

# Important Questions Answered As the UK Court Rules for the First Time on Issues Effecting Failed Energy Supply Companies

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Devinder Singh, a restructuring and insolvency partner in SPB's Birmingham office, acted for one of ten applicants in an application for directions made in the High Court by a number of officeholders following the collapse of several energy supply companies ("ESC").

The application sought directions on a number of key issues affecting the energy industry as a whole which until today, have not been addressed by the courts, including:-

- The obligations of ESCs in respect of renewable obligations certificates ("ROCs"), mutualisation sums and the levelisation fund run and maintained by Ofgem
- The status of debts and liabilities resulting from the above and factors affecting that status
- The ability of Ofgem to make a claim in the insolvencies of failed ESCs for non-provision of ROCs and/or non-payment in lieu
- The obligations of suppliers of last resort (SoLRs) to honour the credit balances of customers of the failed ESCs
- Whether payments/supplies made by a SoLR to such customers were effective in validly discharging the customers' credit balances
- If so, whether the SoLR was able to reclaim any such sums paid or supplies provided from the insolvent estate of the failed ESC.

The applications were heard in London over 4 days in October 2022 by Mr Justice Zacaroli. Judgment was handed down at 10am this morning, Friday 11th November 2022.

Whilst a more detailed blog will follow shortly, Mr Justice Zacaroli ruled, in short, that:-

- Ofgem is able to make a claim in the insolvent estates of failed ESCs following the non-

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provision or payment in lieu, of ROCs by the failed ESC

- A customer's credit balance is validly discharged by a SoLR that pays it or provides services to the value of it
- A SoLR is able to make a claim in the insolvencies of failed ESCs in relation to customers' credit balances which the SoLR has honoured.

There are arguably still some gaps which may require further clarification by the court in individual insolvencies in due course. Moreover, it remains possible that some of the larger creditors across multiple insolvencies in the sector, may look to challenge some of the judge's findings because they detrimentally impact the level of returns those creditors can expect to receive in the relevant insolvencies.

However, the judgment is an important one, because for the first time it provides clarity of how issues that are particular to energy company insolvencies should be dealt with and resolved.

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