



3rd Floor North
200 Aldersgate Street
London EC1A 4HD
Tel: 03000 231 231

citizensadvice.org.uk

19 January 2022

We are responding to your plan outlining proposed actions in the short to medium term to strengthen the resilience of suppliers. This submission is non-confidential and may be published on your website.

The recent market turmoil has affected over 4 million households, and has left a bill for consumers of over £2.4bn. While wholesale gas market conditions are the proximate cause, we entered the crisis with too many energy suppliers in a weak position, unable to withstand the sort of shocks we've seen previously in the energy sector, as well as in other markets. Our recent report - [Market Meltdown](#) - found that these issues were well known, with clear warning signs from the many supplier failures seen in the years leading up to 2021. Despite this, reforms to tackle problems in the market were too slow, and companies were able to flout the rules that did exist to protect consumers.

We've called for an independent review to understand how this was allowed to happen - but we cannot wait for this to complete before taking action. We agree with Ofgem that further reforms to improve supplier risk management and protect consumers are vital and urgent. We therefore broadly support the plan put forward at this stage. However, we think it should have a clearer objective to rebuild consumer trust, and deliver more transparency over resilience of the market and individual suppliers.

It is challenging to comment on the combination of actions in the programme of work, as some policies may prove more or less useful in improving resilience depending on the level of progress with others. It will therefore be important to iterate the plan as it moves forward. While the timeline provided only goes through to mid-2022, work will clearly continue beyond this point. Later this year Ofgem should update the plan to track progress and continue to give a clear indication of the milestones. We also think that some individual actions within the plan should be accelerated where there is most confidence that they are necessary. In particular, steps to limit mutualisation of the Renewables Obligation and credit balances have been considered in detail and repeatedly delayed in recent years, and should now be taken forward more swiftly within the action plan.

There is also clear evidence that many of the rules put in place by Ofgem were not being followed, and that its approach to enforcement and compliance was not effective at improving supplier resilience. The plan should incorporate considerations of how these functions can be improved, and include the forthcoming update to the Enforcement Guidelines as an output within the plan.

Finally, this is a very significant programme of work for Ofgem. It will need to be prioritised and adequately resourced in order to deliver these reforms successfully while continuing its other work, much of which is essential in order for us to achieve our net zero goals.

We set out our views on the objectives and actions in the plan in more detail below.

Yours sincerely

Alex Belsham-Harris
Principal Policy Manager, Retail Energy Markets

Overall objective and outcomes

We support the objective set out by Ofgem to ensure companies are financially resilient with risks not inappropriately passed to customers, but think this should be expanded, with the parallel aim of building consumer trust in the sector. We are concerned that trust has been significantly damaged, and unless this is addressed only the most confident consumers are likely to engage and benefit from the market. This is likely to mean lower income consumers and those in vulnerable circumstances are likely to see poorer outcomes. It also poses a risk to achieving our net zero goals, which are likely to need consumers to be more engaged with energy choices.

To help deliver this objective on consumer trust, a further outcome of the programme should be transparency. This will enable stakeholders to better understand the risks in the market and the action being taken to address them, and to critically engage with the approach that Ofgem is taking. While we do not think it is likely - or even desirable - for consumers to use information on company

resilience in their switching decisions, publishing this information to an appropriate level would provide effective reputational incentives on companies.

We recognise there are important competition issues to consider around what information can be shared on individual supplier resilience. However, these should not be insurmountable - for example, the Prudential Regulation Authority shares some outcomes from its stress testing at company level.¹ However, under current plans, information from Ofgem's resilience work seems only likely to be published if formal compliance action is launched against a company. This will not go far enough to reassure stakeholders and consumers that suppliers are more resilient and that the issues that led to the current market turmoil are being resolved.

Individual actions in the plan

Actions 1 and 2: Monitoring and stress testing

We agree that Ofgem should enhance its data collection from suppliers, but this can be enhanced further with data from stakeholders (including consumer groups) and data from codes, including the Retail Energy Code which should enable more centralised information about supplier behaviour and performance to be available.

We support the introduction of stress testing, and recognise the benefits of an iterative approach - although this also needs to be done in a timely way, rather than moving at the pace of the slowest. We agree that stress tests should include a range of scenarios that suppliers could face including wholesale price rises or increased volatility, a wider economic recession and increasing customer bad debt, significant customer losses (especially where the supplier has used auto-switching services to drive acquisitions), and changes to the expected pace of transition to low carbon technologies that may affect the business strategy.

Ofgem should use insights from individual supplier stress tests to consider market-wide risks, including a possible 'domino effect' of multiple supplier failures on other suppliers, and other market participants like shippers, metering agents etc. To more fully understand market-wide risks it may be necessary for Ofgem to expand its stress testing to non-domestic supply.

Action 3: Management Control Framework

We support the proposals for this process. It should include an examination by companies of the risks that could emerge if the company fails, through either a

¹Bank of England (2021) [Stress testing the UK banking system: 2021 Solvency Stress Test results | Bank of England](#)

Supplier of Last Resort or Special Administration process. Steps should then be taken to address these risks and update the Customer Supply Continuity Plan accordingly. This could include risks around the company structure and commercial arrangements which are likely to counteract the aims of the Financial Responsibility Principle to reduce mutualised costs in the event of a supplier failure, by ensuring that the administrator is able to recover funds that can offset these costs.

Action 4: Financial Responsibility Principle compliance and enforcement

While we support Ofgem's commitment to swift enforcement of these requirements, our research has highlighted repeated missed opportunities in relation to enforcement of rules, including those introduced recently as part of the licensing review. New powers under the recent licensing reforms, like the ability to require audits of suppliers financial plans or operational capability, appear never to have been used. Had tougher action been taken in a more timely manner, the market could have been more resilient at the point that wholesale price rises began to bite.

In order to make meaningful improvements and rebuild confidence among stakeholders, Ofgem must urgently consider the role of enforcement and compliance in recent market turmoil as part of its wider review of regulation (Action 10), and set out how its approach will change in future when it publishes the planned update to its Enforcement Guidelines.

Actions 5 and 9: Mutualisation and credit balances

We have long called for action to minimise the risk of mutualisation of credit balances and the Renewables Obligation.² The latter had driven the majority of costs related to supplier failures prior to 2021, and in total at least £500m will have been mutualised since 2016.³ Ensuring companies cannot build up large liabilities or make inappropriate use of consumers money should remove scope for risky behaviour and help ensure more sustainable business plans, particularly for new entrant suppliers. Action to tackle these risks 'at source' should also enable stress testing to be more focused on commercial risks, and enable it to be used proportionately.

Despite the risks being well understood, reforms to tackle these risks have already been considered for a number of years, and consulted on many times. We're concerned that the timelines set out in the plan suggests further delays, with a decision unlikely before the second half of 2022. Given that changes may be complex for suppliers, Ofgem has previously suggested that implementation may

² Citizens Advice (2019) [Picking up the Pieces](#)

³ Citizens Advice (2021) [Market Meltdown](#)

need to be longer than for other rule changes. We therefore think that Ofgem and BEIS should bring forward consultation as soon as possible in Q1 2022.

Action 7: Governance and accountability

Ofgem made a number of reforms in this area as part of its licensing review. Ofgem must consider why those changes may not have been as effective as they could have been in the recent retail market turmoil. In strengthening the rules further it should look at whether personal liability can be introduced to hold individuals more accountable if risky or non-compliant approaches are taken by companies.

Actions 6 and 8: Managing customer growth and extension of the new supply application assessment period

We have responded in detail to the statutory consultation on strengthening milestone assessments.⁴ We note that these plans largely revert to proposals which were made earlier in Ofgem's licensing review.

We support the change to the new supply application assessment period given the current risks in the market. Ofgem will need to closely monitor how these develop beyond April and consider carefully whether further extensions are necessary or appropriate, especially given that higher wholesale prices now look likely to persist.

Action 10: Wider review of regulation

We support a wider review of regulation, but we think this needs to be expanded beyond its focus on financial regulation. While some recently failed suppliers had unsustainable business models and have left a large bill for consumers, many were also offering a poor service and failing to meet basic regulatory requirements before they failed. We've called for suppliers to be held to higher standards in future, in order to rebuild consumer trust and deliver better outcomes. We think this should take the form of a new consumer duty, similar to that being introduced by the FCA, which holds companies to account for the experience of their customers. This would support the aim of rebuilding consumer trust, and could make it easier for Ofgem to enforce its rules.

As well as looking at the content of rules, Ofgem also needs to consider how its role in monitoring and enforcing these rules played a role in enabling the recent turmoil to take place. More detail is set out above in response to Action 4.

⁴ Citizens Advice (2022) [Response to Ofgem's statutory consultation on strengthening milestone assessments and additional reporting requirements](#)