

Supplier Licencing Review Stakeholder Workshop - Summary notes

From: Evan Alaa, Ruth Saunders, Richard Miller, Richard Adams

Date of workshop: 21 June 2019
Time: 9.30 am

Location: Ofgem 10 South Colonnade, Canary Wharf, London, E14 4PU

Overview

As part of the Supplier Licensing Review, we are reviewing our approach to licensing and regulating suppliers, to raise standards around suppliers' financial resilience and customer service. To do this, we intend to introduce a package of reforms. The scope of the review encompasses:

- **conditions for suppliers entering the market;**
- **ongoing requirements, monitoring and engagement; and**
- **arrangements for managing supplier failure and market exit.**

We have already enhanced our entry requirements by strengthening the criteria we use to assess supply licence applications.¹ We are now working to progress the 'ongoing requirements' and 'exit arrangements' strands of the Supplier Licensing Review. With this in mind, in May 2019 we published a working paper setting out the various policy options we could take forward as part of the Review.²

On 21 June 2019, we held a workshop to get stakeholder views on the options we have been considering and any further options they think we should consider. We aimed to use the workshop to inform our prioritisation of options for consultation in the autumn.

The workshop was well-attended, with wide participation from approximately 55 stakeholders from across the energy industry and beyond (see appendix 1 for a full list of attendees). Discussions were broken down into three main sessions. The first focused on the problems the Supplier Licensing Review aims to tackle – we aimed to understand whether stakeholders have a common understanding of where these problems lie, and where our remedies should be targeted. The second focused on stakeholder views of individual policy options. And the third gave stakeholders the opportunity to put forward their ideal package of policy options.

The latter two sessions involved polling of stakeholder views on the day – the results of these exercises are set out in appendices 2 and 3 to this note. Ofgem would like to thank those who were in attendance. We will use the discussions and poll results, as well as our ongoing engagement, to inform our policy development.

The main views that emerged from these discussions are captured below. **Please note that these are the views of workshop attendees and do not necessarily represent the views of Ofgem.**

¹ Ofgem, [Supplier Licensing Review: Final Proposals on Entry Requirements](#), April 2019

² Ofgem, [Update on the way forward for the 'ongoing requirements' and 'exit arrangements' phases of the Supplier Licensing Review](#), May 2019

Identifying the causes and effects the Supplier Licensing Review is trying to address

In general, there was consensus among workshop attendees that the 'theories of harm' diagram³ broadly reflects the issues that the Supplier Licensing Review is working to address. Feedback from stakeholders included:

- Many attendees had strong views that 'prevention is better than cure.' They felt that addressing the causes of poor supplier behaviour would have a greater impact than measures to mitigate the impacts of supplier failure, for instance. The topic of unethical behaviour and business practises was raised, with some attendees noting the perverse incentives cost mutualisation could have on supplier behaviour. Other parties highlighted the perceived limited consequences of breach of licence conditions in the lead up to supplier failure – they suggested that at the point of failure a supplier was unlikely to prioritise licence requirements over any measures it could take to ensure its continued survival.
- Some participants referred to financial mismanagement such as lack of hedging and inadequate due diligence as factors contributing to poor quality of service and supplier failure. However, those who commented also acknowledged that the new entry regime⁴ should help mitigate these risks
- Several participants expressed the need to improve the Supplier of Last Resort (SoLR) experience for consumers, particularly the impact of poor behaviour by the administrators of failed companies.
- Some participants indicated that the debts and poor operational condition of failing suppliers could make them less attractive to potential buyers and mergers. However, if steps are taken to reduce the level of debt incurred by a failing supplier, then acquisition may become more attractive and therefore reduce the need for Ofgem to activate the SoLR process.
- It was also highlighted that the diagram didn't fully reflect the interaction between suppliers and third party investors. Some attendees noted the moral hazard whereby investors gain from risky behaviour of some suppliers but do not pay the cost of this risky behaviour if the supplier fails (due to mutualisation). A few others voiced concerns of the effects of falling market confidence and availability of third party services.

³ This diagram can be found in the slides from the day published on the same page as this note.

⁴ Under the new entry regime, supply licence applicants will now need to provide us with increased information to demonstrate they have the appropriate resources to enter the market, and they understand their regulatory obligations with appropriate plans in place. There are also new requirements relating to applicants' suitability to hold a licence, which apply to all licence types.

Stakeholders views on individual options

Promoting better risk management

There was considerable discussion and support for the 'promoting better risk management' work package, though attendees expressed a variety of different views about the options. Across the poll results and the output of the 'design your own work package' exercise, stakeholders showed broad consensus in their preference for Ofgem to prioritise delivery of the following options:

Requirements to have capacity, processes and systems in place to comply with obligations (Option 1a)

- In general, attendees were supportive of the idea of introducing the requirement to have the capacity, processes and systems in place to comply with obligations. They suggested it would ensure expectations are more clearly outlined, giving Ofgem a remit to intervene earlier before severe detriment to consumers occurs.
- The majority of stakeholders were in favour of this being assessed at pre-defined milestones, though some participants warned that milestones should not be linked solely to customer growth. A number of participants noted that the requirement may be useful in facilitating early bilateral engagement between Ofgem and suppliers, particularly around key activities such as the smart meter roll out.
- A few participants challenged this idea on the basis that it could duplicate existing obligations in the licence. They felt that this may be challenging to implement for suppliers who are already performing poorly. There were also some general concerns that this may be resource intensive in terms of the monitoring it would require. Some stakeholders felt that it would be difficult to enforce as this would ultimately require change in corporate behaviour/attitude within some organisations.

Cost mutualisation: credit balance provisions (Option 1b)

- There was strong and almost universal support for suppliers to have provisions in place that ensures customer credit balances are protected in the event of failure. Some attendees preferred an enforceable principle that would give suppliers the flexibility to determine the most appropriate protections for their business model (letter of credit, parent company guarantee, etc). A few others argued that Ofgem should be more prescriptive in the types of provisions suppliers must implement.
- Stakeholders were interested in how Ofgem might enforce compliance with this type of obligation. One participant noted that Ofgem could request evidence of compliance (eg through independent audits).
- It was noted that not all suppliers have enough liquidity to comply if a credit balance rule was to be put into place suddenly. One party suggested there would need to be transitional arrangements to allow suppliers time to make the necessary changes and limit disruption to the business.

- A few participants warned that credit balance arrangements should not be aimed at eliminating mutualisation completely but rather it should be aimed at reducing the burden it has on industry. They felt that it is important that the costs imposed on industry through any credit balance arrangements should not exceed the overall cost of mutualisation.

Cost mutualisation: prudent provision to discharge obligations under government schemes/policies (Option 1c)

- Many stakeholders felt that rules for protections against credit balance mutualisation should be extended to any potential debts that could be shared across the industry in the event of failure. Other parties were not clear our approach would deliver the desired objective as 'prudent provisions' could be interpreted differently across different business models.
- Stakeholders also suggested ways the risk of failing suppliers disregarding compliance with this obligation could be mitigated:
 - Arrangements similar to Air Travel Organiser's Licence (ATOL) for package holidays to assign risk more appropriately and reduce the debt that needs to be mutualised.
 - A requirement for a supplier to procure either a parent company guarantee, failure insurance, or another capital facility may be an appropriate way of most effectively apportioning risk.

More responsible governance and increased accountability

- Overall, stakeholders were receptive to the proposals put forward for better governance. A fit and proper test was generally seen as an 'easy win'. Many participants were in support of this requirement, though there was no clear consensus on how this might work in practice. A couple of attendees suggested that Ofgem could ask the supplier to evidence that the person is fit and proper.
- A requirement to have named officers was also seen as 'easy win', though some participants cautioned that it could be problematic to assign responsibilities to individuals, where those individuals don't have appropriate control to make certain decisions.

Improved market oversight

- Stakeholders showed particular interest in the improved market oversight work package, with most supporting risk-based reporting. Discussions were centred around the point that Ofgem should be doing risk-based monitoring to quickly identify and intervene where suppliers are in financial distress, rather than just monitoring for the sake of it.
- A notable minority of participants argued that risk-based reporting should also look at supplier forward plans, to ensure they have in place the necessary arrangements to expand in an orderly manner, for example. These participants also noted that even though this can be seen as a barrier, good business planning is generally expected from any prudent business.

Market exit arrangements

Although options from the exit work packages did not receive many votes from workshop attendees, there was a general sense that it was more important to address the causes and effects of supplier failure over managing market exits. Many stakeholders also felt that Ofgem should intervene earlier where a supplier starts to fail. However, many highlighted the challenges of determining when the appropriate point to intervene is.

Overall attendees held the view that successful delivery of the options presented in the ongoing work packages should significantly minimise the impacts of supplier failure.

Improving efficiency and competitiveness of the SoLR process

- Most attendees indicated that improving data quality is key to efficient customer on-boarding from a failed supplier to the SoLR. They felt that suppliers should demonstrate that they have the systems in place to efficiently collect and transfer up-to-date and accurate customer data such as billing details, credit/debit balance and account history.
- A few participants briefly discussed mandating certain features of supplier billing systems to enable the efficient transfer of customer data during the SoLR process. Those that commented referred to the high costs and long lead time this would involve. Some participants also noted that successful delivery of option 1a could significantly reduce the need for a specific rule on data collection and transfer to relevant parties.
- Several participants argued that withdrawing a licence could be a more appropriate solution where there is clear evidence of systematic poor behaviour by a company which has led to detriment to consumers. However, all acknowledged that there are significant challenges in deciding when it is appropriate for Ofgem to step in and revoke a licence as there is no obvious point at which a supplier becomes unsuitable to hold one.

Improving the SoLR experience for customers

- Some stakeholders expressed concerns about impact of the SoLR experience on consumer engagement and overall consumer confidence. One party commented on the need to address the interactions between administrators and the customers moved to a SoLR. Another party suggested we explore replicating aspects of the new Supplier Guaranteed Standards of Performance⁵ for consumers moved from failed suppliers to SoLRs.

Improving the mechanisms to recover costs

- This work package received the fewest votes as some participants held the view that it would be difficult at this present time to envisage alternative methods for recovering SoLR costs. Some noted that this may be an area for industry to explore further.

⁵ Guaranteed Standards provides automatic redress to consumers who suffer detriment (when a supplier fails to achieve an outcome within a particular timeframe), and better incentivise suppliers by creating a financial cost for poor customer outcomes.
Ofgem, [Supplier Guaranteed Standards of Performance for Switching - Final Decision and Statutory Instrument](#), February 2019

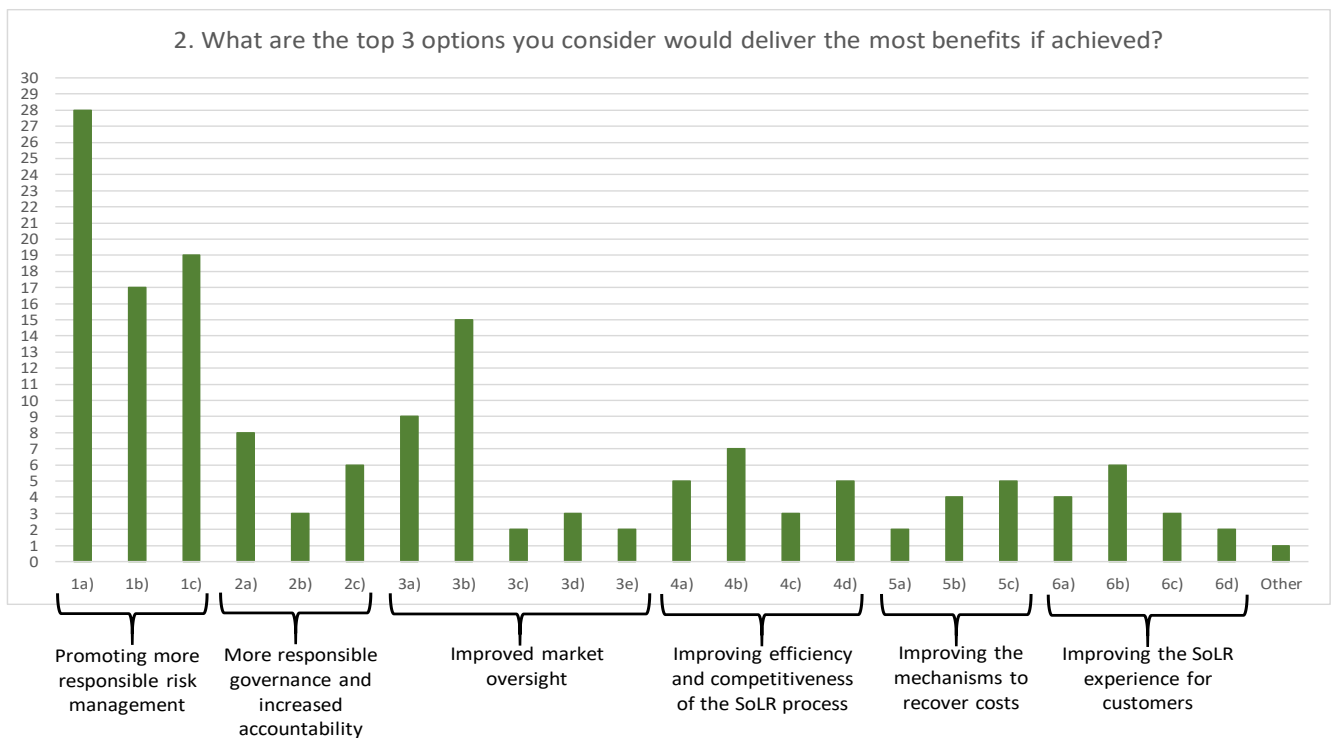
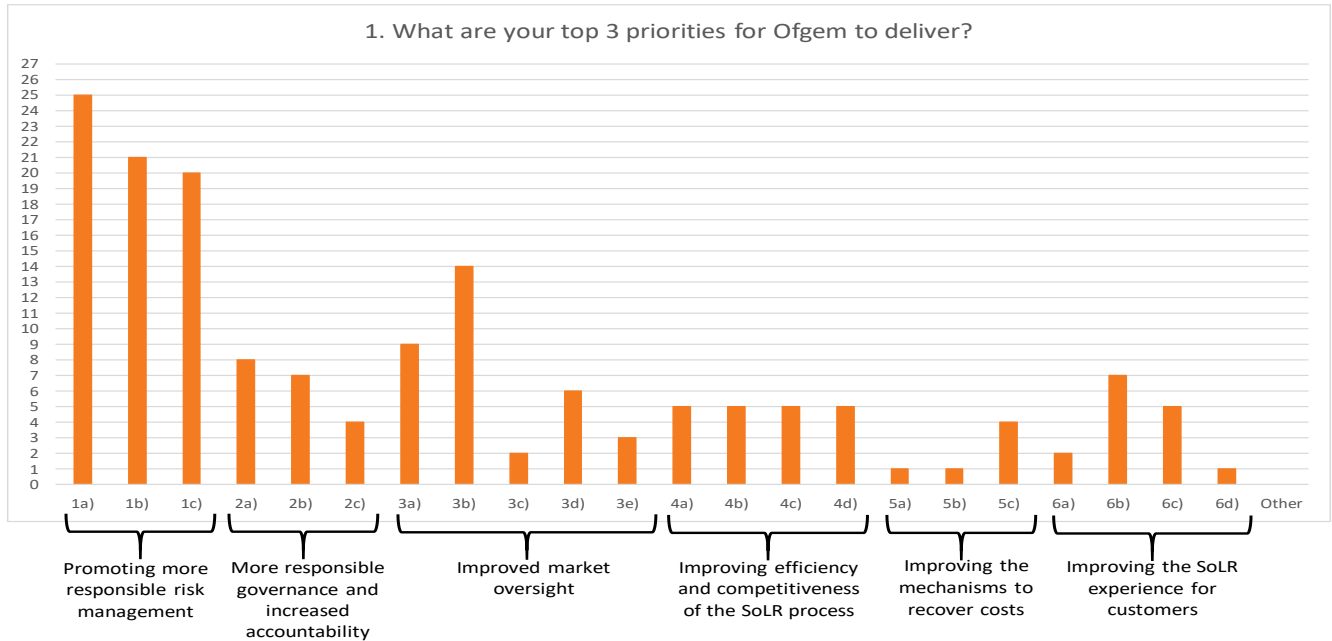
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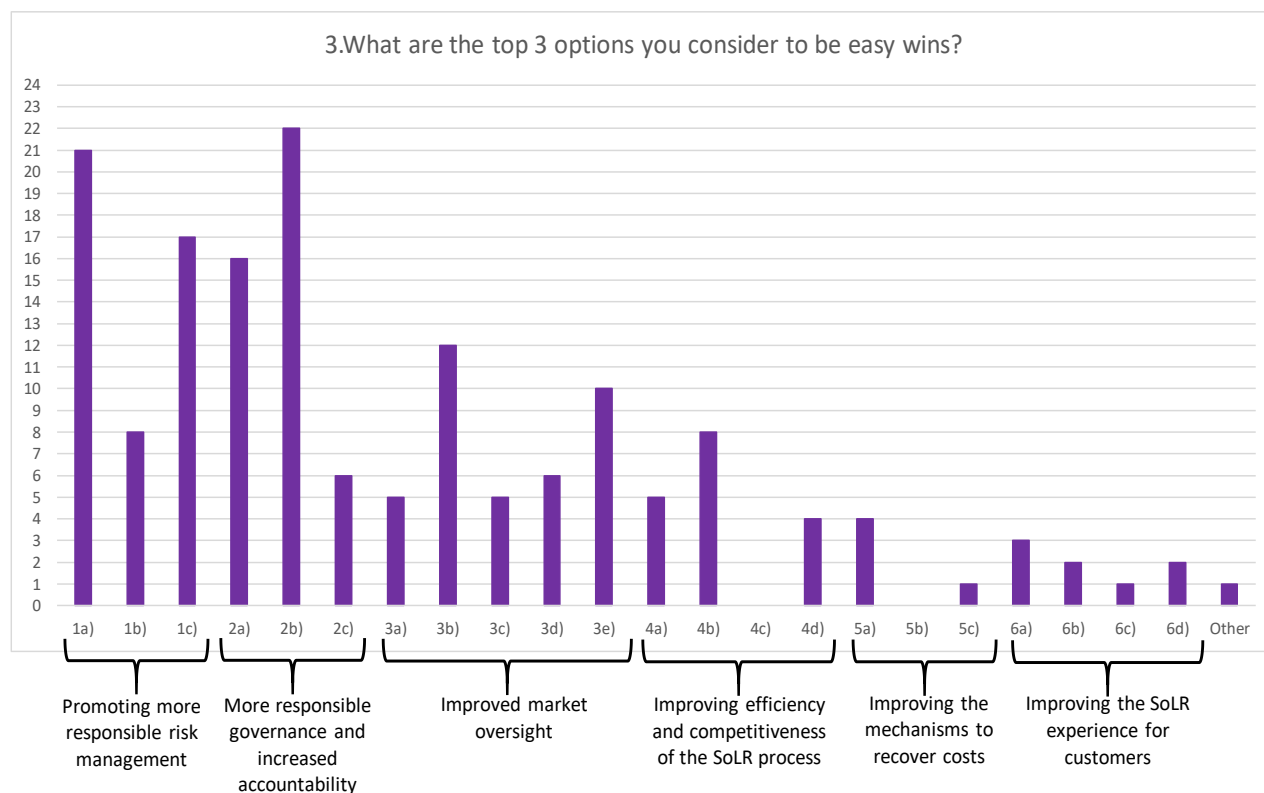
We appreciate the valuable feedback provided to us by stakeholders. We have taken on board this feedback and are in the process of developing and refining our thinking. We expect to publish a formal consultation with a proposed package of options in the autumn. If you have any questions or further feedback, please contact licensing@ofgem.gov.uk.

Appendix 1 – Attendees

Bulb Energy	EDF
CMS	Tonik Energy
Haven Power	Good Energy
BEIS	Robin Hood Energy
ICoSS	Centrica
Elxon	The Utility Warehouse
Edgware Energy Ltd	Gemserve
Smart DCC	Northern Gas Networks Ltd
Npower	ESB Energy
New Energy Consulting	Ombudsman Services
Ecotricity Group Ltd	Post Office Ltd _ Payzone Bill Payments Ltd
Utiligroup	ENSEK Ltd
National Grid ESO	Contract Natural Gas Ltd
Bristol Energy	Eon
Green Network Energy	ZTPUK
Glimond	Crown Gas and Power
Business Power and Gas Limited	Victory Energy Supply Ltd
Cornwall Insight	Citizens Advice
Energy UK	Scottish Power
SSE	Energyhelpline (Comparison Tech)

Appendix 2 – Live poll results





Appendix 3 – Result from design your own work package

Policy Number	Work package	Policy Area	Percentage of respondents selecting option
ON-1a	1. Promoting better risk management practices	1a) Requirements to have capacity, processes and systems in place to comply with obligations	82%
ON-1b		1b) Credit balance provisions in place in the event of failure	70%
ON-1c		1c) Making prudent provision to discharge obligations under government schemes/policies	70%
ON-2a	2. Responsible governance and increased accountability	2a) Ongoing 'fit and proper' requirement	54%
ON-2b		2b) Requirement for named officers	30%
ON-2c		2c) Standards of behaviour/governance	30%
ON-3a	3. Increased Market Oversight	3a) Assurance reporting (cyclical reporting)	42%
ON-3b		3b) Risk based reporting	74%
ON-3c		3c) Independent audits	26%
ON-3d		3d) Requirement to maintain a living will	20%
ON-3e		3e) Change of control notifications	32%
EX-4a	4. Improving efficiency and competitiveness of the SoLR process	4a) Data collection and transfer to relevant parties	36%
EX-4b		4b) Powers to revoke supply licences	44%
EX-4c		4c) Ofgem having the most appropriate process for appointing a SoLR or alternatives	20%
EX-4d		4d) Splitting the exiting supplier's portfolio	22%
EX-5a	5. Improving the mechanisms to recover costs	5a) Move collection of levy to System Operators rather than distribution companies	14%
EX-5b		5b) Accounting for costs recovered through the liquidation process	16%
EX-5c		5c) Alternative mechanisms for recovering costs of SoLR	24%
EX-6a	6. Improving the SoLR experience for consumers	6a) SoLR performance	16%
EX-6b		6b) Customers in debt to the failing supplier	44%
EX-6c		6c) Continuity of service to customers	30%
EX-6d		6d) Energy Ombudsman decisions not being implemented, including compensation	12%