

# Market Meltdown

How regulatory failures landed us with a multi-billion pound bill



**citizens  
advice**

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Ofgem allowed **unfit** and **unsustainable** energy companies to trade with **little penalty**. Despite knowing about **widespread problems** in the market, it **failed** to take **meaningful action**.



Almost **4 million households** have seen their supplier fail since August 2021 alone, with 28 failures this year.



Supplier failures since Aug 2021 will cost consumers **£2.6 billion** - around **£94** per customer from 2022.



Government has set aside a further **£1.7 billion** of taxpayer money for Bulb's failure.



Citizens Advice estimate that consumers whose supplier failed and were moved to a new supplier saw average price rises of **£30/month**.



Consumers of failed suppliers are also paying for energy market turbulence with **billing delays**, **confusion** and **lost debt protections**.



**40%** of people who've heard about supplier failures are less likely to switch supplier in future as a result.

### **Rules to ensure companies were fit to trade came too late**

From 2010 onwards, dozens of companies entered the market with limited checks. Some offered good service to consumers, but others were poorly prepared. Despite warnings from Citizens Advice and others, it was only in 2019 that Ofgem brought in new rules on market entry, and in 2021 to improve financial resilience - reforms that came far too slow to prevent the collapse we've seen.

### **Ofgem's reforms failed to improve the resilience of suppliers**

Many recently failed suppliers were poorly capitalised and unable to withstand recent significant rises in gas prices. Some had business practices that left them in a precarious position, including:

- Being **insufficiently 'hedged'** (hadn't bought enough energy in advance)
- Offering fixed term **deals that couldn't cover their costs**
- **Amassing customers very rapidly**, in some cases fuelled by auto-switching services

Some suppliers used customer credit balances as a cheap way to fund their growth, rather than use funds from lenders or investors. Contacts to Citizens Advice show customers of recently failed companies had an average credit balance of **£353**, around £200 more than needed for an average household at this time of year.

## Rules to protect customers weren't enforced

Ofgem's regulatory failings also led to a culture where companies were free to flout the rules.



Only **2 in 5** compliance and enforcement cases in the last 3 years focused on consumer experience rules.



The number of Ofgem staff working on enforcement fell by **25%** between 2017/18 and 2020/21, despite record numbers of suppliers in the market.



Only **1 of the 20** suppliers that failed between August to mid-November 2021 had a **'living will'** in place, a new requirement from Ofgem which would have protected customers when suppliers failed.

## Ultimately consumers pay for companies' rule-breaking

Ofgem has a raft of powers it can use to tackle rule-breaking. But it's been nearly 3 years since they last used powers to stop a company taking on new customers until it improved its service.

In the meantime, rules on accurate billing, telephone support and prepayment continued to be flouted.



**Avro Energy** (failed Sept 2021) will cost consumers an estimated **£679 million**. Since 2018 Citizens Advice raised concerns with Ofgem about the company on **10** separate occasions as it nearly tripled in size.

## Ofgem and the Government must act to fix the problems that led us here and restore consumer confidence in the market

### Services haven't been good enough and trust has been damaged

- ⊗ There should be an independent review of the causes of the market turmoil which considers the role of delays in policy changes, Ofgem's approach to compliance and enforcement, and recommends improvements.
- ⊗ Ofgem should introduce a new consumer duty, similar to that being introduced in financial services, which would put the onus on companies to ensure good consumer outcomes in future.

### Consumers need to be protected from the costs of failure

- ⊗ Consumers should be protected from immediate bill hikes resulting from recent supplier failures
- ⊗ Ofgem and the Government should implement reforms, including prudential regulation, to tackle risky business practices
- ⊗ Ofgem and the Government should improve the supplier failure process so consumers are better protected

### Rebuilding a market that works for consumers and net zero

- ⊗ Ofgem and the Government should develop clear strategies for the retail market and its role in supporting decarbonisation.
- ⊗ These should consider how to enable consumer engagement and innovation in a more consolidated market.

# Consumers are paying the price for energy market turbulence

Supplier failures since Aug 2021 will cost

**£2.6 billion**

around **£94** per customer from 2022

When an energy supplier fails, Ofgem normally appoints a new supplier to take on its customers. This will incur costs - like paying for energy for the new customers and protecting their credit balances - which the new supplier can apply to use an industry levy to recover. The costs of the levy are 'mutualised' - paid for by all other consumers through an extra charge on our bills.

New analysis by BFY Group, commissioned by Citizens Advice, estimates that the total cost to bill-payers of supplier failures since August 2021 will be £2.6 billion (not including Bulb)<sup>1</sup>. An Ofgem decision to recover these costs more quickly than normal means consumers will see an increase in bills from April 2022 of £94 per customer<sup>2</sup>. This is on top of an expected increase in the price cap of between **£400-£520** in the same period<sup>3</sup>.

If a larger supplier fails, it may not be feasible for a new supplier to take on their customers all at once. This happened for the first time with the failure of Bulb, which served around 1.7 million households.

In this case, Ofgem can ask for an administrator to take over the company, and the Government will give it financial backing to continue supplying customers until a buyer can be found, or until batches of customers can be sold to other suppliers. The proceeds of the sale will help recoup the Government's costs, but if there is a shortfall it can choose to recover the costs through charges on energy bills. The Government has set aside an initial **£1.7 billion** to keep Bulb running.

Customers of failed suppliers may also incur a cost when moving to a new supplier. Since August 2021, all customers of the failed suppliers have been transferred to the new supplier's default (variable) tariff, priced at the price cap.

Given the typically lower fixed tariffs customers of failed suppliers were moving from, Citizens Advice estimated that moving from a failed to supplier to a new supplier costs customers £30 month. Households on Universal Credit that were affected by supplier failures will have particularly struggled, as these coincided with changes to reduce their weekly payments by £20 in October 2021<sup>4</sup>.

Failures can also cause a great deal of confusion for consumers. The Citizens Advice consumer advice service saw a **140%** month-on-month increase in calls in mid-September as more suppliers failed.

The week beginning 20 September saw a **9,000%** increase in views to our advice pages on supplier failures.

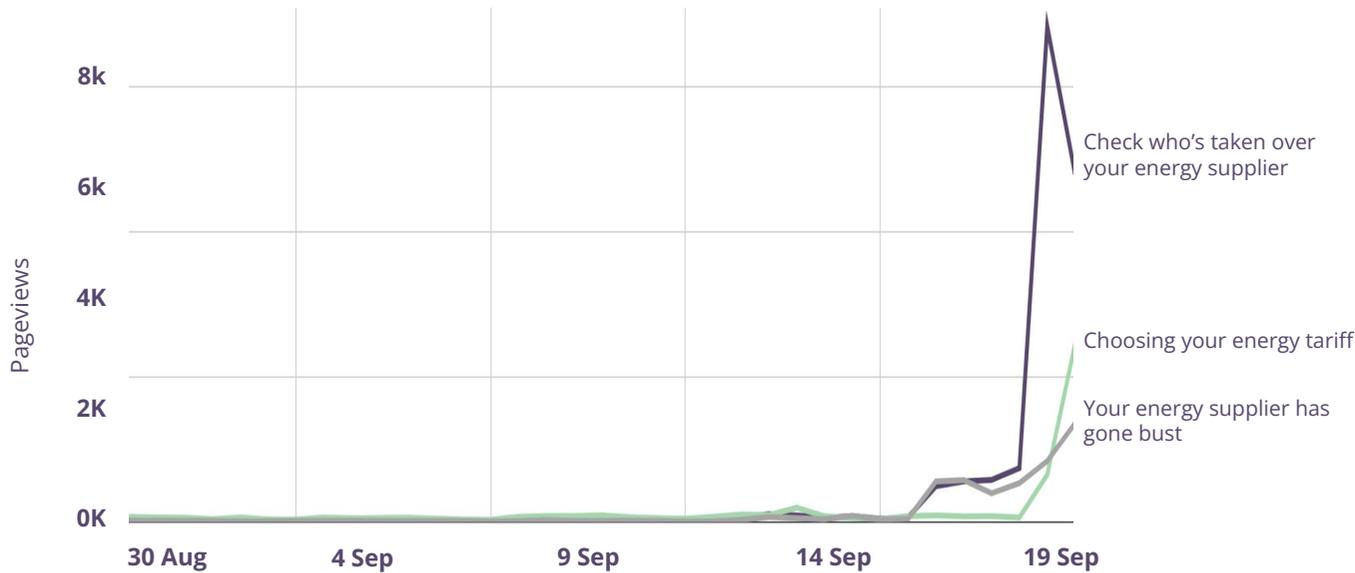
In particularly worrying cases, people were coming to Citizens Advice for help after some suppliers did not maintain their communication channels.

This meant people were unable to provide meter readings, download bills, or even contact an engineer if their pre-payment meter stopped working.

Supplier failures can continue to affect customers for weeks or even months after a company has failed. The consumer advice services continues to help people with:

**Credit refunds:** People are concerned that they won't get their credit balances back, and some customers have built up hundreds of pounds of credit due to incorrect billing practices.

Fig. 1 Pageviews to Citizens Advice supplier failure webpages, 30 August - 19 September 2021



### Sydney's story\*

Avro Energy, failed September 2021

A customer is elderly with severe health problems; they have had over £1100 taken from their account, even though they were in credit. This is much higher than their usual direct debit, and the customer doesn't know why they took this amount.

The customer can't afford to buy essentials, but doesn't know how to get in touch with the failed supplier, as there are no phone lines, and their website is not working.

**Debt and Billing:** Customers have concerns about a potential debt or billing error, but have not been able to get in touch with their previous or new supplier.



**Emma's story\***

People's Energy, failed September 2021

Emma is elderly, unable to read her meter and doesn't use the internet. Usually someone comes to read the meter but they haven't for weeks. She's been told she hasn't made any direct debit payments, but two identical amounts have been taken from her account. She's also been told she will be referred to a debt collection agency if she doesn't pay a debt. She doesn't know how to get in touch with her new supplier to try and sort out the situation.

**Delays in complaints being resolved:** Customers are seeing delays in accounts being transferred over, causing stress - especially if they have an outstanding complaint or complex query.



**Parvati's story\***

Green, failed September 2021

Parvati had an ongoing issue with Green, as they had increased her direct debit by over 5 times its original amount, despite her not using more energy. She was told by Green that there could be an issue with her meter readings, and the case was ongoing. Green then failed, and the high direct debits have continued. It is unlikely that the final bill will be ready before December, with the customer worried about making much higher monthly payments for Autumn.

**Multiple supplier failures:** Customers face particular difficulties if they have recently switched between one or more failed suppliers, as it becomes unclear who is responsible for the customer.



**Joshua's story\***

Igloo, failed September 2021

Joshua, who is disabled and needs extra support with communications, had received a final bill from Igloo in October which stated he was owed credit. However, he had a direct debit set up with Avro in September. Both Igloo and Avro have now gone bust, and he's unsure if his credit is being held by EON or Octopus. The customer will need to liaise with both EON and Octopus to work out who should be supplying him.

**Why did this happen, and how can we ensure this doesn't happen again?**

# Rules ensuring companies were fit to trade came too late and didn't go far enough

## Rules to protect consumers came too late

Concerns over unsustainable business models and poor practice began to grow after the number of suppliers in the market rapidly accelerated in the early 2010s. Citizens Advice formally wrote to Ofgem in 2013 with concerns around the risk of poorly run companies entering the market.

In November 2016 GB Energy - a supplier serving 160,000 customers - became the first to fail in 8 years. It was only after a further 5 suppliers failed that Ofgem published its first consultation on how it could tackle these issues in November 2018<sup>5</sup>. Another 5 suppliers had failed by the time the reforms came into effect.

The first changes made by Ofgem's review were introducing new entry criteria from June 2019<sup>6</sup> with the aim of improving the resilience of companies and their ability to serve customers, including fairly basic requirements for entrants to:

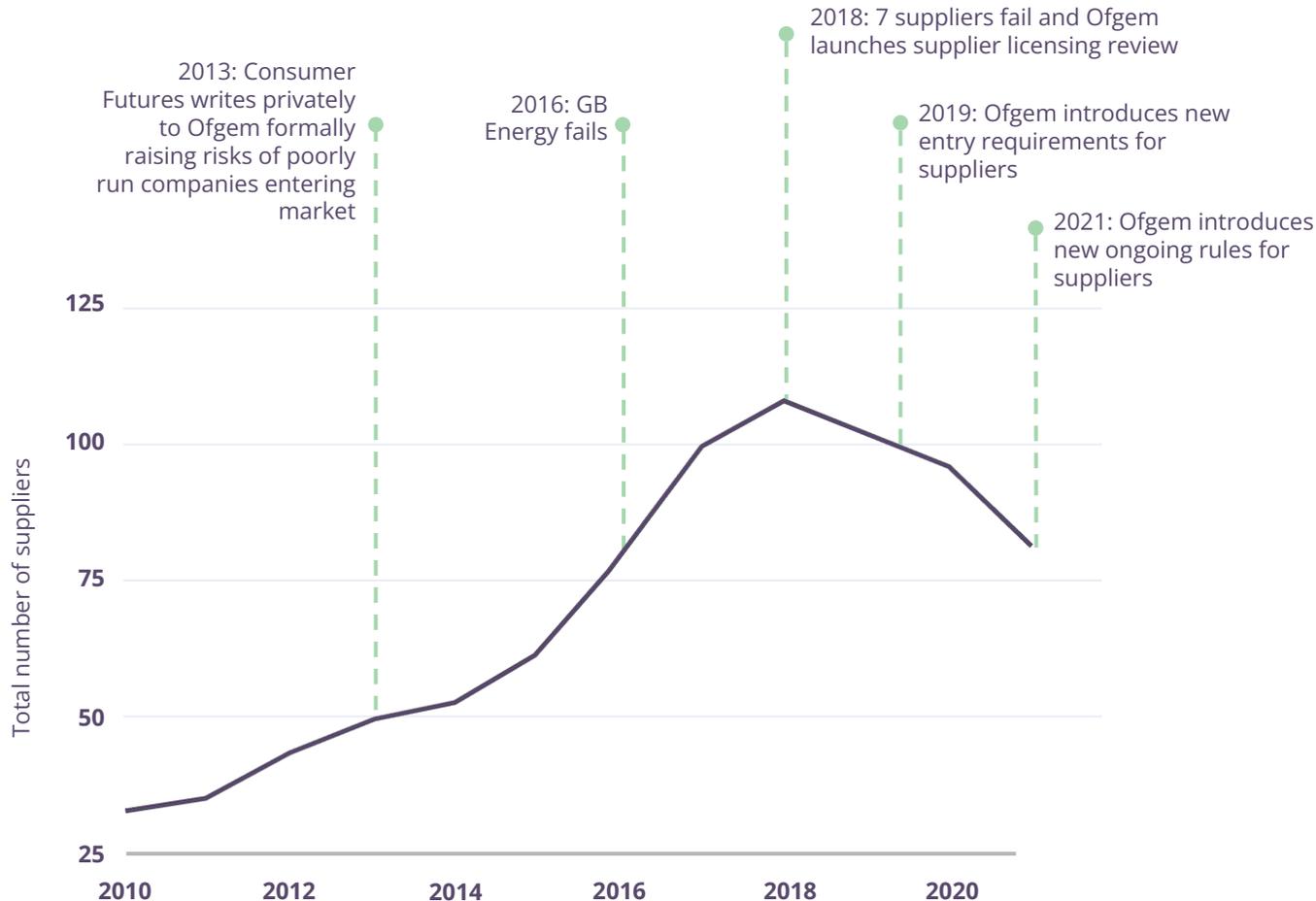
- ① have appropriate resources to enter the market, understand their regulatory obligations and have appropriate plans in place to meet them.
- ② be run by people that are 'fit and proper', taking account of factors like links to companies that previously failed or had enforcement action against them<sup>7</sup>.

However, these reforms came after a period of very rapid growth in the number of companies trading. Between 2015 and 2018 alone, over 45 new companies were given licences to trade<sup>8</sup>, while only 11 companies have entered the market in the 3 years since the reforms were made, reflecting market conditions and higher thresholds for entry.

We think that prioritising changes to entry tests delayed action to tackle the practice of existing companies in the market, while the reforms themselves haven't guaranteed that companies will be financially fit to trade - in fact, nearly half of suppliers that entered after these reforms have failed in recent market turbulence.<sup>9</sup>

Dozens of energy companies entered the market with limited checks from Ofgem, despite repeated calls from consumer groups like Citizens Advice starting from 2013 calling for tougher licensing.

Fig. 2. Total number of energy suppliers in market, 2010 - 2021<sup>10</sup>



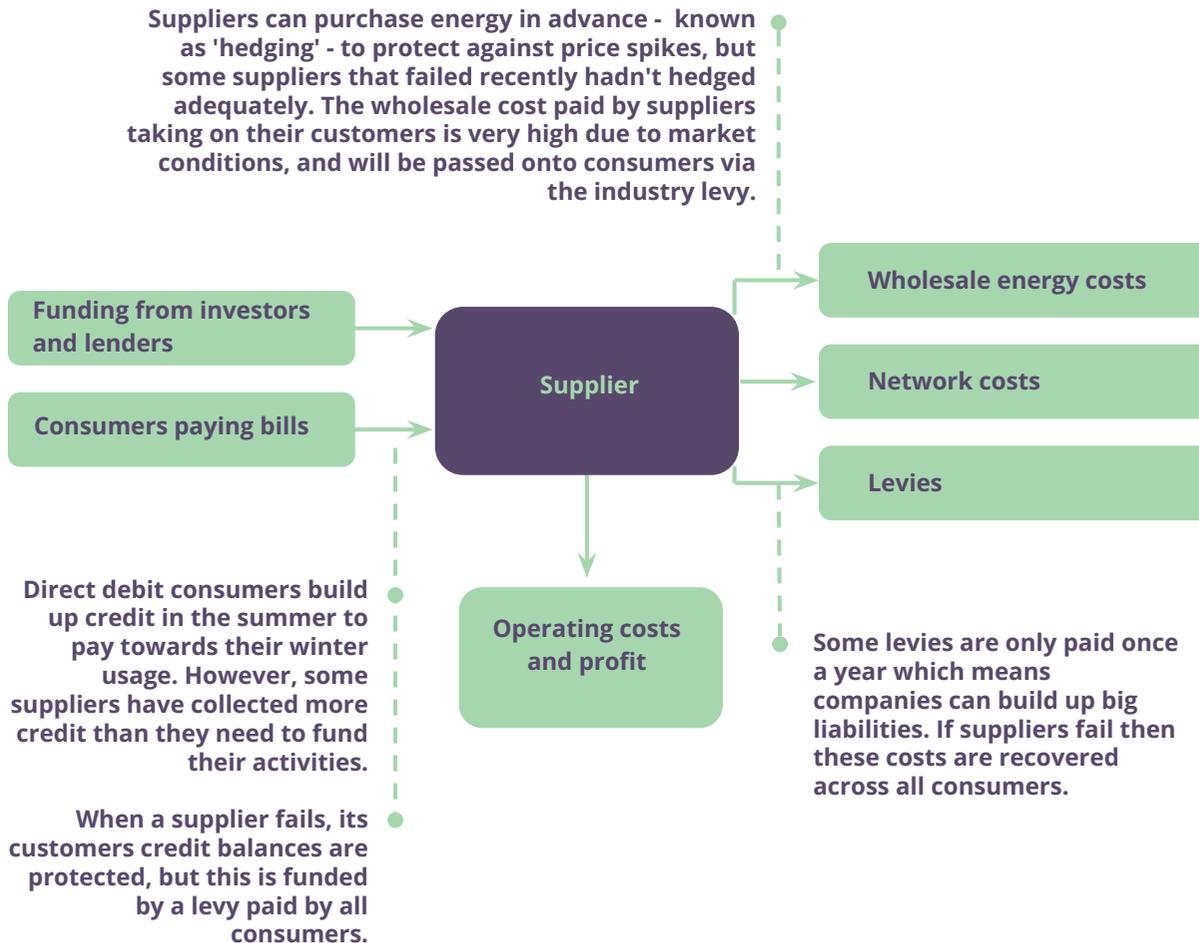
Only in early 2021 did Ofgem put in place new rules for suppliers<sup>11</sup>, including:

- Requirements to be financially responsible and have operational capability to effectively serve customers<sup>12</sup>.
- Assessments to check suppliers are adequately resourced as they grow, and powers to require independent audits of a supplier's service or financial health.
- Requirements to be cooperative with Ofgem and ensure that senior staff are 'fit and proper' on an ongoing basis.

These changes were welcome - but **should have been put in place much earlier**, and used more effectively by Ofgem when they did come into force.

We're not aware of Ofgem making use of some of its new powers<sup>13</sup>, like requiring independent audits of companies, and there's no evidence that the suppliers that failed in 2021 changed their behaviour in response to the new rules.

# Companies were able to build up large liabilities, much of which consumers will now have to pay



Citizens Advice analysis of data from administrator reports shows that failed suppliers often leave large debts and very few assets. This means much of their debt is unrecoverable by creditors. For example, Extra Energy (failed 2018) had an estimated **£107 million** in unrecoverable debt, and Green Network Energy (failed 2021) owed **£66 million**.<sup>14</sup>

Despite 2021 reforms by Ofgem to encourage financial resilience, failed suppliers continue to amass significant debts.

➤ **HUB** (failed August 2021) had an estimated **£7 million** in outstanding debt. This was before industry payments were due, so it is unlikely they could pay their obligations.<sup>15</sup>

➤ **Avro** (failed September 2021) may owe more than **£250 million** to creditors<sup>16</sup>.

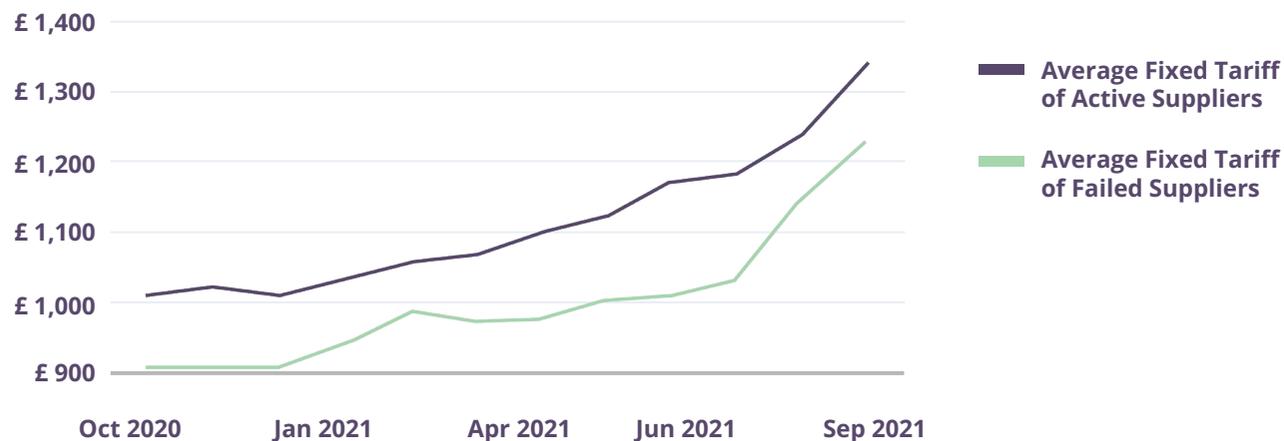
Where industry processes exist to collect this money from other consumers these costs are mutualised. Other companies that suppliers use to provide their energy services - like metering providers - that are owed money may have to pass these costs on through higher charges for their services, leading to higher consumer prices.

## Energy companies weren't financially resilient

It's been widely reported that many of the companies that have failed recently were insufficiently hedged (where suppliers buy energy ahead of time). For example, the administrator for Avro said that it 'lack(ed) any hedging instrument' for its energy purchases<sup>17</sup>. It's also been reported that Bulb didn't have sufficient long term purchases of energy to manage the risk of price rises. This means companies were forced to buy higher priced energy as prices rose, while better hedged suppliers benefitted from lower gas prices from 2020 and early 2021.

In recent years, newer suppliers offered competitive - mostly fixed term - deals, in many cases gathering large volumes of customers as a result. Citizens Advice analysis of average fixed tariffs offered by suppliers who have failed since August 2021, as compared to suppliers still operating, clearly shows the discrepancy between the two<sup>18</sup>. These unsustainably low prices were locked in via the fixed nature of the deals, even as wholesale prices rose, and are likely a key reason that many suppliers failed.

Fig. 3 Comparison of fixed price tariffs offered by suppliers, Oct 2020 - Sept 2021<sup>18</sup>



### A preventable crisis?

The lack of resilience of the retail market to volatile wholesale prices is alarming, because recent events, while significant, were not unimaginable. We've seen big spikes in the wholesale price of gas before in 2008, and similar shocks in other markets like financial services.

There were clear warning signs in the market that many suppliers lacked the financial muscle to make it through any turbulence. Many have been lightly capitalised, often with few signs of external funding and an apparent dependence on credit balances to provide their working capital. Few were profitable or had any reasonable prospect of becoming so, and a failure to hedge properly left some incredibly exposed when high wholesale prices arrived in Autumn 2021.

None of these things were secrets - in fact, Citizens Advice raised concerns from 2013 onwards that companies weren't financially resilient. An effective regulator would have seen these problems coming and acted to prevent them, and ultimately minimised the impact on consumers.

When the energy price cap was introduced, it was expected that the difference between cheap fixed deals and those for the default tariffs would decline. However, new entrant suppliers were able to continue to price aggressively, often drawing larger suppliers into offering loss-making deals in order to compete.

#### Key policy decisions and failures to regulate enabled this activity:

 Small and new entrant suppliers are exempt from some industry schemes, like ECO and Warm Home Discount. This can give smaller suppliers an unfair advantage by avoiding costs that larger suppliers face. But as companies scale up they need to plan carefully how they'll pay for them once they become obligated.

 The emergence of unregulated auto-switching services enabled companies to grow much more rapidly and at a relatively low cost. The biggest of these services was responsible for making switching decisions for 100,000s of customers. Our research has shown that these services can be opaque, with users not knowing whether they're getting the best deal available and being unable to choose suppliers based on the quality of their customer service<sup>19</sup>.

 Some suppliers used customer credit balances as a cheap source of finance, rather than funding from lenders or investors. Administrators for Avro Energy said the company had "no external funding" and was financed through 'working capital generated by its trading operations'<sup>20</sup>.

Ofgem analysis previously found that as much as £1.4 billion was held in surplus credit balances in October 2018<sup>21</sup>.



Analysis of contacts to our consumer service helpline shows customers of recently failed companies had an **average credit balance of £353** on their account when their supplier failed



although many customers built up balances much higher than this, with many **customers with credit balances as high as £1,000.**

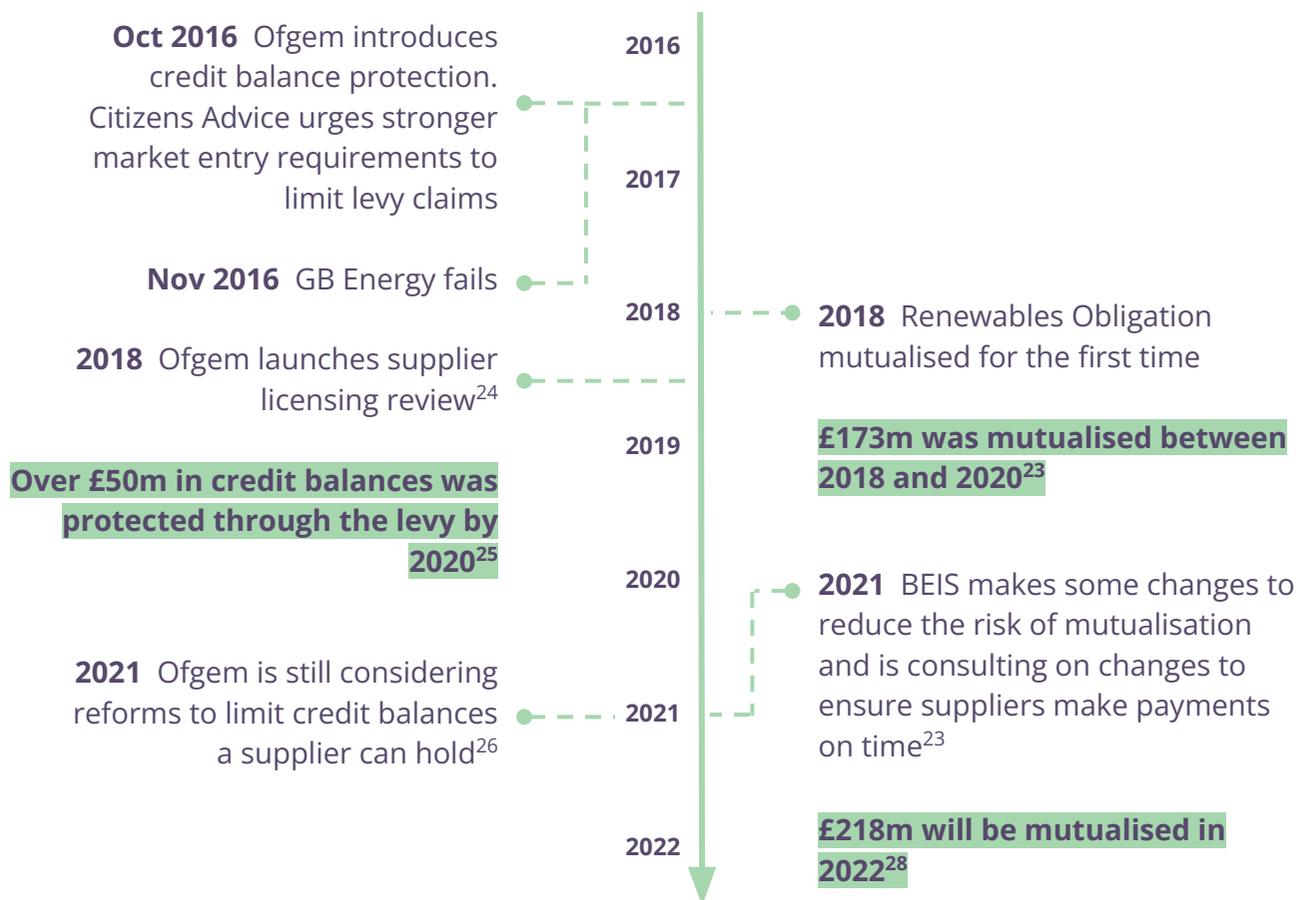


Ofgem modelling estimates that **an average dual fuel bill payer in October 2021 would need a credit balance of around £150** to help pay towards their winter usage<sup>22</sup>.

Finally, many suppliers also failed to make mandatory payments towards renewable schemes, the largest of which is the Renewables Obligation. Although suppliers should be collecting money towards this from customers each month, they only pay into the scheme once a year. If they've spent the money on other things and can't raise new finance to pay, the costs are mutualised. These risks have been allowed to develop, with Ofgem and the Government **repeatedly delaying action** to prevent them.

### Credit balances

### Renewables obligation



### Is the price cap to blame for recent failures?

New suppliers have competed principally on price, and some have appeared to do so below cost. Combined with engaged customers who are unlikely to stick around when their fixed deal ends, it's been hard to discern a route to long term profitability for many. 8 suppliers failed in 2018, before the price cap existed.

Some suppliers chose not to buy energy in line with the assumptions in the cap methodology, or lacked the funding to do so. These suppliers were more exposed to the increase in wholesale costs but couldn't pass them on to consumers. However, even in the absence of a price cap, suppliers who bought less energy in advance would have been at a massive commercial disadvantage to those who had.

One area where suppliers are now facing unexpected costs is that the price cap is now the cheapest deal available, so customers coming to the end of fixed deals are choosing to remain on the cap, rather than switch away. Ofgem is consulting on changes to enable suppliers to recover these costs next April<sup>29</sup>.

Without the price cap, households - including many in vulnerable circumstances - would have seen bills this winter that were hundreds of pounds higher.

# The rules that were there to protect consumers weren't enforced

As well as setting the rules for energy suppliers, networks and generators, Ofgem is also responsible for making sure companies follow them. Ofgem has significant powers to enforce rules, including:

- **Investigations** which can result in fines, payments to Ofgem's redress fund and payments to affected customers.
- **Orders** which compel a company to comply with rules, and can put in place restrictions until they do so, for example stopping them taking on new customers.

Ultimately Ofgem can revoke a company's licence - forcing them to close down entirely.

In addition to formal enforcement action, Ofgem can also take compliance action, where it works with companies when issues are identified or self-reported. Compliance cases can result in agreements by suppliers to change their processes and redress payments.

Ofgem enforces rules across a range of areas, including:

- **Consumer experience rules**, including customer service, accurate billing, complaints, debt, payments and switching.
- **Technical rules on levies, schemes and industry requirements** including payments towards renewable energy costs, participating in schemes on energy efficiency and smart metering.
- **Competition, pricing and network rules** including limits on what suppliers can charge under Ofgem's price caps.

Ofgem gathers insights on company practices through regular engagement with suppliers, formal requests for information, and through evidence from the Citizens Advice service and the Energy Ombudsman via the tripartite process. This is a regular forum for sharing data and insights about supplier performance and consumer contacts between the statutory energy bodies.

Ofgem aims to deliver a 'credible deterrent' and 'meaningful consequences' for companies who don't comply<sup>30</sup>. However, Ofgem has cut the number of staff working on enforcement, reducing their capacity to take action against companies that are breaking the rules.



Data from a Freedom of Information request issued by Citizens Advice shows that despite record numbers of suppliers operating in the market, **the number of Ofgem staff working on enforcement across all regulated companies fell by 25% between 2017/18 and 2020/21**, before rising slightly in the year 2021/22.

Between 2017/18 and 2020/21, the number of staff working on compliance and monitoring rose by less than 5% and the total number of staff working across all regulatory functions at Ofgem rose by 1.5%.<sup>31</sup>

## Rules which would have protected customers when suppliers failed weren't enforced

Worryingly, we have evidence which suggests important rules which would have protected consumers from some of the impacts of supplier failures have not been enforced.

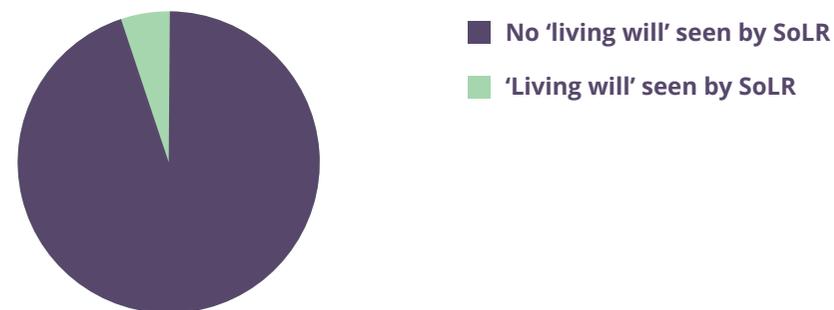
### What's a Customer Continuity Plan (CCP), or 'living will'? <sup>32</sup>

Following 21 suppliers failures between 2016 and 2020, Ofgem introduced a requirement for companies to have Customer Continuity Plans in March 2021. These are designed to safeguard customers if their supplier fails and they are moved to a new supplier via the Supplier of Last Resort process. This should include:

- Key information about customers (including information on vulnerability), billing systems and arrangements with third party service providers.
- Details of how information about customer account balances will be collated and prepay customers protected.
- Details of datasets and how these can be accessed, updated and shared with a new supplier.
- Plans for communicating with customers in the case of supplier failure, as well as engaging with Ofgem and central industry bodies.

This information should ensure consumers are protected during supplier failures, and make the handover process smooth and efficient.

Our evidence suggests few failed suppliers in 2021 had 'living wills'. Out of 20 suppliers who failed before mid-November, we have been told by SoLRs that only 1 had a 'living will' - 18 had none<sup>33</sup>. This has likely contributed to delays in customers receiving final bills and refunds.



This reflects a broader unpreparedness across the sector for supplier failures, with basic consumer protections forgotten as suppliers failed, like telephone lines not operating for hours or days. This prompted Citizens Advice to create a 'First Steps' document for suppliers setting out advice to protect consumers in the interim period before a new supplier was announced. This includes ensuring online accounts remained live, and an emergency number was available for prepayment customers without power<sup>34</sup>.

Our evidence suggests this is not an isolated incident, but is part of a wider failure by Ofgem to tackle rule-breaking.

## Ofgem let companies get away with breaking the rules

Ofgem has sometimes not acted on evidence of licence breaches, and ignored calls from consumer groups, instead focusing on enforcing technical problems with less direct impact on how consumers experience the market and are served by their supplier.



**Less than 40% of Ofgem's compliance and enforcement cases in the past 3 years focused on consumer experience rules (eg billing, service, debt etc)<sup>35</sup>**

The majority of cases focused on enforcement of basic rules, like making mandatory payments for renewable schemes, participating in schemes or technical errors in implementing price caps.

Companies that openly and repeatedly flouted the rules continued to amass customers, under Ofgem's watch, and the majority of Ofgem's work with suppliers was via its compliance function. The last time Ofgem used enforcement powers to stop a company taking on new customers until it improved its customer service was almost 3 years ago<sup>36</sup>. And it hasn't opened any new formal investigations into

domestic consumer experience issues since 2018, when it investigated Utility Warehouse. This case took over 3 years to complete, finishing in November 2021<sup>37</sup>. Other investigations have taken even longer - up to 4 years to complete<sup>38</sup>. Failing to complete investigations in a timely manner delays redress for consumers and allow problems to persist.

**We think that earlier intervention by Ofgem could have reduced the cost of failure now piled on consumers.** While some of the companies that failed since August this year provided good customer service, others clearly did not. For example, in the quarter January - March 2021, our customer service star rating showed that 80% of suppliers which were included and have since failed were ranked 11 or below out of 34, and 50% were ranked below 20.

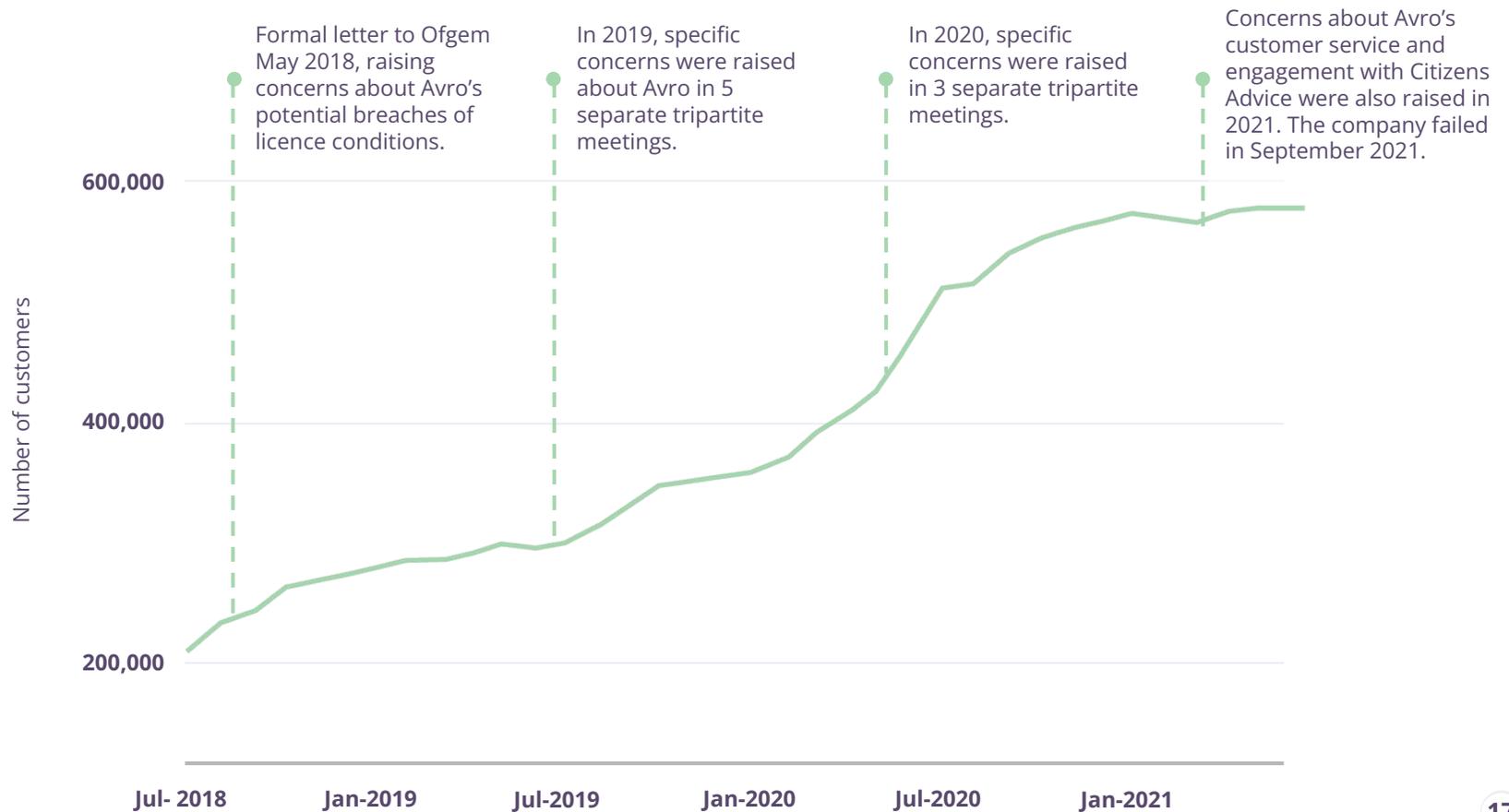
Despite clear issues with service at these firms, Ofgem's website shows it only investigated or published details about compliance engagement on consumer experience issues with five of the 26 firms that failed between August and November this year.<sup>39</sup> For many of these firms, there appears to have been little credible deterrent or reputational threat from Ofgem in relation to the way they treated their customers.

# Some suppliers grew rapidly despite repeated reports of non-compliance



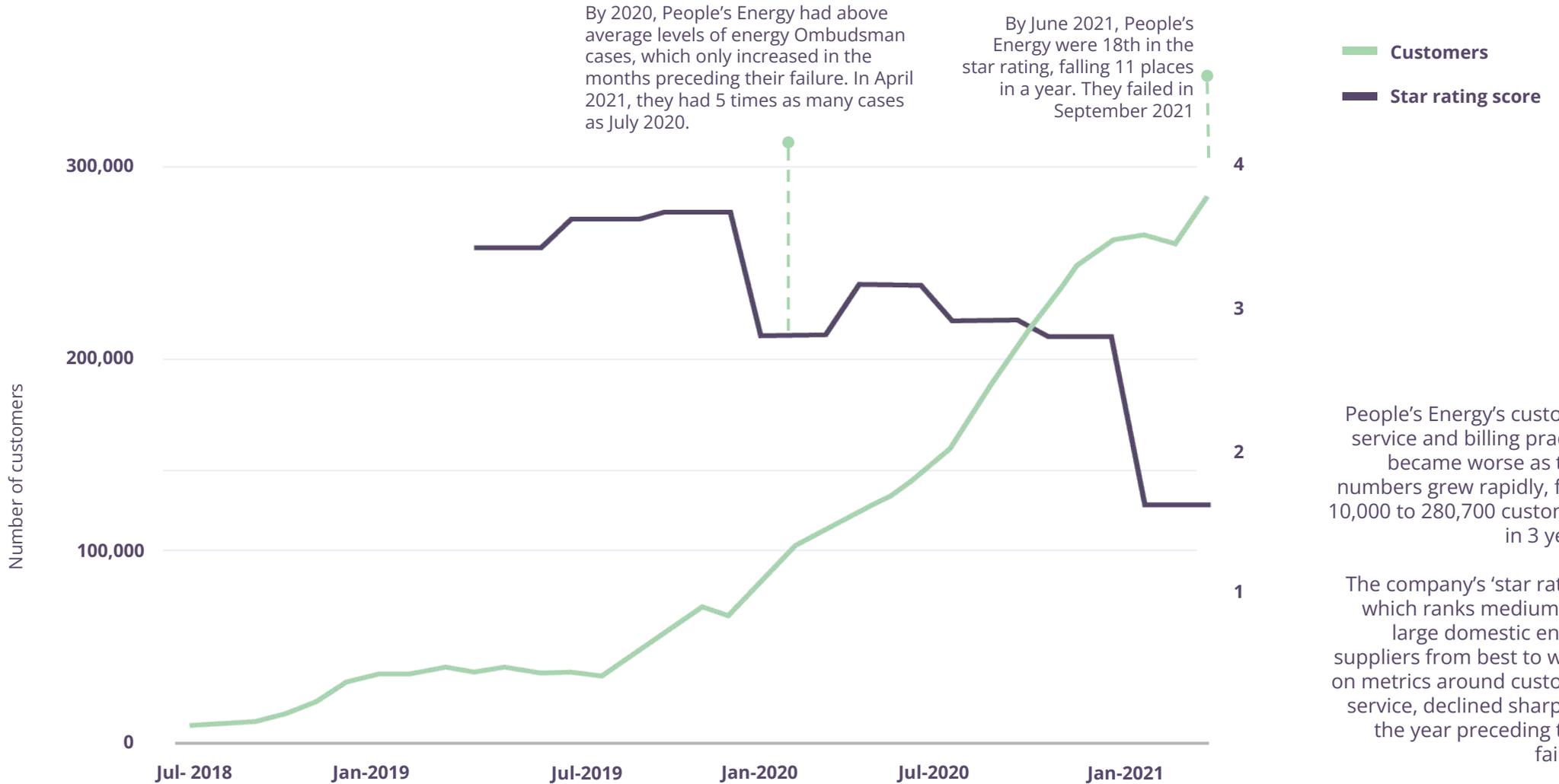
**Avro Energy**, who Citizens Advice repeatedly raised concerns with Ofgem on customer service issues, debt recovery practices, and failure to respond to requests for information, continued to amass customers until their eventual failure, which will cost bill-payers an estimated **£679 million**<sup>40</sup>.

- 2013: First formal letter sent to Ofgem calling for a tougher licensing framework
- 2017: Formal letter sent to Ofgem setting out concerns about the market entry process and areas where it could be strengthened.
- Avro's customer base increased from around 210,900 to 580,000 in about 3 years.





**People's Energy**, whose customer service and billing practice (as reflected in star rating scores) fell sharply after their customer numbers skyrocketed. The company's failure will cost bill-payers an estimated **£409 million**<sup>41</sup>.



# Ofgem allowed a culture of rule-breaking with some areas of the rulebook

## ① Accurate billing

Billing is the top issue that people contact our consumer service helpline for support with - 36,207 cases in the last year alone. Poor billing practices not only cause ongoing problems for customers, but also contribute to a higher overall cost of supplier failures.

There's clear evidence that billing systems and processes at some failed suppliers have not been fit for purpose. Iresa - which failed in 2019 - used a system which was described as having 'extremely significant challenges associated with data quality' which incurred 'greater costs than initially expected in transitioning Iresa's customers'<sup>42</sup>.

To protect customers, there are rules banning billing for energy used over 12 months ago, but this kind of back billing remains rife - Citizens Advice advisers helped at least 1,000 people affected by suspected non-compliant back bills in the past year.



We estimate these bills were £1,197 on average - totaling £1.32 million for Citizens Advice clients alone.<sup>43</sup>

However, Ofgem has never taken formal enforcement action on its back billing rules, and last opened a formal investigation into accurate billing of domestic customers over 5 years ago.



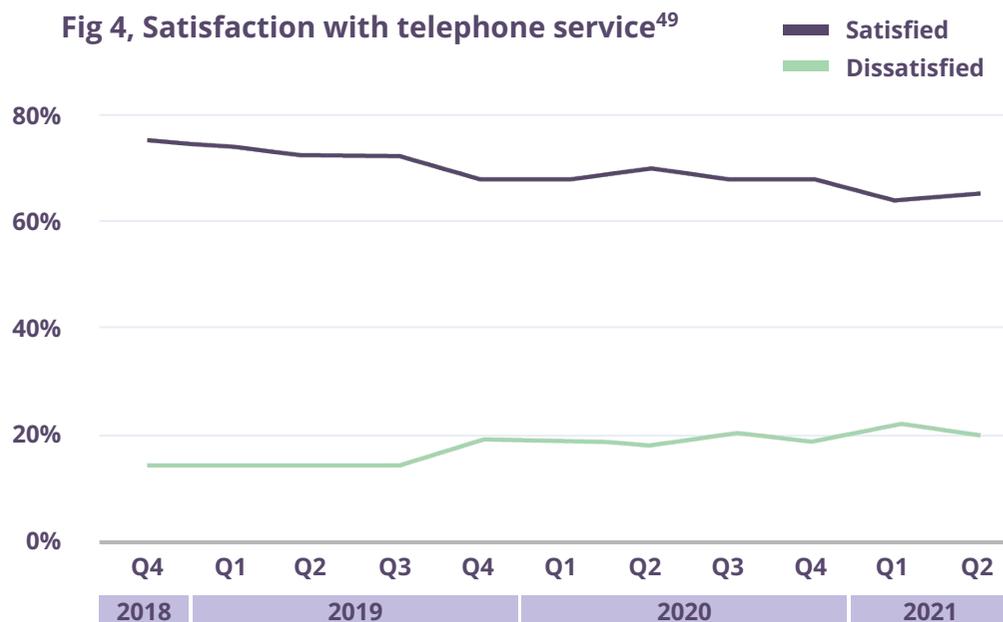
## Timeline

- **2011** Rules on providing accurate bills when meter readings are provided introduced (SLC 21B)
- **2014** Rules strengthened to require accurate bills at least once a year
- **2015** Ofgem opens case into Spark Energy's billing practices. Spark later failed in 2018<sup>44</sup>
- **2016** Ofgem opens case into Extra Energy billing practices, the last such case opened. Extra later failed in 2018<sup>45</sup>
- **2018** Back billing rules introduced, as the previous voluntary arrangements failed to offer sufficient protection<sup>46</sup>
- **2020** Ofgem publishes open letter on compliance with back billing rules in response to evidence from consumer bodies that the rules are not being followed by a number of suppliers<sup>47</sup>
- **2021** Ofgem introduces new rules requiring suppliers to have billing systems that are fit for purpose

## ② Customer service and telephone support

Our research has previously shown that consumer satisfaction with energy supplier service has not improved in recent years, and that it lags behind other essential service markets<sup>48</sup>. We also found that while digital channels are growing in popularity, telephone remains people's preferred channel of communication when things go wrong.

This can be particularly important for some groups of consumers, including people who are digitally disengaged or have low levels of literacy. It can also be important for people who need urgent support, for example prepay customers who need support to avoid being disconnected. However, satisfaction with telephone service has fallen substantially in recent years<sup>49</sup>.



More worryingly, some suppliers have removed telephone lines altogether. This is despite requirements that consumers must be able to make complaints by phone, and Ofgem setting out clear expectations that all suppliers should have a phone number that's easy to find and free to call.

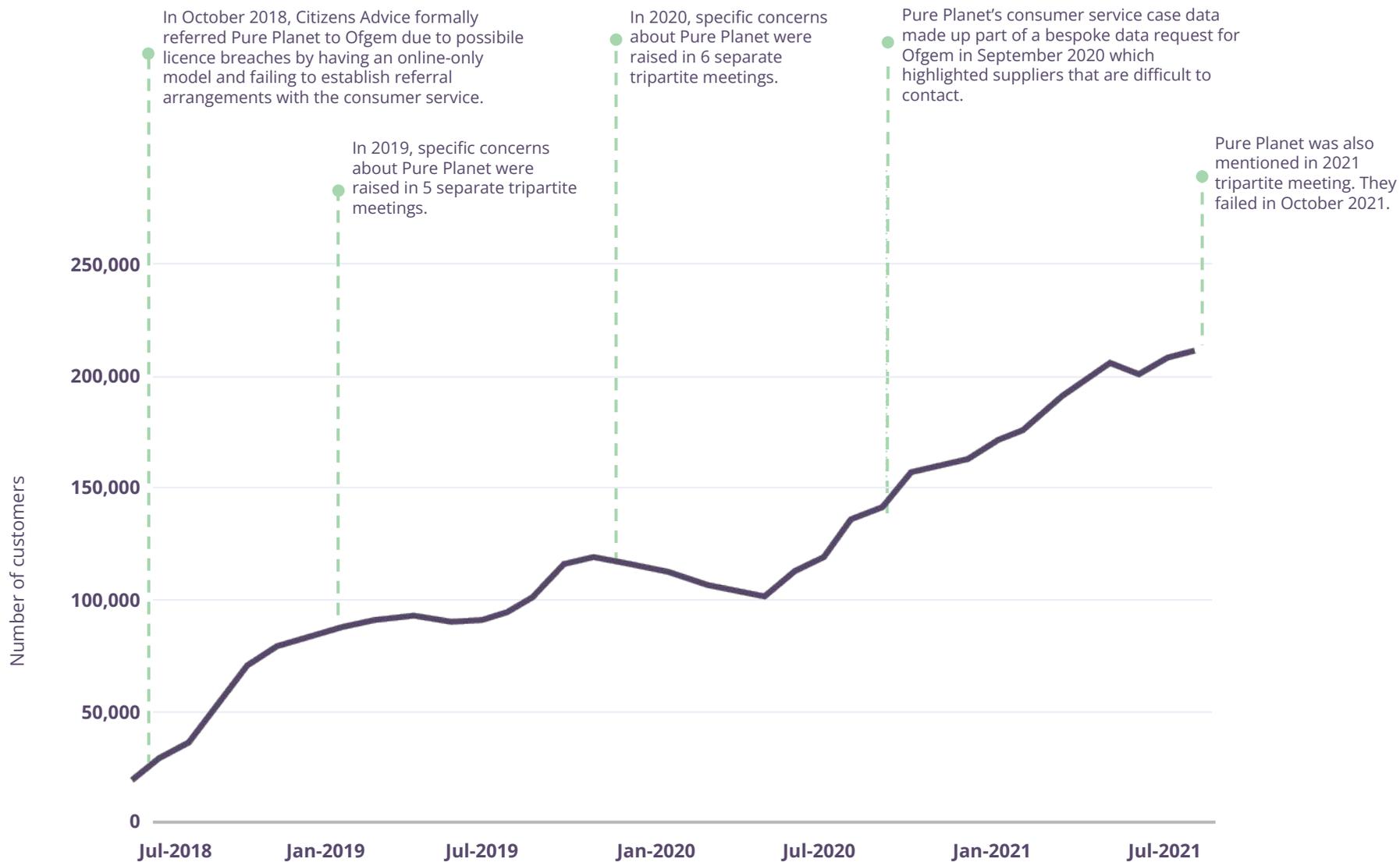
Ofgem has taken no action against suppliers who don't provide a telephone line, and it's over 2 years since they opened a formal investigation into any supplier over the quality of their service.

### Timeline

- 2013** Standards of conduct introduced, requiring suppliers to be easily contactable, with customer service arrangements that are 'complete, thorough, fit for purpose and transparent'<sup>50</sup>
- 2015** Ofgem publishes an open letter on expectations in relation to telephone services, including that all suppliers have a number that's easy to find and freephone<sup>51</sup>
- 2017** Ofgem introduces requirements to take account of vulnerability when providing services to customers<sup>52</sup>
- 2017** Pure Planet (failed Oct 2021) launches as a digital only service, with no phone line
- 2019** Ofgem stops Solarplicity (failed Aug 2019) selling to new customers until their telephone service reaches below 2 minute average wait time<sup>53</sup>
- 2021** Pure Planet (failed Oct 2021) says it passes Ofgem assessment 'with flying colours', despite having no phone line<sup>54</sup>



**Pure Planet** continued to amass customers despite not offering a telephone line, a requirement under Ofgem's complaint handling standards, failing with over 200,000 customers in October 2021.



### ③ Prepay and debt

People in energy debt or who use prepay for energy face particular risks, including self-disconnection and self-rationing. The CMA's investigation in 2016 found that prepay customers had more limited choices than customers using other payment methods.<sup>55</sup> As such, Ofgem has important rules in place to protect these consumers and ensure they are treated fairly by their supplier.

Suppliers that serve more than 50,000 customers are required to proactively offer a range of payment methods, including prepayment and payment in cash. All suppliers need to support customers who are struggling to pay, including offering prepayment or deductions from benefits. More recently, Ofgem introduced further requirements for suppliers to provide additional support to customers in debt who are at risk of not being able to afford to top up their prepayment meter.

These are vital protections that should support many people on low incomes or in vulnerable circumstances and ensure that they have good choices in the market.



Our analysis shows that suppliers have been repeatedly breaking these rules, and **Ofgem has not opened a formal enforcement case into rules related to prepayment in the past 3 years.**



#### Timeline:

- **2015** Citizens Advice's Fair play for prepay campaign highlights the challenges faced by prepay customers, including poor customer service, less choice and higher prices<sup>56</sup>
- **2017** Ofgem introduces new rules that require suppliers to make it easy to compare and select tariffs - including by different payment methods<sup>57</sup>
- **2018** Bulb grew to around half a million customers before offering prepay - in closing its compliance case Ofgem sets out a clear expectation that suppliers 'openly offer a prepayment payment option to customers as soon as they exceed 50,000 customers'<sup>58</sup>
- **2020** Ofgem closes anonymous compliance cases with 3 suppliers who have 'not been providing complete and transparent information to consumers on the range of payment methods available and not treating customers fairly by providing equal access to all payment methods'<sup>59</sup>
- **2021** In mid-2021 Octopus Energy has more than 3 million customers, but continues to exclude prepay tariffs from its normal quotation tool and requires consumers to fill out an application form with a 5 day wait in order to access prepay tariffs<sup>60</sup>
- **2021** Pure Planet fails with 234,000 customers. None of them are using prepayment

# What changes do we need to see?

## Consumer confidence needs to be repaired

Over 2 million consumers who bought tariffs from new entrant suppliers in good faith have faced rises on average around £30 a month as they move to a new supplier<sup>61</sup>.

The failure to enforce high standards in the market and ensure suppliers were managed responsibly has damaged consumer confidence more widely, and risks lower engagement in future.

- **1 in 6** people have been directly affected by supplier failures
- **7 in 10** haven't been affected but have heard about them
- **40%** of people who've heard about the failures are less likely to switch supplier in future as a result - only 1 in 10 are more likely to switch<sup>62</sup>

This couldn't come at a worse time, given that consumers will need to engage more with choices around energy in order to help achieve our net zero goals.

### We need a clear commitment to higher standards in future

Energy prices are projected to rise by hundreds of pounds next year. It will be even more unacceptable for households to receive a poor service from their energy supplier.

At a minimum, Ofgem must act to ensure compliance with key consumer protections and tackle inadequate customer service standards. After years of cuts, it should dedicate more resource for its enforcement function to achieve this outcome.

But compliance with existing rules won't go far enough. Ofgem should make a bold new commitment to higher standards. This would give consumers the confidence to engage, and assure them that companies will act in their best interest. This could take the form of a new 'consumer duty' to enhance existing requirements to treat customers fairly.

Similar changes are being introduced by the Financial Conduct Authority (FCA)<sup>63</sup> which will make companies directly responsible for the outcomes experienced by customers. As energy products get more complex this sort of rule would ensure consumers benefit, and drive higher standards of service.

**The FCA consumer duty** says that firms must act to deliver good outcomes for customers. It is underpinned by 4 specific outcomes:

- the price of products and services represent fair value for consumers
- products and services are specifically designed to meet the needs of consumers
- customer service meets the needs of consumers, enabling them to realise the benefits of products and services
- communications equip consumers to make effective, timely and informed decisions

## We need a more resilient market

In order to rebuild a market which people are confident to engage with, it's vital to improve the resilience of suppliers, and reduce the mutualised costs when failures do occur.

This should include action by Ofgem and government on long delayed reforms to limit how much credit balance suppliers hold and require more regular payment of the Renewables Obligation levy. These changes should tackle risky financial practices by some suppliers and reduce the cost of supplier failures. Government should also include all suppliers in schemes like the Warm Home Discount and ECO schemes, to create a level playing field for competition.

Ofgem has also said that it will consider new prudential regulations<sup>64</sup>. This could include requirements to hold or have access to certain levels of capital, and for suppliers to have appropriate hedging strategies in place. This would be particularly effective at ensuring large and medium suppliers are behaving responsibly. However, any new regulatory functions must be backed by additional compliance and enforcement resource, so Ofgem can also tackle rules on consumer experience.

## People experiencing supplier failures need more protection

People can face real disruption if their supplier fails, as well as higher prices for their energy. We're concerned that in some cases the administrators of failed suppliers and the supplier appointed to take on its customers have struggled to agree commercial terms to access data and systems. This can add delays to the process, involving long waits for final bills and credit balances - which is one reason they should be avoided.

We also have long-standing concerns that consumers who owe money to the failed company can lose vital debt protections, like affordable debt repayment plans<sup>65</sup>. Ofgem and the Insolvency Service should review how the SoLR and administration processes can work together to ensure consumers are protected.

The SoLR process also carries more risks for customers who prepay for energy. This was one reason that Bulb - which has over 200,000 prepay customers - was put into special administration rather than the SoLR process<sup>66</sup>. Some of these risks have now been tackled via urgent rule changes, but Ofgem should review this process thoroughly.

Ofgem previously considered changes that would enable customers from a failed supplier to be divided into batches and distributed to different suppliers. This could move consumers to suppliers that better meet their needs and get more competitive bids from gaining suppliers<sup>67</sup>. Ofgem should revisit reforms to the SoLR process in light of recent experience.

Ofgem should also consider new powers to act ahead of supplier failures. We've been concerned by evidence of suppliers taking inappropriate action - including hiking direct debits unnecessarily - potentially to try to shore up their finances. Rights for Ofgem to step in and run suppliers in financial trouble (similar to FCA powers) could tackle this.



### **Fran's story\*** **Bulb (failed Nov 2021)**

Fran had previously contacted Bulb about credit on her account, but did not receive a reply. The credit held on her account is £500, but she's been refused a refund. Her billing is not estimated, as she has a smart meter. The customer has previously been paying £80 for her energy, but her direct debit has gone up to £176 - a 120% increase.

# We need a plan for how the market will deliver for consumers as we decarbonise

Earlier this year BEIS set out that its objectives for the retail market<sup>68</sup> ensuring it:



sustainably delivers services that make it easy for consumers to engage and adapt their usage to achieve net zero



consumers should pay fair prices for their energy, no matter how they engage

These aims seem broadly right, but recent market turmoil means policymakers need to look again at how they can be achieved in a more consolidated market going through a period of recovery.

In this report we've identified steps that should improve the sustainability of the market, including a consistent approach to compliance, steps to tackle mutualised costs and financial risks, and a level playing field.

While these steps should provide strong foundations, there are 3 key areas where there needs to be a clearer blueprint - **engagement, innovation and specialisation.**

## The role of engagement and switching

At the moment most suppliers have withdrawn their acquisition deals, but in the coming months these are likely to re-emerge. This should be good news for consumers who are confident to switch. However, this also carries some risks.

Companies that haven't borne as much of the cost of supplier failures may be able to undercut those that have. And if wholesale prices fall more rapidly than expected, new or unhedged suppliers may be able to buy energy very cheaply, while prudent suppliers are locked in to advanced purchases.

While the size of the risk is currently unclear, it could lead to further supplier failures. And consumers who aren't confident to switch, or can't because of debt, could face much higher prices than those that can. Ofgem must put in place a clear plan for how it will manage these risks in a way that is fair to all consumers.

We also need a longer term plan for engagement in the market. Historically, larger suppliers have done a poor job of engaging their own customers, and as we head to a more consolidated market, the risks of significant loyalty penalties emerging may rise.

In order to tackle this problem the Government introduced its default tariff cap in 2018. This was designed as a temporary protection, while reforms to enable competition to deliver fairer outcomes were put in place. Recognising that these are not yet in place, the Government has committed to amend legislation to extend the price cap framework beyond its current end date of 2023.

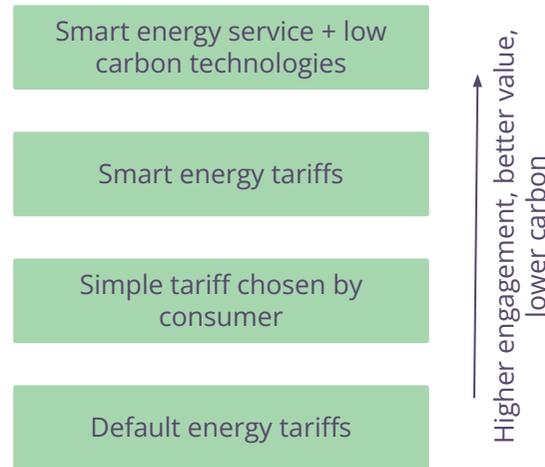
While the cap is therefore likely to remain in place for the foreseeable future, Ofgem has proposed changes to the methodology that will likely mean it will rise in response to recent events.

Even with the price cap in place, consumers can normally save money by switching tariff or supplier. This is likely to continue to be the case, even though consolidation and regulatory changes may mean the level of savings decreases in future. To improve the switching experience, in 2022 Ofgem is due to complete a £500m reform programme to make switching faster and more reliable.

Yet many in industry think there has been too much focus on switching<sup>69</sup>. They argue that this has led to a race to the bottom, helping to cause the market collapse we've seen. Suppliers have strongly opposed proposals for a new scheme to prompt consumers on default tariffs to engage. They also suggest that longer term customer relationships are needed for low carbon services - though this will depend heavily on the business model.

On the other hand, many households will continue to purchase 'vanilla' energy tariffs for years to come. These consumers are likely to be on lower incomes, and unable to afford or access credit for low carbon technologies like electric vehicles. For these consumers, switching supplier or tariff is likely to remain an important route to making savings.

#### Engagement outcomes in a future market<sup>68</sup>



Some consumers face other barriers to engaging in the market that are likely to persist or deepen in future. In the past we've particularly highlighted the risks that digitally disengaged consumers and people in rented homes face in the future energy market.<sup>70</sup>

Previous trials of opt-in switching schemes has shown them to be effective in tackling these barriers.<sup>71</sup> While industry has pushed back strongly against this idea, there is currently no consensus on viable alternatives that broaden the pool of consumers that can access the market.

Another factor we've highlighted in this report is the role of third party intermediaries like auto-switchers in turbocharging the growth of some suppliers, while limiting the ability of consumers to make informed choices about the quality of service of the company they're moving to.

We've previously called for more regulation of these services<sup>72</sup>. While the Government is already considering changes in this area, Ofgem should also consider whether it needs to take further action ahead of legislative changes being put in place.

The type, level and quality of engagement is likely to be fundamental to consumer outcomes as we transition to net zero - but there's currently no clear vision of what this should look like and what policies will get us there. Industry is clearer on what policies it is against than what it is for - and there's no agreement on how to reduce barriers to groups that miss out on the benefits of the market. Ofgem and the Government need to develop a clear plan for reopening the market and longer term measures to support engagement.

## Driving innovation in a more consolidated market

Innovation in the market is important for us to achieve net zero and improve outcomes for consumers, including enabling more flexible energy use by consumers, and more efficient services from suppliers.

New entry to the market is often conflated with innovation - and it has been one important way that companies have tried new approaches and services to consumers. There have been some notable new entrant successes.



Octopus Energy has developed an efficient service platform, Kraken, which will soon be used to serve 20m customers globally<sup>73</sup>.

But some innovation by new entrants has also had more negative consequences. For example, reducing customer service below adequate levels, using IT systems which aren't fit for purpose, and building up customer credit balances as a cheap source of funding could be seen as 'innovations', but have not led to positive outcomes for consumers.

We also can't rely only on new entrants innovating if we are to achieve our decarbonisation targets. Larger suppliers also need to adapt - and this has already been happening whether by developing their own new products built around low carbon technologies, or buying innovative start-ups to integrate into their offerings.

Competition is one important driver of innovation and efficiency by suppliers. There are system reforms underway which will play a key role in shaping competition in the coming years, including smart metering, settlement and charging reforms. These should put in place the infrastructure and price signals for flexible, low carbon energy usage to be rewarded. Some industry analysts have called for this to go even further, with more localised wholesale price signals.

Policy also plays a role in driving innovation. For example, the energy price cap has been a key way to put pressure on incumbent suppliers to reform their systems and processes to be more efficient. In a more consolidated market, policies to encourage and shape innovation may become more important - especially if new entry and switching decline.

A new consumer duty, as described earlier, could ensure innovation focuses on delivering positive outcomes for consumers, and prevent a race to the bottom on service. Some have previously also suggested that net zero mandates for suppliers should be introduced in future to deliver subsidy-free renewable energy generation<sup>74</sup>.

More could also be done to support new entrants trialling changes outside of the current rulebook. Ofgem already offers a service - Innovation Link - that provides feedback on proposals, and a sandbox, which can enable trials of products that would not be allowed under existing regulations. Earlier this year Ofgem consulted on how this service could be improved, including whether it should enable more policy-led innovation<sup>75</sup>.

This could drive innovation to tackle specific barriers to engagement, or support people who aren't always the target of innovation projects, including more people in vulnerable circumstances or on lower incomes. But further reforms may be needed in a more consolidated market. This could include greater use of powers to direct suppliers to undertake trials and require suppliers to work with innovators trialling new services.

## Setting clear boundaries for specialisation

Some companies want to participate in the energy retail market but provide a more specialised offering. There are some well-established suppliers specialising on green tariffs or prepayment, while others have also tried to focus on segments such as the private rented sector.

Specialisation can offer benefits in providing consumers with a more bespoke service that best meets their needs. But it can also mean suppliers avoid paying their fair share of some costs, leave some consumers with less choice, and prevent a level playing field for competition between companies.

The extent to which specialisation is possible is limited by parts of the supply licence, including requirements to:



offer to supply all customers that request a contract



supply customers who haven't actively chosen your service under deemed contracts



offer a range of payment methods and support people in debt

These are important protections designed to ensure all consumers can access a range of offers. Suppliers can take legitimate steps to limit, but not completely avoid, the impact of some of these rules. For example, they can use marketing approaches that target a desired customer base, and use pricing to deter customers from products that they don't want to offer (subject to the limits in the price cap where relevant).

However, we're concerned that Ofgem has allowed some specialisation to take place by looking the other way when suppliers don't comply with its rules. For example, Pure Planet offered a digital only service and were not serving prepay customers, despite rules that should have prevented both.

In 2020, Ofgem consulted on ways to enable specialisation through derogations from certain rules and geographically based licences<sup>76</sup>. However, the regulator has not yet published a response, and it has not developed a clear vision on the role of specialists in the market. Other existing policies to support specialists - like Licence Lite, which enables companies to outsource some obligations to a fully licensed supplier - have not been successful to date.

A more radical, longer term option considered recently by the BEIS/Ofgem future energy retail market review includes moving to modular, activities-based regulation<sup>77</sup>. However, reforms like this could require significant resource to complete, and there is disagreement over the extent to which these barriers are the most relevant to enabling low carbon energy products and services. Changes like these to the market framework were pushed back to the late 2020s under BEIS's retail market strategy.

In order to enable fair competition and ensure consumer protection in future, Ofgem should provide a clearer view of where specialisation is possible within the current licence. If it identifies rules that prevent certain models which could provide benefits, it should consult on how these could be amended, and whether thresholds should be applied or opt-outs should be enabled. This approach should enable it to clearly understand potential impacts on competition and consumer choice, and how these can be mitigated.

# Recommendations

## Services haven't been good enough and trust needs to be repaired

- There should be an independent review of the causes of the market collapse, including Ofgem's approach to compliance and enforcement to ensure it is more rigorous and delivers:
  -  enforcement against rule-breaking impacting consumers and customer service, as well as technical breaches
  -  thresholds for escalating action that enable breaches to be tackled more quickly, and investigations that are completed in a more timely fashion
  -  compliance and enforcement activity that is properly resourced to achieve these outcomes
- The review should also consider Ofgem's policymaking processes to understand why action on licensing reform was delayed, despite risks being well known, and recommend changes to ensure regulation can be more responsive in future.
- Ofgem should ensure higher standards in future - including a new **consumer duty** - to ensure companies achieve good outcomes for consumers. This is particularly important as smarter products and services are introduced and outcomes more personalised.

## Consumers need to be protected from the costs of failure

- The Government and Ofgem should protect people from unaffordable bill hikes by recovering the cost of claims to the SoLR levy to be recovered over a longer period. Government should fund any shortfall when Bulb's special administration is completed, rather than passing this on to consumers.
- Ofgem and the Government should urgently take forward changes to limit credit balances and changes to make the Renewables Obligation paid more frequently.
- Ofgem should ensure it can understand and manage the systemic risks posed by suppliers as they grow. This should include new 'prudential regulations' on capitalisation and hedging.
- Ofgem should improve the processes for supplier failures so it can intervene earlier if needed, and ensure consumers in debt or with prepay meters are better protected.

# Recommendations

## Rebuilding a market that works for consumers and net zero

- ④ The Government should ensure a level playing field, with all suppliers offering appropriate service and paying a fair share of social and environmental costs, including ECO and Warm Home Discount.
- ④ Ofgem should address the risks posed by auto-switching companies, and government should regulate these services in the longer term.
- ④ Ofgem and the Government should set out a plan for how engagement, switching and the price cap work together to help consumers achieve lower costs and make lower carbon choices.
- ④ Ofgem should set out a strategy for supporting innovation in a more consolidated market, and a clear regulatory approach on where specialisation is possible and can benefit consumers.

\*All names in case studies have been changed

# Appendix

- [Timeline of Citizens Advice engagement with Ofgem on compliance and enforcement](#)
- Freedom of Information request to Ofgem, Dec 2021

## Freedom of information request

In October 2021, we submitted a freedom of information request to Ofgem for the following data over the previous 5 financial years:

- The number of full time equivalent staff time Ofgem allocated to enforcement of rules and regulations
- The number of full time equivalent staff time Ofgem allocated to compliance and monitoring of regulated firms

In response Ofgem provided the data below on staff numbers in the relevant teams - detail on Ofgem's current structure is available [here](#). The total regulatory FTE staff numbers are taken from Ofgem's annual reports (see [2020/21 and 2019/20 data](#) and [2018/19 and 2017/18 data](#)).

	2017/18	2018/19	2019/20	2020/21	2021/22
Enforcement FTE*	37.6*	34.5	31.3	23.7	28.8
Compliance and monitoring FTE	49.5	52.1	49.5	51.5	55.4
Total regulatory FTE	401	369	392	395	Not yet available

\*Subsequent to their response to our freedom of information request, Ofgem informed us that 6 staff situated in the enforcement team were working on other issues, and were moved out of the team in the period 2017/18 - 2020/21. To account for this we removed 6 FTE from the enforcement FTE in 2017/18 when calculating the percentage change between 2017/18 and 2020/21.

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Contributors: Abby Jitendra, Alex Belsham-Harris, Connie Thorn, Maisie Gibson

Design: Carmela Pica

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