

# Supplier of Last Resort (Electricity)

Consultation on  
Dealing with Customer Credit Balances

May 2017



## About the Utility Regulator

The Utility Regulator is the independent non-ministerial government department responsible for regulating Northern Ireland's electricity, gas, water and sewerage industries, to promote the short and long-term interests of consumers.

We are not a policy-making department of government, but we make sure that the energy and water utility industries in Northern Ireland are regulated and developed within ministerial policy as set out in our statutory duties.

We are governed by a Board of Directors and are accountable to the Northern Ireland Assembly through financial and annual reporting obligations.

We are based at Queens House in the centre of Belfast. The Chief Executive leads a management team of directors representing each of the key functional areas in the organisation: Compliance and Network Operations, Finance and Network Assets, Wholesale, Retail and Consumer Protection, and Corporate Affairs.

### Our Mission

Value and sustainability in energy and water.

### Our Vision

We will make a difference for consumers by listening, innovating and leading.

### Our Values

Be a best practice regulator: transparent, consistent, proportional, accountable, and targeted.

Be a united team.

Be collaborative and co-operative.

Be professional.

Listen and explain.

Make a difference.

Act with integrity.

## Abstract

The purpose of this consultation is to seek views on the approach to dealing with customer credit balances and deposits in the event of an electricity supplier failure and the implementation of the Supplier of Last Resort process. This paper focuses on electricity customers however the results and decisions may influence decisions with regard to the gas SoLR process.

## Audience

This document is most likely to be of interest to regulated supply and network companies in the energy industry, consumer organisations, community and voluntary organisations, natural gas and electricity consumers, government and other statutory bodies. The Utility Regulator welcomes stakeholder views and comments on all the proposals set out in this consultation paper.

## Consumer impact

This policy is likely to have a positive impact on consumers as it is about ensuring consumer credit balances are protected in the event of a supplier failure.

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## Glossary and Acronyms

ATOL	Air Travel Organiser's Licence
CAA	Civil Aviation Authority
FSCS	Financial Services Compensation Scheme
FSMA	Financial Services and Markets Act 2000
FCA	Financial Conduct Authority
MIB	Motor Insurers' Bureau
NIEN	Northern Ireland Electricity Networks
Ofgem	Office of Gas and Electricity Markets
PRA	Prudential Regulation Authority
PSO	Public Service Obligation
SoLR	Supplier of Last Resort
UR	Utility Regulator

# 1 Introduction

- 1.1 The primary statutory duty of the Utility Regulator (UR) is “to protect the interests of consumers of electricity supplied by authorised suppliers, wherever appropriate by promoting effective competition,”<sup>1</sup>. Therefore, we are committed to ensuring that consumers are adequately protected in the event of an electricity supplier failure or insolvency.
- 1.2 As a result of the financial failure and consequent licence revocation of Open Electric in December 2016, and during the ensuing Supplier of Last Resort (SoLR) process that was carried out, the UR identified the issue regarding those customers who have credit balances or deposits with the failing supplier. As the existing SoLR processes do not make any provision for dealing with customer credit balances, we are consulting with stakeholders to explore various options with respect to how deposits and credit balances of customers of the failing supplier should be dealt with. We note at this stage, that the nominated SoLR will need to have access to accurate information regarding credit balances of customers of the failed supplier. If this information is not passed to the SoLR by the original supplier it is unlikely that any customer reimbursement will be possible.
- 1.3 In this paper we also explore options for the scope of any potential remedy and options for paying for reimbursing customer balances. We are seeking a full consultation with stakeholders to ensure a balanced outcome that meets our statutory duty to protect customers.
- 1.4 The UR is currently developing the Supplier of Last Resort process for the gas industry and we are currently liaising with the key gas SoLR stakeholders with regard to progressing the final aspects of gas SoLR. Stakeholders should note that although this consultation is for the arrangements regarding the electricity SoLR process, the results and decisions may influence decisions with regard to the gas SoLR process.

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<sup>1</sup> Article 12 of *the Energy (Northern Ireland) Order 2003*.

## 2 Background

### *Supplier of Last Resort Arrangements*

- 2.1 In Northern Ireland, the electricity retail market was initially opened for large non-domestic consumers in 2002 with the smaller non-domestic market being opened over the following couple of years. The domestic market was opened to competition in 2007 but there were no new entrants until 2010.
- 2.2 The electricity supply market in NI is now fully open to competition and there are now a number of competing suppliers in the domestic and business markets. Whilst competition benefits consumers, it can also lead to a situation where a supplier may fail, in the same way as companies in other markets may fail. It is this potential failure of a supplier and the arrangements that should be in place to deal with this that are the subject of this consultation.
- 2.3 The primary statutory duty of the Utility Regulator (UR) is “to protect the interests of consumers of electricity supplied by authorised suppliers, wherever appropriate by promoting effective competition,”<sup>2</sup>. Therefore, we are committed to ensuring that consumers are protected in the event of an electricity supplier failure or insolvency.
- 2.4 In order to facilitate this, the UR has in place a Supplier of Last Resort (SoLR) procedure. The SoLR procedure is triggered by the revocation of a supply licence by the Utility Regulator.
- 2.5 Revocations of supply licences are rare across the UK. Supply licences can be revoked for various reasons (e.g. non payment of fines, serious breach of licence). The factors triggering potential revocation are standard across all supply licences and usually entail a 30 day notice period, given the significance of a licence revocation. However, factors relating to financial failure of a supplier (e.g. the supplier going into Administration) allow for a 24

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<sup>2</sup> Article 12 of *the Energy (Northern Ireland) Order 2003*.

hour revocation notice period given the potential for immediate customer detriment.

- 2.6 The Northern Ireland SoLR procedures were established several years ago for the electricity sector when new suppliers began to enter the market. Fundamentally the procedure involves NIE Networks (as market data provider and customer registration function) and Power NI (as the nominated SoLR) launching emergency Action Plans and procedures to switch all affected customers from the failed supplier to the SoLR and begin the necessary IT, operational and communications procedures to make the transfer as smooth and seamless as possible.
- 2.7 These arrangements are well established between the Utility Regulator, NIE Networks and Power NI, have been regularly tested (including IT systems testing), and ensure that consumers will not lose supply in the occurrence of a SoLR event.
- 2.8 As part of the arrangements for the Northern Ireland SoLR procedure, the UR has appointed a nominated Supplier of Last Resort. The UR decided to appoint Power NI as the SoLR in accordance with the conditions of its licence. This was decided because Power NI is the sole price regulated supplier and existing arrangements in place with both Power NI and Northern Ireland Electricity Networks ensure that the companies have systems and procedures designed to ensure a smooth transition of customers to Power NI as part of the SoLR process. In particular, this includes systems for transferring keypad meter customers, which ensures they can continue to purchase electricity from vending outlets and will have a new 60 digit code created for them that will facilitate this as soon as the transfer of customers has completed. The UR sees the maintenance of the vending function for keypad customers as the most important consideration in a SoLR event. If this functionality was to be interrupted, it would lead to customers being unable to vend and having their supply cut off. Security of supply during the days surrounding a SoLR event will be of more concern than anything else to consumers, especially those in vulnerable positions who depend on electricity. This has been the principal reason the UR has opted for a nominated supplier of last resort model as this

greatly reduces the risk of any system or process failures at the point of a supplier failure.

- 2.9 Having a nominated SoLR also allows annual testing to help facilitate SoLR processes and thus ensuring consumer protection. This annual reassurance is important.
- 2.10 The UR is satisfied that Power NI has adequate resources to act as SoLR in relation to customers of any potential failed supplier in the Northern Ireland market and can do so without disruption to supply to its existing customers. Furthermore as stated above, Power NI is the price regulated electricity supplier in Northern Ireland, which means the Utility Regulator has oversight of the maximum tariff they can charge their domestic customers. It is also our opinion that it is in the best interests of consumers that a nominated SoLR is in situ to ensure protection in the event of a supplier failure and currently Power NI is the most appropriate supplier for this role. We will consider a further process to give other suppliers the opportunity to compete for the position of SoLR in the future.

### ***Supplier of Last Resort Event – December 2016***

- 2.11 There has been one SoLR event in Northern Ireland to date.
- 2.12 The UR was informed on 15 December 2016 that an event of insolvency had occurred in the form of the appointment of an administrator to Open Electric. On 16 December we received documentary proof to this effect.
- 2.13 Further to a meeting with the Administrator and taking into account the information disclosed at this meeting, the UR was unable to be satisfied that Open Electric had the resources to be able to continue to trade for more than a short period of time, or that there were plans in place which were likely to lead to the sale of the business as a going concern in the immediate future.
- 2.14 The UR was satisfied that, in the circumstances of the insolvency, it was entitled to revoke Open Electric's licence. In addition, it was satisfied that, if it were minded to do so, it would also be entitled to direct the appointment of

Power NI to act as the SoLR in relation to the customers of Open Electric, with that direction to take effect from the time of revocation.

- 2.15 The licence revocation formally took place at 00.01 on 18<sup>th</sup> December 2016 and the SoLR industry procedures formally came into operation at that time.
- 2.16 The SoLR procedure ran smoothly and successfully resulting in a seamless transfer of the customers of the failed supplier to the nominated supplier. This vindicated the SoLR arrangements in Northern Ireland and the continuity of consumer protection and supply that those arrangements deliver. The existence of a nominated SoLR which has tested all IT systems and associated processes on a yearly basis with NIEN ensures that all precautions against an unsuccessful process have been taken.
- 2.17 Once the process was completed, the UR conducted a “Lessons Learned” exercise to identify areas to improve the process for any future incidents and examine a number of issues that emerged as part of the December 2016 event. The exercise highlighted that should a larger supplier fail, this may result in a longer processing time. We are working with NIEN and Power NI to ensure that, as soon as is possible, any issues are resolved, tested and in place should there be another SoLR event.

### ***Customer Balances***

- 2.18 It became evident during the SoLR event, that in the event of insolvency there would be financial implications for the failed supplier’s customers i.e. that some non-keypad customers may have a credit balance on their account at the time when the licence is revoked. This balance can be because they had been paying more in direct debits than they have been consuming or they have a deposit held by the supplier. For non-keypad customers it can depend on the time of year and the suppliers DD setting processes just what percentage of them will have credits on their accounts. Most keypad customers however will have a credit of some sort remaining on their meter except those that are in the emergency credit phase or have self disconnected, as they have not topped up the meter.

- 2.19 For the Open Electric event, as a one-off the UR decided to ensure that all customers with a credit balance and/or with an outstanding security deposit would be reimbursed. This was based on the fact that the customer numbers were very low, and therefore the resulting financial outlay was not material. This cost was covered in part by Power NI and in part by all customers. This reimbursement was facilitated by the fact that Open Electric was able to provide the nominated SoLR with accurate account balance information in order to recompense customers.
- 2.20 However, the December 2016 SoLR event highlighted the need to make a policy decision on the options around how the deposits and credit on accounts of customers of the failing supplier should be dealt with in a future SoLR event. This paper proposes options on the scope of any potential remedy (i.e. who should a policy apply to – domestic/non-domestic customers?) and options for handling customer credit balances.
- 2.21 There are various options ranging from “do nothing”, i.e. customers in credit will be deemed an unsecured creditors of the failed supplier, (which is the current arrangement in NI, and was in GB until recently) through to full recompense for customers via an industry levy of some sort (which is the backstop arrangement that has been introduced in GB recently). These options are explored fully in the body of this paper.

## 3 Expectations/Current Situation

### *Current situation for electricity customers*

- 3.1 When a supplier is unable to supply customers with electricity, the Supplier of Last Resort process is put in motion. After the December 2016 SoLR event, it became evident that the UR would need to make a policy decision on the options regarding how the deposits and credit on accounts of customers of the failing supplier should be dealt with in any future SoLR event in NI.
- 3.2 In the case of a supplier insolvency, a customer is likely to be treated as an unsecured creditor of the failed supplier. Insolvency law allows a hierarchy of payments where some types of creditors should be paid in preference to others. Secured Creditors are generally paid before, and in preference to, unsecured creditors.
- 3.3 This means that the customer is unlikely to receive all, or possibly any, of the money in the credit balance back from the failed supplier. In GB, Ofgem has estimated that customers with average consumption may build up a credit balance of around £100 although this may vary depending on seasonal weather variations and customer usage<sup>3</sup>. For the December 2016 SoLR event, the average credit balance for Open Electric customers was £90 with the average account deposit amounts for Open Electric customers were £150.
- 3.4 Currently, keypad customers do not lose any of the credit on their meter and they will not have been required to give a deposit therefore there is no risk of consumer detriment for those customers using keypad meters. However, the nominated supplier that takes over the failing company's customers will be obligated to pay for the wholesale energy and network costs associated with the credit still to be used but will not be receiving payment for that usage. Under the current situation, the nominated SoLR recoups these costs via the PSO levy.

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<sup>3</sup> Based on fixed-term tariff customers paying by fixed direct debit. Ofgem expect these customers to build up credit balances due to having fixed payments set against varying seasonal consumption. Figure assumes customer joining tariff at start of summer and conforming to seasonal consumption trends found in publicly available data. Price determined from simple average of all dual fuel fixed term tariffs priced using Ofgem's medium Typical Domestic Consumption Values (TDCVs) averaged across UK as of 2nd March 2016.

- 3.5 For customers who are in debt, their debt will not follow them to the new supplier. Their situation is a matter for the Administrator appointed to the failed supplier.
- 3.6 However, for Direct Debit customers, the supplier will likely be holding credit for some of the Direct Debit accounts and those customers will lose this credit when their account with the failing supplier closes and they move to a new account with the nominated SoLR. Furthermore, customers who paid a deposit on joining their supplier may lose that deposit as a result of their supplier failing and not having sufficient funds to refund customers.
- 3.7 As part of the process of considering the best approach for dealing with customer balances in a SoLR event, we investigated the approach different regulators and different industries have in resolving similar situations.

### *Situation for consumers of other services and products*

- 3.8 With regard to general retail insolvency, insolvency law does not give consumers any special protection. When a company becomes insolvent, its remaining assets must be distributed to creditors according to a strict statutory hierarchy. Most of the money will go to those towards the top of the list, such as employees and secured lenders, leaving very little for unsecured creditors such as consumers. As unsecured creditors, consumers are likely to receive only a negligible distribution on liquidation if anything at all.

### *Law Commission*

- 3.9 In September 2014 the Department for Business, Innovation and Skills (BIS) asked the Law Commission to examine the protections given to consumer prepayments and to consider whether such protections should be strengthened. A report “Consumer Prepayments on Retailer Insolvency” was published in July 2016 and presented to Parliament.<sup>4</sup>

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<sup>4</sup> <http://www.lawcom.gov.uk/wp-content/uploads/2016/07/56284-Law-Comm-HC-543-Web-pdf.pdf>

- 3.10 The Law Commission has stated that although consumers should not be protected from all losses, there exists a case for limited reforms to protect customers in the most serious cases.
- 3.11 The Law Commission recognises that in the utilities sector it is common for a consumer to have a credit balance with their gas or electricity supplier, particularly those who pay through fixed monthly direct debit payment plans. The Commission highlights that payments made by Direct Debit are not protected in the same way as they would be if they paid by credit or debit card<sup>5</sup>.
- 3.12 The Law Commission has recommended giving preferential status to a limited category of consumers in the event of a retailer insolvency. This status would provide a limited change to the statutory hierarchy governing how assets are distributed to creditors on insolvency. It would give preferential status to a small number of consumer claims, which would rank below employees' preferential claims but above claims from floating charge holders. The consumer would need to meet the following criteria in order to be eligible for preferential status:
- a) The claimant is a consumer as defined in section 2(3) of the Consumer Rights Act 2015.
  - b) The claim relates to a prepayment. In other words, the consumer has paid money to the insolvent business (or has parted with goods with a money value), and did not receive goods or services in exchange.
  - c) The consumer has paid £250 or more during the six months immediately prior to the insolvency, either in a single transaction or in a series of linked transactions.

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<sup>5</sup> <http://www.which.co.uk/consumer-rights/advice/how-do-i-use-chargeback>

d) The consumer used a payment method (such as cash or cheque) which was not protected through chargeback; and the prepayment was not protected in any other way.

3.13 The Law Commission has suggested that it is relatively common for consumers to build up surpluses with their gas or electricity provider. This can be due to consumers paying security deposits to their supplier, consumer overpayment during the summer months to pay for higher winter consumption, or billing issues which may lead to over payment. The Commission acknowledges that Ofgem has powers to take action on insolvency of energy suppliers with the primary focus of ensuring the continuity of energy supply to consumers. However, they have identified that if the limited preference for consumers were introduced, this would apply to consumers of an insolvent energy company.

3.14 The Law Commission has stated that this approach may make lenders more cautious, particularly if energy suppliers at risk of insolvency were to use direct debit to overbill consumers but has suggested that this caution would be beneficial.

3.15 We will continue to monitor the progress on the Law Commission paper on Consumer Prepayments on Retailer Insolvency and its implications for Northern Ireland.

### *Ofgem*

3.16 In October 2016, Ofgem issued revised guidance on their SoLR process<sup>6</sup>.

3.17 Ofgem's approach to a SoLR event differs from the UR in that it asks suppliers to indicate willingness to act as a supplier of last resort. If a supplier fails, potential SoLRs enter into a competitive process and are asked to submit information on how:

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<sup>6</sup> [https://www.ofgem.gov.uk/system/files/docs/2016/10/solr\\_revised\\_guidance\\_final\\_21-10-2016.pdf](https://www.ofgem.gov.uk/system/files/docs/2016/10/solr_revised_guidance_final_21-10-2016.pdf)

- a) they operate industry processes and agreements,
- b) they will manage the change of supplier process,
- c) they will manage adequate current and increased credit cover under existing industry arrangements,
- d) they tell customers what has happened
- e) they inform customers of any charges they will face, and
- f) they will ensure that arrangements are in place to enable customers to move onto a contract with the SoLR or to move from the SoLR to a contract with a supplier of their choice.

3.18 Ofgem will also seek information on a SoLR's proposed deemed contract rate.

3.19 As part of the process, Ofgem also seeks information on whether and how the SoLR would address the loss of customer balance for those customers of the failed supplier who have an outstanding credit balance or prepayment meter balance.

3.20 The Ofgem procedure endeavours to give suppliers advance warning that a SoLR event is imminent, but still only allows between four to six hours for potential SoLRs to provide the information outlined above.

3.21 Ofgem then applies a selection criteria to assess which supplier should be directed to take on the role of SoLR.

3.22 This differs from the UR approach where the nominated supplier of last resort will already be in place, have tested IT systems and procedures and have these approved by the UR.

3.23 With regard to credit balances, Ofgem's revised guidance states that it will use the selection process to provide a safety net to protect consumers' credit balances. The assessment criteria will assess the supplier's proposals in respect of consumers who have credit balances, with a preference for those agreeing to cover the balances.

- 3.24 Ofgem have stated that in certain circumstances it may consider it appropriate to approve a SoLR claim via a levy<sup>7</sup> where it relates to costs associated with the protection of customers who held a credit balance with the failed supplier.

## *Other industries*

### *Motor Industry*

- 3.25 The Motor Insurers' Bureau<sup>8</sup> (MIB) is a UK Guarantee Fund that compensates victims of negligent uninsured or untraced drivers (known as Hit and Run accidents).
- 3.26 MIB was established in 1946 to compensate the victims of negligent uninsured and untraced motorists and every insurer underwriting compulsory motor insurance is obliged, by virtue of the Road Traffic Act 1988, to be a member of MIB and to contribute to its funding.
- 3.27 The Motor Insurers' Bureau is funded via insurance premiums and the typical cost is £15-30 per policy.
- 3.28 The Motor Insurers' Bureau will pay for bodily injury suffered by victims of negligent uninsured or untraced drivers and there is no limit to the level of compensation.

### *Travel Industry*

- 3.29 By law, every UK travel company which sells air holidays and flights is required to hold an ATOL, which stands for Air Travel Organiser's Licence<sup>9</sup>.
- 3.30 If a travel company with an ATOL ceases trading, the ATOL scheme protects customers who had booked holidays with the firm. It ensures they do not get stranded abroad or lose money.

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<sup>7</sup> Levy on gas transporters' and electricity distributors' Distribution Use of System (DUoS) charges.

<sup>8</sup> <https://www.mib.org.uk/>

<sup>9</sup> <https://www.caa.co.uk/ATOL-protection/Consumers/About-ATOL/>

- 3.31 The scheme is designed to reassure consumers that their money is safe, and will provide assistance in the event of a travel company failure.
- 3.32 The scheme was designed to cover charter flights and package holidays. In recent years, the holiday market has changed considerably and a rise in online booking means many people now book the components of their holidays separately.
- 3.33 As a result, changes were made to the ATOL scheme in April 2012. It now covers all overseas air holidays where a flight and accommodation have been booked together.
- 3.34 ATOL is run by the Civil Aviation Authority (CAA). It is funded by contributions from the travel companies, who must pay £2.50 into the scheme for each person they book on a holiday.
- 3.35 This charge is not a tax on individuals or an insurance premium - the law requires travel companies to pay it, not holidaymakers. However, some travel companies choose to highlight the ATOL scheme cost by showing it separately on receipts and invoices.
- 3.36 This money creates a fund that is used by the CAA to ensure consumers either complete their holiday or – if they cannot get away – receive a full refund.

### *Financial Services Industry*

- 3.37 The Financial Services Compensation Scheme (FSCS) protects consumers when financial services firms fail and is the compensation scheme for customers of UK authorised financial services firms. It is a non-profit, independent body created under the Financial Services and Markets Act 2000 (FSMA).
- 3.38 The Scheme compensates customers if a firm has stopped trading or does not have enough assets to pay claims made against it. The Scheme covers business conducted by firms authorised by the Financial Conduct Authority

(FCA) and the Prudential Regulation Authority (PRA) ( the UK's independent financial watchdog).

- 3.39 The Scheme was set up mainly to assist private individuals, although smaller businesses are also covered. Larger businesses are generally excluded, although there are some exceptions to this for deposit and insurance claims.
- 3.40 The Deposit Guarantee Scheme, one of five sub-schemes run by the FSCS, is triggered when a firm authorised to accept deposits by the Prudential Regulation Authority (PRA) goes out of business, for example if the firm goes into administration or liquidation, and is unable to repay its depositors. Once the FSCS is satisfied that a firm is unable, or likely to be unable, to pay claims against it, it is declared to be in default. A declaration of default allows the firm's customers to make a claim for compensation to the FSCS.
- 3.41 From 30 January 2017, the deposit compensation limit is £85,000.
- 3.42 The Scheme is funded by levies on firms authorised by the Prudential Regulation Authority and the Financial Conduct Authority.

### **Conclusion**

- 3.43 As shown above, for larger service industries and essential services like banking and insurance, where customers require the service as essential but have no protection if the provider goes out of business or some other detriment occurs, provisions are made to protect customer balances in these instances. This not only protects customers, it also provides them with the confidence to make deposits and payments in the knowledge they are protected in law and as such is a benefit to the industries in general.
- 3.44 In this context and given the nature of energy as a product we consider it appropriate, as a consumer protection principle, to protect electricity customer credit balances in the event of supplier failure which will in turn will allow for customer confidence in the competitive energy market.

## 4 Scope Options

- 4.1 The Northern Ireland electricity market provides opportunities for both domestic and industrial and commercial consumers to gain benefits from competition. However, as with all markets, there remains the potential for companies to fail.
- 4.2 Should this happen, our processes ensure continuity of supply for all the failing company's customers. It also ensures that all customers are transferred seamlessly to the nominated supplier of last resort.
- 4.3 In reviewing the SoLR process from the December 2016 event and exploring options for the protection of credit balances of customers of the failed supplier, we also need to consider the scope and type of coverage of this protection.
- 4.4 Although all customers can be affected by supplier failure, the UR is proposing to implement protection on credit balances for domestic customers only.
- 4.5 In examining the possibility of credit balance protection, we have taken the view that business customers are generally more informed on their options and the risks of switching to a new supplier. Business customers will have engaged in more detailed financial planning with regard to their energy purchasing, and have more structured cash-flow processes in place, all of which will leave them in a better position to deal with a supplier failure. Lastly, they are commercial entities and as such will take on more risk than ordinary household customers in a host of different areas regarding financial transactions.
- 4.6 We are therefore of the opinion that any protection on customer credit balances resulting from this consultation process will apply to domestic customers only.

**Q1. Do you agree that the scope of any protection measures implemented to resolve issues with regard to outstanding credit balances due to a SoLR event should only apply to domestic customers? Please provide supporting information and evidence for your response.**

## 5 Coverage Options

- 5.1 Currently for consumers in the event of a supplier failure, the situation is that keypad customers will not lose any of the credit on their meter and they will not have been required to give a deposit therefore there is no risk of consumer detriment for these customers.
- 5.2 However, the nominated supplier that takes over the failing company's customers will be obligated to pay for the wholesale and associated network costs for the energy still to be used by those customers but will not be receiving payment for that usage. This amount for wholesale and network costs will be paid to the SoLR via the levy.
- 5.3 Therefore, there is currently a discrepancy in how different domestic customers are treated when a supplier fails, as there is no provision for reimbursing non-keypad credit customers of a failed supplier who have outstanding credit balances and/or deposits with the failed supplier.

### *Options for the Coverage of Protection*

#### *No customers reimbursed*

- 5.4 In policy evaluation and development it is common practice to include a 'do nothing' or 'status quo' option. If we adopt a 'do nothing' approach to customer credit balances this may result in non-keypad customers of a failed NI electricity supplier losing significant sums of money as it will be unlikely that they will be recompensed as unsecured creditors in the insolvency process.
- 5.5 Furthermore, there may be additional detriment to the market as a whole, as customers may lose confidence in the retail energy market and no longer engage in switching supplier, or be less inclined to do so, as it would be seen as a risky activity.

- 5.6 Given that options appraisal is about moving forward and that the UR has an obligation to both protect consumers and promote competitive markets we believe that a do nothing option is not an appropriate approach for this policy.

### *Full reimbursement of domestic customers in credit*

- 5.7 This option will ensure that all domestic credit customers, irrespective of their method of payment, will receive full reimbursement of their outstanding credit balance held with the failed supplier.
- 5.8 This approach will ensure that all customers who have made advance payments or overpayments in good faith, will not be adversely affected should a supplier fail and withdraw from the market.
- 5.9 Given that domestic customers should not be expected to assess the risk of potential supplier failure in a regulated market, this may be considered the most appropriate protection for customers who have switched supplier. This reflects the principles in other sectors discussed earlier.

### *Capped domestic customer reimbursement*

- 5.10 A further option with regard to the reimbursement of customers of a failed supplier is to provide partial reimbursement to non-keypad domestic customers on the outstanding credit or deposit in their account with their failed energy supplier.
- 5.11 There are several options for managing this partial reimbursement:
- i. Establish a cap on the fund available from the levy and distribute these funds proportionally among the customers with outstanding credit balances.
  - ii. Apply a monetary cap to all repayments i.e. all credit balances reimbursed up to a maximum of £x.
  - iii. Apply a percentage cap to all repayments i.e. accounts reimbursed 50% of what the outstanding credit balance is.

5.12 In commenting on the proposals, we would ask stakeholders to consider the differential between keypad and credit customers (keypad customers will not lose any credit on their account) and the potential consumer protection or customer detriment that could result from each approach.

### *Switched customers with credit balances*

5.13 A further group of customers that may be impacted by a supplier failure are those customers who have already switched to an alternative supplier before the supplier became insolvent and have a credit balance with the failed supplier which has not yet been returned to them.

5.14 In this instance, the “former customer” would not be eligible for any reimbursement as they would not be switched as part of the SoLR process and therefore the new nominated supplier would not have their account details to reimburse them.

5.15 In this situation, the customer would be an unsecured creditor in the insolvency process and would seek recompense via administrator.

5.16 Whilst this may seem inequitable, the heavy administrative burden to attempt to recompense these customers would be too great as to be unjustifiable as it would be a cost borne by other customers. We do not envisage that there will ever be a significant number of customers in this category.

**Q2. Which of the proposed approaches do you consider most suitable for resolving the issue of the coverage of the protection for customers with outstanding credit balances. Please provide supporting information and evidence for your response. If you have an alternative proposal, please provide sufficient detail for further analysis.**

**Q3. If you consider that capped domestic reimbursement is the most suitable approach for resolving the issue of coverage for outstanding credit balances, please provide your views on how the capped amount should be calculated.**

## 6 Funding Options

6.1 In the following section, we set out the options for funding the payment of customer credit account reimbursement. We understand that any decision in this area needs careful consideration and needs to balance the impacts on all customers, not just those of the failing supplier.

### *Industry Levy*

6.2 One proposal is that the nominated SoLR will reimburse all customers in credit and then add all those customer credit balance costs to the Last Resort Supply Payment amount<sup>10</sup> along with all other SoLR event costs. These costs will be assessed in due course by UR for reasonableness and accuracy.

6.3 Once approved, the total cost is then recouped through the PSO (as it is currently) or some other industry levy e.g. via domestic DUoS charges.

6.4 In this scenario, the cost of reimbursing the credit accounts of the customers of the failed supplier is borne by all suppliers and hence all electricity consumers.

6.5 This approach is similar to the MIB and ATOL arrangements discussed in section 3. Whilst it may be argued that other customers are covering the losses of those customers of the failed supplier, it would also be the case that the protection this approach would provide would be in place for any and all domestic customers should their supplier fail. In that sense a SoLR payment to cover credit balances made through an industry levy would be similar to an insurance premium paid by everyone that protects the entire customer base.

### *Payment by SoLR*

6.6 A second option is for the nominated SoLR to cover all the costs of the customer credit balances of the failed supplier.

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<sup>10</sup> See condition 23 of Electricity Supply Licence

- 6.7 This option could be deemed appropriate as the nominated SoLR would have acquired a potentially substantial new customer base without incurring any customer marketing and acquisition costs.
- 6.8 This option would entail no further cost imposition on other electricity suppliers or their customers, however, as a cost this may eventually be spread across the existing customer base of the nominated SoLR.
- 6.9 It should be noted, that following the 18<sup>th</sup> December 2016 SoLR event, three weeks after consumers were no longer locked in with the SoLR (Power NI) and were allowed to switch away, over 20% of the former Open Electric customers had switched to an alternative supplier.
- 6.10 This increased to 37% 10 weeks after switching was enabled.
- 6.11 This would indicate that a significant proportion of customers who are switched to a SoLR can be expected to switch again to an alternative supplier. The amount of customers switching will change in each event and so is unquantifiable. Given this, we consider it unreasonable to require the nominated SoLR to take the risk of paying for the full amount of the customer balances (which is an unknown) as well as the inherent reputational and operational risk that comes with acting as SoLR, given the likelihood that a significant number of the failed suppliers customers will leave the SoLR after the event.

### ***Combination of Levy and SoLR payment***

- 6.12 A further option would be a hybrid of the two previous proposals where the nominated SoLR would cover a proportion of the credit balance costs in recognition of the “free” acquisition of new customers and the remainder of the costs would be recovered via the PSO or another regulatory levy.
- 6.13 This option would spread the burden of the costs and ensure that the nominated supplier was making some contribution for its acquiring of new customers.

- 6.14 It may be the case that the proportions of the credit balance cost that the SoLR and the levy should cover would need to be negotiated at the time of a SoLR event, or that an agreed £ per customer that the SoLR would have to pay would be agreed in advance and then applied at the time of the SoLR event. The remaining amount would pass through the customer levy.
- 6.15 However the split would be calculated, this approach would be similar to the arrangement in GB. In the latest SoLR event with the failure of GB Energy, Co-Operative energy paid an undisclosed proportion of the amount to cover GB Energy's customers' credits and the remainder was recovered through the industry levy that Ofgem recently put in place.
- 6.16 Should a negotiated price per customer be the agreed approach, we would need to consider how to calculate the amount the SoLR should pay for being given each customer as part of the SoLR process. As stated in 6.11, any calculation should be mindful of the potential for customers switching away from the Supplier of Last Resort.

### *Bond / Insurance*

- 6.17 This option would introduce a situation similar to the financial services and travel industries where a third party would provide compensation to customers in the event of a supplier becoming insolvent.
- 6.18 This would involve a contribution made for each credit customer account by a supplier to protect their outstanding credit balance.
- 6.19 All suppliers would incur additional costs with this option and it would impact their pricing and profitability and is likely to impact smaller suppliers disproportionately. It could also have an impact on competition.
- 6.20 Furthermore, consideration would need to be given to the cost of establishing, implementing and monitoring such a scheme.

**Q4. Which of the proposed approaches do you consider most suitable for resolving the issue of payment options for outstanding credit balances. Please provide supporting information and evidence for your response. If you have an alternative proposal, please provide sufficient detail for further analysis.**

**Q5. If you consider that the SoLR should pay a fixed amount per customer acquired through the SoLR event, please provide your views on how the amount paid for each customer should be calculated.**

## 7 Conclusion

- 7.1 During the December 2016 SoLR event customers were seamlessly transferred to the SoLR. This ensured that no detriment was experienced by the customers of Open Electric. Key stakeholders worked well together to implement the SoLR plan which has been in place since 2013 and customers with credit balances and deposits with the failing supplier were fully reimbursed.
- 7.2 Our policy development process with regard to credit balances of the failed supplier has identified potential options for the coverage and scope of any potential remedy and various options regarding who should pay for reimbursing those balances.
- 7.3 Having reviewed the potential options, we consider that the most fair approach, which will ensure consumers are protected is to provide full recompense to all domestic customers with outstanding credit balances and deposits.
- 7.4 We consider the most appropriate funding for this approach would be to adopt the hybrid method of cost recovery, where the SoLR would cover a proportion of the credit balances costs and the remainder would be recovered via a regulatory levy paid for by all other domestic customers. This would be collected by the network company most likely via use of system or PSO tariffs.
- 7.5 This hybrid approach would mean that the SoLR would be contributing in part to the costs of reimbursement, with the remainder being funded by all other customers. Asking the SoLR to do the latter would seem appropriate given the increased customer base that the SoLR will be rewarded with as part of the process, whilst mitigating the risk of covering the full cost of all credit balance costs. This would be inappropriate as some customers will inevitably switch away from the SoLR quite quickly, as evidenced in the post Open Electric SoLR event switching numbers.

- 7.6 We are currently favouring this approach as we consider it to be a balanced outcome for both consumers and the nominated supplier in the SoLR process. However, we are seeking stakeholder views on this approach and keep an open mind to other suggestions.
- 7.7 It should be noted, that the success of reimbursing customer credit balances and deposits is dependent on the SoLR having access to accurate account balance data. Access to this data is at the discretion of the failing supplier. Once the supply licence has been revoked, the Utility Regulator cannot instruct the failing supplier cooperate on this issue. The UR could demand the information under condition 10 of the electricity supply licence of the failing supplier but if they are exiting the market the supplier may have no incentive to comply with licence obligations. The UR will take all possible measures at any SoLR event to secure the customer account data for the SoLR to make reimbursement possible but the result is not fully guaranteed. The UR intends to seek, by either agreement or licence obligation, that all suppliers include in their domestic customer Terms and Conditions a clause informing customers that their account data will be passed to the SoLR in the event that the supplier has had its licence revoked. This is so that the SoLR has the information required to reimburse any monies which are being held in credit balances or as deposits with the failing supplier.
- 7.8 We welcome industry and other stakeholder views and comments on all the proposals set out in this consultation paper. Your response will be most useful if it is framed in direct responses to the questions posed at the end of each section and summarised in Section 9, and supported with any evidence that you may have. Further relevant comments and evidence received will also be welcome.

## 8 Equality Considerations and Next Steps

### *Equality Considerations*

#### 8.1 Section 75 of the Northern Ireland Act 1998

As a public authority, the UR has a number of obligations arising from Section 75 of the Northern Ireland Act 1998. These obligations concern the promotion of equality of opportunity between:

- i. persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- ii. men and women generally;
- iii. persons with disability and persons without; and
- iv. persons with dependants and persons without.

The UR must also have regard to the promotion of good relations between persons of different religious belief, political opinion or racial groups.

8.2 In the development of our policies we also have a statutory duty to have due regard to the needs of vulnerable customers i.e. individuals who are disabled or chronically sick, individuals of pensionable age, individuals with low incomes and, for electricity only, individuals residing in rural areas.

8.3 In order to assist with equality screening of the proposals contained within this consultation paper, we request that respondents provide any information or evidence in relation to the needs, experiences, issues and priorities for different groups which they feel is relevant to the implementation of any of the proposals. Furthermore, we welcome any comments which respondents might have in relation to the overall equality impact of the proposals.

### *Next Steps and How to Respond*

- 8.4 Once all the responses to this paper are received and analysed, we will issue a decision paper setting out the decision with regard to addressing customer balances in the context of a Supplier of Last Resort event.
- 8.5 We welcome industry and other stakeholder views and comments on all the proposals set out in this consultation paper. Your response will be most useful if it is framed in direct response to the questions posed at the end of each section and summarised in Section 9, though further relevant comments and evidence received will also be welcome.
- 8.6 The consultation period will close at **Noon on Friday 23<sup>rd</sup> June 2017**. Responses to this consultation should be forwarded to reach the Utility Regulator on or before **Noon Friday 23<sup>rd</sup> June 2017** to:
- Michael Campbell  
The Utility Regulator  
Queens House  
14 Queen Street  
Belfast  
BT1 6ED  
Email: michael.campbell.@uregni.gov.uk
- 8.7 Your response to this consultation may be made public by the UR. If you do not wish your response or name made public, please state this clearly by marking the response as confidential. Any confidentiality disclaimer that is automatically produced by an organisation's IT system or is included as a general statement in your fax or coversheet will be taken to apply only to information in your response for which confidentiality has been specifically requested.
- 8.8 Information provided in response to this consultation, including personal information may be subject to publication or disclosure in accordance with the access to information regimes; these are primarily the Freedom of Information

Act 2000 (FOIA) and the Data Protection Act 1998 (DPA). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things with obligations of confidence.

- 8.9 In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Authority.
- 8.10 This document is available in accessible formats. Please contact: Michael Campbell ([michael.campbell@uregni.gov.uk](mailto:michael.campbell@uregni.gov.uk)).

## 9. Consultation Questions

- Q1. Do you agree that the scope of any protection measures implemented to resolve issues with regard to outstanding credit balances due to a SoLR event should only apply to domestic customers? Please provide supporting information and evidence for your response.
- Q2. Which of the proposed approaches do you consider most suitable for resolving the issue of the coverage of the protection for customers options with outstanding credit balances. Please provide supporting information and evidence for your response. If you have an alternative proposal, please provide sufficient detail for further analysis.
- Q3. If you consider that capped domestic reimbursement is the most suitable approach for resolving the issue of coverage for outstanding credit balances, please provide your views on how the capped amount should be calculated.
- Q4. Which of the proposed approaches do you consider most suitable for resolving the issue of payment options for outstanding credit balances. Please provide supporting information and evidence for your response. If you have an alternative proposal, please provide sufficient detail for further analysis.
- Q5. If you consider that the SoLR should pay a fixed amount per customer acquired through the SoLR event, please provide your views on how the amount paid for each customer should be calculated.

