

David Hall
Deputy Director, Financial Resilience and Controls
Ofgem
10 South Colonnade
Canary Wharf
London
E14 4PU

24 April 2025

Dear David,

Guidance on supply licensee governance arrangements

We welcome the opportunity to respond to Ofgem's consultation on the proposed guidance for supply licensee governance arrangements. We appreciate the rationale behind this consultation and welcome Ofgem's continued efforts to promote robust governance practices across the energy retail sector. We are committed to supporting measures that strengthen financial resilience, enhance transparency, and ultimately deliver better outcomes for consumers.

Measures that seek to reduce the likelihood of disorderly exits and promote more financially responsible business practices are therefore an important and necessary development.

Our answers to the consultation questions outlined in Annex 1. There are two key points that we consider fundamental to ensuring the effectiveness and long-term applicability of the proposed guidance.

- First, we believe it is important that the guidance explicitly recognises the breadth of legitimate governance models already in operation across the market. Many larger or multinational entities operate under international or internal group frameworks that are well-established and robust, though structurally distinct from the UK Corporate Governance Code. A principles-based approach that allows for such flexibility is essential. Without this, there is a risk that the guidance may either become overly prescriptive or be interpreted over time as mandating a narrow model, potentially limiting the effectiveness of alternative arrangements that are already delivering sound governance outcomes.
- Second, we would caution against an approach to examples that could inadvertently lead to a checklist-style interpretation of governance expectations. While illustrative

scenarios can be helpful, there is a risk that the current drafting may imply that certain governance practices, such as the management of conflicts of interest or transparent remuneration policies, are less relevant to smaller suppliers. These are foundational features of good governance, regardless of scale, and their absence from example scenarios risks setting a lower bar for some licensees. We believe the guidance would benefit from clearer messaging that good governance can and should be applied proportionately across all supplier types, and that illustrative content is not exhaustive nor intended to prescribe a single path to compliance.

Yours sincerely,

A handwritten signature in blue ink that reads "Richard Sweet". The signature is written in a cursive, flowing style.

Richard Sweet
Director of Regulatory Policy

**CONSULTATION: GUIDANCE ON SUPPLY LICENSEE GOVERNANCE
ARRANGEMENTS – SCOTTISHPOWER RESPONSE**

Question 1: Do you agree that Ofgem should introduce guidance under SLC 4A setting out its expectations for governance arrangements?

Question 2: Do you agree that the guidance under SLC 4A should cover the effectiveness of the board, transparency of governance arrangements, and example scenarios?

Question 3: Do you have any comments on the guidance drafting itself?

We are broadly supportive of measures that enhance the robustness of governance within supply licensees and agree with the intention behind Ofgem's proposal to provide guidance under SLC 4A. Clear articulation of expectations can assist licensees in strengthening internal arrangements and support a culture of sound decision-making and consumer focus.

However, we would like to raise several points of caution regarding the drafting of the proposed guidance, particularly in relation to the risk of over-prescription, the use and presentation of illustrative examples, and the clarity of certain expectations. We have considered both the overarching consultation narrative and the accompanying draft guidance under SLC 4 (Annex 1), and we believe several areas would benefit from refinement to ensure the guidance is appropriately proportionate, future-proofed, and adaptable to the diversity of supply licence holders.

Guidance on Supply Licensee Governance Arrangements (Consultation Document)

The guidance states that, should a supply licensee exit the market, Ofgem wants consumers to be able to trust that they will not be financially worse off (paragraph 2.1 and 4.1). We believe this ambition goes beyond what can realistically be delivered. The current guidance and licence conditions only require suppliers to minimise mutualised costs. Additionally, in the event of a Supplier of Last Resort (SoLR) process, customers are likely to be transferred to the appointed SoLR under a price capped tariff, which may be higher than their previous fixed-term tariff. (Historically, some SoLRs have supplied customers at the same price point as lower fixed tariffs, but this is increasingly unlikely.) Consequently, these customers could be financially disadvantaged, regardless of the orderly exit of the failed supplier and the elimination of mutualised costs. Ofgem should recognise that expressing its ambition in this way may set unrealistic expectations, potentially leading to greater distrust in the sector.

Ofgem's new supervisory approach is based around three principles, including that it should be proportionate, ie 'tailored to firm size and business model and impact of a possible failure on consumers' (paragraph 2.7). While the principles are broadly sensible, we have concerns about interpreting "proportionate" as meaning less scrutiny for smaller suppliers. Ofgem's recent Billing RFI, which was not shared with all suppliers but only those above a certain size, exemplifies this concern. While the intention may be to streamline oversight and focus on larger entities, the historical context of supplier failures suggests that smaller suppliers are equally, if not more, susceptible to operational and financial risks. Consequently, a supervisory approach that reduces scrutiny for smaller suppliers could inadvertently overlook significant risks, potentially leading to consumer harm.

Ofgem mentions an ongoing review of the Fit and Proper requirements under SLC 4C (paragraph 2.9). We would welcome clarification from Ofgem as to what has prompted this review and when it intends to publish its findings. Additionally, we recall a Market Compliance Review (MCR) on the Fit and Proper requirements conducted in 2022, which was not published due to sensitivity. Can Ofgem confirm whether the current review is a result of the findings from that MCR?

Paragraph 2.10 refers to Ofgem's ongoing work with Government on potential mechanisms to hold senior management accountable where actions lead to regulatory breaches or consumer harm. We would encourage Ofgem to consider carefully the implications of introducing measures that target individual executives. As we noted in our response to DESNZ's review of Ofgem, such approaches could unintentionally foster a risk-averse culture and stifle innovation. They may also deter skilled individuals from entering the sector, reducing cross-sector learning and weakening the industry's ability to deliver high-quality, competitive services for consumers. We would also caution against framing Ofgem's role as primarily punitive. A forward-looking regulatory approach, focused on collaboration, stability, and enabling transformation, will better support innovation and long-term consumer trust, which will be crucial for the transition to Net Zero.

Ofgem says it has identified examples of good practice from other areas/sectors to shape its proposed guidance (paragraph 2.16). The fact that good practices are employed in other sectors does not necessarily mean the existing governance arrangements in the energy retail sector are insufficient. Ofgem should consider each supplier's approach to governance within its specific context.

Although Ofgem believes that a principles-based approach is most appropriate at this stage for areas such as board composition, it says it will consider whether a more directive approach is needed should it find that this approach does not achieve the envisaged outcomes and benefits for consumers (paragraph 2.18). We set out our concerns on the risk of the guidance becoming overly prescriptive in the section below. Furthermore, we would be concerned that if one or two suppliers fail to meet expectations, it might result in stricter obligations for everyone, even for those for whom the principles-based rules have proved effective. Therefore, we urge Ofgem to reconsider this statement.

Ofgem considers it would be helpful to share worked examples of the arrangements that it might expect to see in hypothetical supply licensees, using the good practice identified in other governance frameworks (paragraph 2.32). Overall, we think providing examples can be helpful; however, Ofgem should be cautious to ensure that these examples are not seen as the only way to meet the Financial Responsibility Principle (FRP) obligations. Ofgem should ensure it interprets the licence conditions and guidance in a way that is consistent with their original intent.

Proposed Guidance under SLC 4 (Annex 1)

With respect to the proposed additional guidance under SLC 4A (Operational Capability Principle), we support the overarching objectives but would like to offer a note of caution regarding the potential for the guidance to be interpreted as overly prescriptive. While reference to established frameworks such as the UK Corporate Governance Code (paragraph 3.7 of Annex 1) can be helpful, many larger or multinational entities may already be operating under alternative international codes or their own sophisticated corporate governance systems that are well-established and recognised as enshrining good governance practices.

For example, Scottish Power Energy Retail Limited (SPERL) has not adopted the UK Corporate Governance Code and instead applies the Governance and Sustainability System of its immediate parent company, Scottish Power Retail Holdings Limited. This system is in

turn based on the model applied by the ultimate parent company Iberdrola SA, which is a model that has consistently been recognised as reflecting corporate governance best practices.

The guidance notes (paragraph 3.8) that boards should put ‘good customer experience at the heart of [promoting the long term success of the organisation]’, but it remains unclear what this expectation encompasses or how it would be assessed. Without a shared understanding of what constitutes “good” in this context, there is a risk that boards might be evaluated against ambiguous or evolving criteria. We would welcome further clarification on how Ofgem intends this principle to be interpreted and how it aligns with the broader goals of proportionality and flexibility in governance.

Additionally, in relation to independent oversight and challenge (paragraphs 3.9–3.11), it would be helpful for the guidance to acknowledge that, in larger corporate groups, meaningful independent oversight may be delivered at a level above the licensee board itself. In such cases, well-designed group governance structures can provide appropriate separation and scrutiny while still meeting the underlying regulatory intent. Recognising this broader application of good governance would ensure the guidance better reflects the diversity of business models in the market. Flexibility in recognising different but robust approaches will be important in ensuring the guidance is future-proofed and not read as implying a single acceptable model.

We would also highlight the importance of avoiding a ‘tick box’ approach to the application of governance features. In terms of the examples presented, we recommend that Ofgem clarifies, in paragraphs 3.11, 3.14 and 3.15, or more directly in paragraph 3.6, that these are not intended to be exhaustive or prescriptive. At present, the distinction between general examples of good practice and the “example scenarios” in paragraphs 3.16 and 3.17 is not entirely clear. This may risk the examples being perceived as a benchmark.

Moreover, we are concerned that the current scenarios do not sufficiently reflect the range of governance models appropriate across the sector. In particular, the omission of any reference to fundamental practices such as managing conflicts of interest or transparency of remuneration policies could unintentionally suggest these are less relevant to smaller suppliers. We believe these core features are critical across all supplier types, and their proportionate application should be reflected even in simplified governance models.

Ofgem states it will consider a range of Supervisor Financial Reporting such as Market Compliance Reviews (paragraph 3.25). We note that the last Market Compliance Review was issued by Ofgem in 2022 and would welcome clarification as to Ofgem's plans for utilising this format in future.

Finally, we note that paragraph 2.5 continues to describe the framework as “emerging” or “new”, despite it having been in place for over four years. While we understand that the policy continues to evolve, we would invite Ofgem to consider when this framework might reasonably be regarded as embedded. Continued references to it as “new” may reduce regulatory certainty and create ambiguity around the status of expectations that are now well-established.

Question 4: Do you agree we should amend the guidance for milestone assessments to include governance arrangements?

Question 5: Do you have any comments on the proposed drafting?

We are supportive of the proposed amendments to the guidance for milestone assessments required under SLC 18C (Annex 2) and agree with Ofgem's rationale for incorporating

governance arrangements at key growth thresholds. Requiring licensees to reflect on whether their governance structures are suitable for their scale and growth ambitions (paragraph 3.17, Annex 2) is a proportionate step that will help promote more sustainable expansion. We believe this measure will enhance transparency, establish clearer lines of accountability, and ultimately reduce the likelihood of failures.

Question 6: Have we identified the key impacts, risks, and benefits of the proposals, and are there any impacts we should give further consideration to?

We believe the key impacts identified are broadly correct; however, we would emphasise that the points raised in our responses to Questions 1 to 3 should be considered more fully to ensure the impact assessment is robust.

In particular, the risk of the guidance being interpreted as overly prescriptive, either in the short term or over time, could lead to unintended consequences, particularly for larger or more established suppliers that already operate within sophisticated governance frameworks. If flexibility is not maintained, the proposals could inadvertently create duplication, reduce efficiency, or limit the adoption of alternative but equally robust governance models. This would run counter to the stated intent of supporting proportionate, scalable, and effective governance practices across the market.

We encourage Ofgem to give further consideration to how the guidance will be applied and interpreted across different licensee types, and to take account of the full range of credible governance approaches in practice today.

Question 7: Do you agree that overall, these proposals would benefit consumers?

We have no further comments beyond those outlined in our responses to Questions 1 to 6.

ScottishPower
April 2025