

Supplier Licensing Team
Ofgem
10 South Colonnade
Canary Wharf
London
E14 4PU

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Dear Team

FINANCIAL RESPONSIBILITY PRINCIPLE DRAFT GUIDANCE DOCUMENT

Thank you for the opportunity to comment on Ofgem's draft guidance to the new Financial Responsible Principle ("the Principle") within SLC 4B1 to 4B3 which comes into effect on 22 January 2021.

Prior to commenting on the guidance itself, we would reiterate the point made in our response to Ofgem's June statutory consultation, that we are not convinced that the Principle will be of much additional benefit (relative to Ofgem's existing powers) in limiting the costs of supplier failure from irresponsible suppliers being passed onto other suppliers and ultimately customers. We are therefore supportive of Ofgem's intention set out in Section 5 of the draft guidance to consult on prescriptive measures to ensure suppliers take appropriate steps to reduce the likelihood and extent of cost mutualisation. We think it essential that Ofgem moves forward with this activity as quickly as possible and we look forward to engaging with Ofgem on this to ensure additional protections can be in place quickly.

In Section 4 of the draft guidance, Ofgem refers to its intention to implement and monitor the Principle using a risk-based approach and using existing reporting as much as possible. We fully support this approach but would note that there are parts of the guidance that could suggest Ofgem intends requesting all suppliers to provide new reporting regardless of whether there are indicators of concern regarding that supplier's practices. We would suggest that Ofgem adjusts the guidance to ensure it is clear that any request for additional reporting would only be made where it identifies a risk arising from a supplier's activities. If Ofgem is to implement the monitoring of this Principle on a proportionate basis, we do not see any need for suppliers acting in a responsible manner to have to provide any more information than that already provided.

Ofgem's consultation notes that suppliers have a responsibility to keep up to date with the latest version of the guidance. We would ask that Ofgem provides clear signposting to where suppliers will be able to access the guidance and ensuring that it is easy to for those representatives new to the market either within an existing supplier or a new entrant supplier.

Yours sincerely,

Richard Sweet

Richard Sweet
Head of Regulatory Policy

**FINANCIAL RESPONSIBILITY PRINCIPLE DRAFT GUIDANCE DOCUMENT –
SCOTTISHPOWER COMMENTS**

We set out below some detailed comments on the guidance document.

Cost Mutualisation Phase Two and its Interaction with the Financial Responsibility Principle

We agree with Ofgem’s drafting regarding the intent of the Principle, however as we have noted in our cover letter, we are not convinced that the Principle will provide sufficient protection to mitigate the risks of costs of irresponsible suppliers being passed onto consumers through mutualisation. We believe it is imperative that Ofgem acts quickly to consult on more prescriptive rules that would ensure that suppliers must ringfence or otherwise protect costs including credit balances and environmental and social obligations.

Ofgem’s guidance suggests an intention that any prescriptive rules would supplement rather than replace this Principle. We are generally in agreement with this approach subject to:

- Evidence that the Principle is providing Ofgem with greater powers than other existing licence conditions to take action where it sees evidence of unsustainable supplier business models, or otherwise inappropriate behaviour of suppliers in relation to their finances.
- The monitoring of the Principle being implemented on a risk-based approach to ensure no additional burden is placed on suppliers acting in a financially responsible manner (see more detail below).

Implementation and expectations of suppliers

Risk based approach to implementation

Ofgem sets out its intention to gather data for an initial assessment of the market landscape, and that in doing so it will seek to use information that is already gathered through other processes rather than request new information. We think this is very important if Ofgem is to ensure this Principle does not place an additional burden on suppliers who are already acting in a financially responsible manner.

We believe Ofgem should only be seeking additional information from suppliers where it has information that indicates a risk to that supplier’s financial stability or suggests that the supplier is not acting in a financially responsible manner. We believe this is the only way Ofgem will be able to deliver on its intention to approach monitoring of this Principle in a risk based and proportionate way as noted in the consultation document.

We are concerned that some of the drafting within Section 4 is somewhat in conflict with the drafting in Section 3 regarding Ofgem’s intent to implement the monitoring of the Principle using a risk-based approach. In particular:

- While the drafting at the start of paragraph 4.2 is suggestive that Ofgem may only require suppliers to provide evidence on request (ie where Ofgem identifies a risk) by the use of “would”, within the bullet points and in paragraph 4.3 the drafting is more suggestive of Ofgem requiring all suppliers to provide additional reporting to what is already in provided in other reporting.

- In particular, the third bullet in paragraph 42 which states that Ofgem “will need to see evidence that suppliers can finance their overall business plan” while paragraph 4.3 states that Ofgem would expect “suppliers to provide ... cash flow projections, budgets, guarantees or proof of investments”. This is suggestive of a higher level of granularity than is currently provided by suppliers in existing reporting.
- In the same paragraph Ofgem notes that suppliers acting in a financially responsible manner would only have to report on the arrangements already in place and provide substantiating evidence. However, at no point does Ofgem highlight that any request would only be made where it identifies risk for a supplier’s activities. If Ofgem is to implement the monitoring of this principle on a proportionate basis, we do not see any need for suppliers acting in a responsible manner to have to provide any information over that already provided.

We would ask that Ofgem amends the guidance to clarify how it will ensure that its monitoring of this Principle will not place a burden on suppliers acting in a financially responsible manner, particularly in relation to its initial assessment of the landscape. Ofgem is already collecting a vast amount of data from suppliers, from regular reporting such as the Consolidated Segmental Statements but also including the significant data within the Covid-RFI which Ofgem has recently indicated will be extended to at least September 2021 and has used within its stress testing activity. If Ofgem is to request any additional reporting from suppliers, we would ask that it provides clear justification of the need to do so where there is no indication of financial concern from a supplier.

Monitoring of non-domestic suppliers

As part of its risk-based approach Ofgem suggests that it may monitor non-domestic suppliers less closely as it views the risk of mutualisation of costs from the failure of such suppliers as lower. While we are in general agreement with this suggestion, we believe it important that Ofgem continues to monitor non-domestic suppliers to ensure that they operate in a sustainable and financially responsible manner.

ScottishPower
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