

## **To insolvency practitioners appointed to failed Energy Supply companies**

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Dear stakeholder,

This letter reflects Ofgem's experience of dealing with insolvency practitioners appointed to failed energy suppliers and sets out Ofgem's expectations of insolvency practitioners operating in this context.

This letter covers the following: (1) context on the role of Ofgem when energy suppliers fail; (2) the role of an insolvency practitioner when energy suppliers fail; (3) Ofgem's engagement with insolvency practitioners and our expectations; and, within the annex, some relevant requirements on energy suppliers to prioritise good consumer outcomes.

### *Ofgem's role and duties when an energy supply company fails*

The principal objective of Ofgem when carrying out its functions is to protect the interests of existing and future electricity and gas consumers.

One of Ofgem's regulatory activities is to promote security of supply. Companies in competitive markets, such as the energy markets, will from time to time fail. However, unlike many other sectors of the economy, gas and electricity supply are essential services and as such we will intervene in circumstances of supplier failure.

When an energy supplier fails, Ofgem's role is to ensure that customers of that supplier are protected and wider market impacts are minimised. In the event of a supplier failure, our priority is to ensure that all customers continue to receive supplies of gas and electricity. In these circumstances, Ofgem has the power to direct any gas or electricity supply licensee to take over responsibility for a failed supplier's customers after revocation of the failed supplier's licences.<sup>1</sup> We do this via our Supplier of Last Resort ('SoLR') process.<sup>2</sup>

As part of a SoLR process, we typically seek expressions of interest from all interested energy suppliers. We then weigh up the bids that have been submitted against criteria contained in our published guidance, before deciding which supplier to appoint as the SoLR for the failed supplier's customers.<sup>3</sup> We then issue a Direction to appoint the energy supplier that is best-placed to supply the customers of the failed supplier without significantly prejudicing its ability to continue to supply its existing customers. At the same

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<sup>1</sup> Condition 8: Obligations under Last Resort Supply Direction of the gas and electricity supply [standard licence conditions](#).

<sup>2</sup> Ofgem, [Guidance on supplier of last resort and energy supply company administration orders](#), October 2016.

<sup>3</sup> The criteria against which we assess SoLR bids include the supplier's willingness to volunteer as SoLR, its willingness to honour the failed supplier's customer credit balances, and its willingness to forego any claim for a "last resort supply payment", among other criteria.

time as appointing a SoLR, Ofgem will revoke the energy supply licences of the failed energy supply company.

To support the smooth completion of the SoLR process, Ofgem's retail compliance team will engage very closely with the appointed SoLR.

### *Insolvency practitioner's role and duties when an energy supply company fails*

In the event of a supplier failing, an insolvency practitioner will typically be appointed to manage the affairs of the failed energy supplier, with the aim of achieving the best outcome for the supplier's creditors.<sup>4</sup> They may carry out this role in a number of different ways with varying degrees of direct consumer interaction. Previous cases have included the following situations:

- The SoLR buys the debt book. The insolvency practitioner's role is to generate final billing positions using the data of the failed energy supply company and agree these open-close balance positions with the SoLR. In these cases the insolvency practitioner will have little or no interaction with customers.
- The SoLR acts as a collections agent on behalf of the insolvency practitioner. The insolvency practitioner's role is to generate final billing positions using the data of the failed energy supply company and agree these open-close balance positions with the SoLR. Again, in these cases the insolvency practitioner will have little or no direct interaction with customers.
- The SoLR does not take on the customer debt book and takes no part in collection. The insolvency practitioner's role is to generate final billing positions using the data of the failed energy supply company and agree these open-close balance positions with the SoLR, as well as to collect any debt. They are therefore likely to have extensive direct interaction with customers.

In each scenario, we expect that the SoLR and insolvency practitioner ensure consumers are treated fairly and that any issues are quickly identified and resolved. This includes working closely together, and engaging other relevant parties where appropriate.

### *Ofgem's engagement with insolvency practitioners*

Ofgem does not have a regulatory role in the governance of insolvency practitioners, however we expect them to treat energy consumers fairly. Ofgem's retail compliance team will engage with the appointed insolvency practitioner with the aim of establishing a collaborative working relationship in order to support the smooth completion of the SoLR process. Ofgem's retail compliance team closely monitors the experience of customers being transferred through a SoLR process, including via social media monitoring and other intelligence sources.

We expect that a responsible organisation operating insolvency services will likely have a code of practice and/or commitment to behaving ethically and treating consumers fairly. In recent years we have gained experience working with a range of different insolvency practitioners, and have observed a mixed level of service and regard for consumers,

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<sup>4</sup> The primary purpose of an administration, of rescuing the company as a going concern, is unlikely to be achievable given that the failed supplier's licences will have been revoked, causing its customer contracts to terminate and a SoLR will have been appointed for its former customers.

including the vulnerable. Some practices have been very good and some have been extremely disappointing, and we believe some poor practices have led to avoidable consumer harm.

Where we become aware of energy consumer concerns relating to the insolvency practitioner's actions or approach, we raise these directly with the insolvency practitioner, with the clear expectation that they put things right as quickly as possible. In the event of serious concerns or where concerns are sustained for a significant period of time, we may escalate a complaint through formal channels within the insolvency practitioner's organisation, or consider a referral to the Insolvency Service or other appropriate regulator. We will also consider making a public statement on our observations of the customer experience offered by an organisation's insolvency practitioners.

We recognise that an insolvency practitioner has its own obligations and regulatory framework. Just as energy suppliers must adhere to the provisions of its regulatory obligations, insolvency practitioners have duties as Officers of the Court and must also act in accordance with any quasi-judicial, fiduciary or other duties that he or she may be under, as well as the Insolvency Practitioner Code of Ethics. These duties should work in line with many of the energy suppliers' regulatory obligations, and particularly those relating to treatment of customers.

We expect all energy suppliers to take their responsibilities towards their energy customers seriously. In stepping into the shoes of the failed energy supplier, we expect that insolvency practitioners will do the same.

For example, we expect insolvency practitioners to quickly and accurately generate and agree (with the SoLR) final debt or credit positions for consumers of the failed energy supplier. Not only will quick and accurate action help consumers but it will also assist the insolvency practitioner to act with reasonable care and skill, as well as performing his/her functions in the interests of the creditors as a whole.

More generally, we expect that the insolvency practitioner deals with energy customers in a fair and reasonable way. We highlight some specific points below (with further detail in the annex):

- When dealing with the customers of a failed supplier, particularly when seeking to recover debt, the insolvency practitioner must bear in mind the fact that the failed energy supplier cannot recover money for any unbilled energy that was incurred more than 12 months previously. Energy customers should not be pursued for unbilled usage older than 12 months.
- We expect that once customers have received a bill, they are given options within their control to settle, query and challenge this bill.
- In general, any payment method used should require an active choice from the customer before payment is taken. Payment methods could include:
  - methods for customers to make a single direct payment, via online/phone/in-person systems;
  - an option to agree a payment plan over a reasonable period, taking account of their ability to pay, and using an appropriate payment method, agreed with the customer;

- use of existing Direct Debit mandate, or a new mandate, if the customer explicitly consents to this after receipt of a bill that they do not dispute; and
- other methods of payment agreed with the customer after receipt of a bill that they do not dispute.
- If an insolvency practitioner chooses to employ the services of a debt collection agency to collect debt from customers of the failed energy supplier, we expect the insolvency practitioner to ensure that the debt collection agency behaves and communicates with customers in accordance with the expectations of a domestic energy customer.
- Energy customers are usually supplied with both gas and electricity by their energy supplier and, in general, they expect to receive a consolidated bill for both fuels. Customers would expect to have, in effect, an overall credit or debit balance at any given time. We expect insolvency practitioners to issue consolidated bills to customers.

In our experience, an insolvency practitioner cooperating with the appointed SoLR will help to create a smoother process for all involved. The appointed SoLR can be a source of expertise to the insolvency practitioner, particularly in regards to serving, communicating and billing energy customers.

We expect insolvency practitioners to abide by the same regulatory requirements as energy suppliers when dealing with energy consumers, and to engage proactively with the SoLR and Ofgem at all times.

If you are an energy consumer affected by these issues please see the advice on our website: [a guide to what happens if your energy supplier goes out of business.](#)

Yours faithfully,



Tessa Hall  
Head of Compliance  
Conduct and Enforcement

## **Annex - Prioritising good consumer outcomes – energy supplier’s requirements**

### Standards of Conduct

Our Standards of Conduct<sup>5</sup> require energy suppliers to treat customers fairly in all their dealings with them. They include the following requirements:

- energy customers are entitled to expect any dealings to be conducted in a fair, honest, transparent, appropriate and professional manner;
- that the customer will be contacted in a prompt and courteous manner to put things right if a mistake is made;
- clear signposts to how to complain and how to escalate the complaint if the customer is not satisfied by the response from the energy company;
- to appropriately identify as to whether or not a customer is in a vulnerable situation; and
- to have taken into account the vulnerable situation of any customer when dealing with them.

It is critical that energy suppliers ensure appropriate treatment of vulnerable consumers.

### Billing and collection of debt

Our rules and regulatory requirements also extend to billing and debt collection:

- when seeking debt repayments, suppliers must take all reasonable steps to send final bills or statements of account within six weeks of the end of a supply contract;
- the energy supply company must include all Relevant Billing Information<sup>6</sup> when billing a customer;
- the energy supply company must adhere to the conditions relating to back-billing. In short, suppliers cannot issue bills to domestic customers for any previously unbilled energy used more than 12 months previously.<sup>7</sup> It is a requirement of those conditions that it is reflected in the terms of any contract a supplier has with a domestic customer for the supply of energy and it would be a breach of those conditions for such a term not to be included in the contract;
- energy suppliers must make an effort to understand whether a customer is in payment difficulty and will struggle to pay back a debt; and
- if a customer is in payment difficulty the energy supplier must take all reasonable steps to ascertain the customer’s ability to pay when calculating instalments to repay the debt.

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<sup>5</sup> Standard Licence Condition - 0, p8, see also Ofgem’s [Standards of Conduct Licence Guide](#)

<sup>6</sup> Standard Licence Conditions – 31H, p.273, see also Ofgem’s [Supply licence guide; metering, billing and payments](#)

<sup>7</sup> Standard Licence Conditions – 21BA, p.128, also Ofgem’s [Supply licence guide; metering, billing and payments](#)