

Hi Andy

Regarding the two queries in your email below:

- **Can the SoLR payments be treated as collateral to pay off unpaid DUOS and what are the consequences of doing so?**

I think what you mean here is - can the DNO set-off its obligation to pay Valid Claims against the supplier's obligation to pay charges under the DCUSA?

The consequence of set-off is that, where payments are due from both parties, the parties may agree that, instead of both parties making separate payments, the party due to make the larger payment should pay the difference between the two amounts.

As a matter of English law, parties can agree to allow set-off.

However, there are some oddities in this case, because the DNO's obligation to pay the Valid Claim arises under the DNO licence (not under contract). Two important consequences of that are: (1) there is nothing on the face of the licence about set-off (as would normally be the case where contractual set-off is agreed); and (2) enforcement of the DNO licence is primarily a matter for Ofgem (not the supplier to whom the Valid Claim is owed).

Nevertheless, I advise that the DCUSA could be amended to allow the DNO to set-off the Valid Claim payment against charges due under the DCUSA. This would constitute agreement of set-off between the DNO and supplier; and also (because the DCUSA is regulated by Ofgem and supplemental to the DNO licence) Ofgem's agreement to the Valid Claim being treated in this way.

This would though require an express addition to the DCUSA.

- **If a SoLR supplier went into administration does the insolvency act allow the offsetting of SoLR payments against any owed DUOS?**

In the case of the insolvency of a company incorporated in English & Wales or Scotland, the Insolvency Act 1986 provides for mandatory set-off, so that the sums due from one party shall be set off against the sums due from the other (except for sums incurred after the other party had notice of pending insolvency).

Let me know if you need anything further

Gus

**Gus Wood**  
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