy sector.

Prevention is better than cure:

We agree that competition in the energy sector is good, however, we also think that the entry requirements for energy providers should be stringent and clear so that any new entrant is aware of the expectations on them, who the key stakeholders are, for example, the relationship they will need to have with Citizens Advice (CA), the Extra Help Unit, and OS (the Energy Ombudsman). New entrants may well need extra support and guidance as they come into the market and, of course, close monitoring. This approach fits well with the principles based Future Retail Regulation framework; as it identifies and targets risk areas.

Clearly this is not just about new entrants to the market but also on-going monitoring of existing energy providers and identifying warning signs and risks as early as possible, so that action and support can be taken to limit consumer and business detriment. There are a whole range of options or tools that can be used, for example, helping providers improve their processes and communications, limiting the number of new customers a provider can take on, and discouraging suppliers from increasing direct debits.

Through the tripartite working between Ofgem, CA and OS, there is a focus on looking at data and insights that highlight issues and trends generally, but also the number and types of complaints that energy providers are receiving. By working in a tripartite way, the focus is around the whole customer journey and where the pressure points are. The ethos of the tripartite working is to identify possible detriment and risk early, so that preventative action can be taken by working with energy providers to reduce that detriment or risk.

Experience of recent appointments of SoLR and the changing energy market:

The two, relatively recent, occasions where a SoLR has been appointed shows that this is not a theoretical discussion and so it is timely to ensure that the SoLR licensing arrangements are being looked at with a view to future proofing them as the energy market develops. For example, the introduction of price caps, increased flexibility and innovation in how energy suppliers operate through principles based regulation, new business models being developed, and the effect of the soon to be introduced database of customers who are disengaged may mean that some energy providers encounter instability, including financial instability. So as well as having a wider discussion on SoLR the new framework needs to be developed quickly.

From our own complaints data we can see how the energy sector changes; for example, we have seen that there has been an increase in the number of complaints about smaller suppliers over the last year from June 2017. The number of cases accepted by OS about smaller suppliers has increased from just over 10% of complaints to approximately 30%. During the same time complaints about medium sized suppliers has dropped from just over 16% to just over 9%, and for large suppliers it has dropped from just under 74% to just over 60%. Information like this helps to re-adjust risk profiles and enables working in a preventative way.

We also know that on matters of signposting – looking at when deadlock letters are issues by providers or 8 week letters informing customers that they can now approach the Energy Ombudsman with their complaint - we see that for smaller suppliers over the last six months signposting has not happened in over 86% to 94% of cases received by the Energy Ombudsman, for medium sized suppliers between 48% to 58% of cases were not signposted, and for large suppliers between 36% and 43% of cases were not signposted.

Looking at our data regarding one of the energy providers that went into liquidation, it showed that the number of cases OS had from customers about the energy provider in its last year of operation was double that of the year before. And when drilling down into complaint types the data showed that customer service complaints were prominent, for example, final bills not being issued, incorrect opening and closing meter readings and a failure to refund credit from closed accounts. During the last six months of the provider operating the upheld rate (complaints found in favour of customers) for complaints against the provider was between 60 to 70%. These indicators show that there were serious consumer service issues. It is important to share data and insight like this to help predict similar patterns in the future, with a view to taking action to prevent the need for SoLR actually happening.

Questions:

1. Do you agree with the intent of the proposed changes?

We do agree with the intent behind the proposed changes – there should be an effective safety net of protections in place for customers in the event that their energy supplier exists the market. However, for all the reasons provided in our general comments we think the discussion needs to be much wider than customer credit balances. For example:

- the customer journey needs to be mapped and harm and detriment needs to be assessed; and
- there needs to be a much bigger focus on working to prevent the need for SoLR in the first place.

We do agree that it is right to clarify what costs a SoLR can actually claim when they are appointed, as does providing some flexibility on the timings of making claims by the SoLR. However, we think the guiding principle here must be customer protection when appointing a SoLR and not whether a potential SoLR is likely to seek recovery of costs, via the back stop industry arrangements. Taking a narrow approach based

on whether the SoLR makes a claim may restrict certain suppliers from applying to become a SoLR, even though on other metrics they might be the best provider for the customer base of the failed provider.

Also, from our experience of working with energy providers in the two recent situations where the appointment of a SoLR was required, we think an important issue is the actual practical arrangements of one supplier taking over the customer database of the failed supplier. For example, where the billing system is readily available to the SoLR then this really helps with continuity of billing. However, where it is not available then this not only adds to customer detriment but it is also more expensive for the SoLR. There will be lessons learnt from the two recent examples of a SoLR being appointed.

2. Do you agree that the draft licence changes deliver the intent?

For all the reasons given in the discussion above we think the draft licence changes will only deliver the intent in part. If you make the discussion wider and from the perspective of customers then you are much more likely to provide an effective safety net that works for customers, limit the need for SoLR arrangements in the first place, and put in place a more holistic SoLR process.

3. Do you consider there are any potential unintended consequences of the proposed changes that we have not identified?

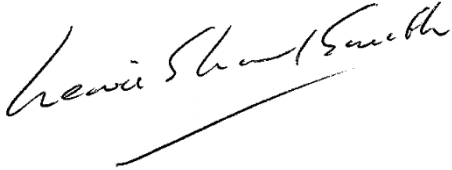
We think the biggest unintended consequence are that:

- the discussion around all of this is too narrow and it would be a missed opportunity if we don't look at better prevention so the risk of requiring a SoLR is minimised, building a safety net that works for customers, and having a more considered SoLR process; and
- unless customers are put at the heart of the process and there is a focus on prevention then the risk of needing to put SoLR in place continues or even increases. Customer trust and confidence in energy providers and the wider energy sector will also diminish. From our own experience, we know that there will be customers who will have made a complaint against a failed energy provider and that complaint will be with the Energy Ombudsman to consider. There is the question around if the ombudsman decision involves remedies then is the SoLR responsible for putting in place those remedies, and if so, can the SoLR make a claim if those remedies involve a cost? We would always consider a complaint from a customer even if we were aware the complaint was against a failed supplier and in reality we had very little chance of recovering our case fee. However, this does have an impact on our service and may in the longer term mean that when we make savings, due to increased efficiencies in our service, the total savings to the sector may not be as high as they should be. For example, the cost to firms for the Energy Ombudsman handling a case has fallen by 19%, cutting costs for the industry by approximately £3.5 million per year. These are significant savings and it would be unfortunate if this was reduced because of a provider failing.

4. Do you have any comments on the proposed licence drafting, set out in Annex 1?

Again, we think the drafting changes need to reflect the wider discussion that is required here around prevention, placing customers at the heart of the process and having an effective SoLR process.

Yours faithfully,



Lewis Shand Smith, Chief Executive and Chief Ombudsman