

Association of Business Recovery Professionals

3rd Floor (East), Clerkenwell House, 67 Clerkenwell Road, London, EC1R 5BL

Tel: 020 7566 4200
Email: association@r3.org.uk

www.r3.org.uk



Mr. D Hall
Deputy Director of Financial Resilience and Controls
Ofgem

Email only – solrlevyteam@ofgem.gov.uk

5 April 2024

Dear Mr. Hall,

SOLR LEVY OFFSET POLICY CONSULTATION

1. INTRODUCTION

- 1.1 R3 is the trade 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.
- 1.2 The insolvency, restructuring and turnaround profession is a vital part of the UK economy. The profession rescues businesses and jobs, creates the confidence to trade and lend by returning money fairly to creditors after insolvencies, investigates and disrupts fraud, and helps indebted individuals get back on their feet. Our members have direct experience of insolvencies and their impact on the UK economy and insolvent companies' stakeholders.

2. QUESTIONS – RESPONSE

Q1. Do you agree with our problem statement?

- 2.1 Whilst we note that the consultation fails to detail how monies recovered from an insolvency process would be applied and result in a reduction of network charges, the principle behind the statement is amicable. It would be morally unjust for the reasonable costs incurred by the SoLR to be ultimately paid by domestic energy consumers in Great Britain through network charges, who are one of many innocent parties connected with a failure of an energy supplier. Furthermore, for a shareholder to potentially receive a surplus from the insolvency of an energy supplier when consumers in Great Britain could be left with increased charges would be inappropriate.

Q2. What are your overall views on whether the proposal would deliver on the aims of the SoLR levy Offset?

- 2.2 For the aims of the SoLR Levy Offset to be delivered, it will heavily depend on asset realisations made in an insolvency process and the level of creditors subject to the process, both of which would fluctuate in every insolvency of an energy supplier.

- 2.3 The desired effect of reducing network charges for consumers in Great Britain will ultimately depend on how much is available for distribution to unsecured creditors after the secured and preferential creditors (and costs) have been paid. In most cases, it is likely that the prescribed part rule will apply, if sufficient realisations allow, and therefore the maximum amount that would be available to unsecured creditors for distribution purposes would be between £600k and £800k. It is difficult to envisage how much a prescribed part distribution would result in lower network charges for consumers.

Q3. What are your views on the proposed option of network companies being creditor, as opposed to other alternatives.

- 2.4 Whilst we have no strong views on the identity of the creditor for the reasonable costs of the SoLR, we do have some concerns about the amount of time needed for the SoLR levy claims to be determined. As the consultation mentions, claims for the SoLR levy can be made up to five years (or within a time otherwise specified by Ofgem), although it is noted that an initial determination could take up to six months. Any delay in a final determination of SoLR levy claims could be prejudicial to other unsecured creditors. Also, the period stated is not compatible with the general overriding requirement for an insolvency process to be conducted expeditiously.
- 2.5 Furthermore, the SoLR Levy Offset would arise in every case and will need to be dealt with appropriately by an office holder for adjudication purposes, which may dilute the funds available to unsecured creditors because of the additional costs incurred in dealing with this type of claim as it is likely to involve some complexity. The consultation also suggests that network companies would also be able to recover their costs in claiming, however, it is unclear how this would be provided for. Costs of proving are usually met by creditors themselves rather than the insolvent estate.

Q4. What are your views on the creditors ranking in the insolvency waterfall as unsecured creditors and do you think another classification would be more appropriate?

- 2.6 Whilst it is likely that having a higher ranking in the insolvency waterfall would result in a higher return, it would be unfair on other creditors that had suffered a financial loss because of the failed energy supplier. To seek a higher ranking in the order of priority would likely discourage investment, be disruptive and bring about unnecessary complexities to existing financial arrangements. The classification as an unsecured creditor is most appropriate.

Q5. What are your views on the creditor claim being contingent on a valid claim being made by a SoLR for a LRSP? Do you think that the creditor claim could be formulated or calculated in another way?

- 2.7 Paragraph 3.31 does not appear to be realistic, *“the insolvency office holder will need to estimate the amount of the debt and revise the estimate when further information as to the value of the debt becomes available.”* Unlike other unsecured claims, a potential claim for costs by the SoLR will not be ascertainable from an energy supplier’s records. To ask an office holder to estimate is something that cannot be realistically asked of them.

Q6. What are your views on the deed as it is currently drafted?

- 2.8 No comment.

Q7. What are your views on the proposed license changes for suppliers and networks? Please identify any factors relating to the drafting of license changes that we should consider at this stage.

- 2.9 No comment.

Q8. Have we identified the key impacts, risks and benefits of the SoLR Levy Offset, and are there any impacts we should give further consideration to? Do you think that overall this would be of benefit to consumers?

- 2.10 The benefits to the SoLR Levy Offset are clear - reducing network charges for consumers in Great Britain. However, as highlighted above there are many factors that will ultimately determine whether the proposal set out in the consultation will reduce network charges for the benefit of consumers.
- 2.11 If you would like to meet or if you have any other queries, please contact me at ben.luxford@r3.org.uk or on 020 7566 4218.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ben Luxford', written over a white background.

Ben Luxford
Head of Technical
R3, The Insolvency and Restructuring Trade Body

Email: ben.luxford@r3.org.uk