

Supplier Licensing Review Stakeholder Workshop – summary notes

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Date of workshop: 26
November 2019
Time: 10.00 am

Location: The Marriot Hotel,
Canary Wharf

Overview

Following our decision on new supplier entry requirements,¹ we have progressed with the next stage of our Supplier Licensing Review (SLR) considering ongoing requirements for active suppliers and exit arrangements in the event of supplier failure. In October 2019, we published a policy consultation setting out proposed remedies to improve supplier standards of financial resilience and customer service.²

On 26 November 2019, we held a workshop to gather stakeholder views on the proposals, with particular focus on our cost mutualisation, milestone assessments and living wills policy options. A broad range of stakeholders were in attendance³, with the day broken down into a mixture of group discussions and live polling.⁴

We will use the discussions and live poll results to inform our ongoing policy development. The main discussion points from the workshop are summarised below. Please note that these are the views of workshop attendees and do not necessarily represent the views of Ofgem. Our next steps are summarised in the open letter published alongside this summary.

Cost mutualisation protections

A majority of stakeholders supported the policy intent of our cost mutualisation proposals. In general, respondents were divided between those that felt the proposals do not go far enough – and that we should require suppliers to protect all costs that may need to be mutualised in

¹ Ofgem, [Decision on new Applications Regulations and guidance document](#), June 2019

² Ofgem, [Supplier Licensing Review: Ongoing requirements and exit arrangements](#), October 2019

³ A full list of attendees is included in appendix 1.

⁴ Live poll results are included in appendix 2.

the event of a supplier failure – and those that felt they go too far. Feedback from the discussions included:

- Some attendees were concerned that the cost of the proposed protections would exceed the current cost of mutualisation. Many stakeholders felt that our draft impact assessment underestimates the cost of the proposals – that the financing costs would be higher than the indicative figure of 0.5% of the amount to be protected. Some suggested that the costs of the required protections should be recoverable under the price cap.
- Some medium and small suppliers were concerned that it may not be feasible to obtain the required protections. They were concerned that financial institutions would not be willing to provide sufficient backing.
- Generally, most stakeholders agreed that Ofgem should adopt a principles-based approach, allowing suppliers to choose the type of protection most suitable themselves, rather than prescribing a one-size-fits-all option.
- Some attendees thought that Ofgem should take a risk-based approach towards the protections. A medium supplier argued that Ofgem should analyse suppliers' financial stability and require only those suppliers considered to be risky to put protections in place.
- Almost all attendees suggested the frequency of Renewables Obligation (RO) payments should be increased. In the absence of formal scheme changes, some suggested a voluntary set of arrangements should be rolled out – enabling monthly contributions for instance.
- Almost all stakeholders argued in favour of a longer implementation period – most suggested between 12 and 24 months would be appropriate. They suggested that time would be needed to adapt business models and financial forecasts.
- Some attendees suggested that the protections should only apply to the domestic market, as failure was less common among non-domestic suppliers, and non-domestic customers are less likely to accrue large credit balances.

Milestone assessments

A majority of stakeholders supported the idea of milestone assessment at key points after a supplier enters the market, and that it would be sensible to base this on customer number

thresholds. A majority of stakeholders also supported the idea of dynamic assessments triggered by certain indicators – there was significant support for these to be based on financial status. Stakeholders generally suggested that milestone assessments and dynamic assessments would provide greater assurance that suppliers are capable of effectively serving their customers and meeting their regulatory obligations. Key feedback from the discussions included:

- Some stakeholders proposed alternative ways of testing supplier preparedness for customer growth such as: “MOT-style” tests every few years, annual audits to test deviations from supplier market entry plans, and enhanced monitoring of supplier performance using current or expanded information collected by Ofgem.
- The most commonly-suggested triggers for dynamic assessments included markedly low tariff prices, poor customer service ratings and financial indicators such as missed industry payments. Some attendees suggested Ofgem take a risk-based approach – only conducting a full assessment of those suppliers who showed certain warning signs.
- Stakeholders held differing views about the level at which the thresholds should be set. The majority of stakeholders agreed with the lower thresholds of 50k, 150k and 250k customers. Many stakeholders opposed the 500k-800k threshold – arguing that it is unnecessary as it is not tied to additional supplier obligations. However, one medium supplier said that 500k customers represents a significant milestone in the lifecycle of an energy supplier. A large supplier said that suppliers should have the ability to apply for an assessment to cover multiple customer thresholds in one go. One small supplier suggested using volume supplied as a threshold rather than customer numbers.
- Stakeholders queried how the assessments would work in practice. Some stakeholders were concerned about how much information would be required for the assessments and the costs associated with gathering this information. Some participants discussed whether both dynamic assessments and independent audits were necessary, as they may both aim to achieve a similar outcome. One attendee thought that the assessments should be flexible enough to take account of different business models, and not inadvertently drive supplier to adopt similar practices.
- Stakeholders suggested that milestone assessments should focus on hedging, risk management, financial obligations, complaints handling and systems migration.

Living wills

In general, stakeholders agreed that Ofgem should aim to mitigate the negative impacts of supplier failure, particularly in the Supplier of Last Resort (SoLR) process. They welcomed efforts to ensure a controlled and orderly market exit, though were unconvinced that the living wills proposal is the best way to achieve this outcome. Stakeholders generally emphasised the importance of good quality data in ensuring a smooth supplier exit from the market. Some of the key views aired were:

- Participants thought the purpose of living wills was unclear. Some viewed them as an attempt to prevent supplier failure. Whereas others saw them as a means of ensuring a more orderly market exit. Some suggested ad hoc information requests may be a more proportionate means of assessing suppliers preparedness for market exit.
- Attendees expressed concerns about how enforceable a living wills requirement might be. One participant argued that it was unlikely Ofgem could hold a company to account and ensure it produces a living will at the point of failure. Many participants said that external contractors would be the ones carrying out the actions set out in a living will if a supplier failed and therefore a supplier's contractual relationships should be outlined in the will.
- Stakeholders differed in their views regarding the reporting requirements and publication of living wills. Some stakeholders argued that publishing living wills could undermine market confidence if failing suppliers do not comply with the terms they set out, and also risked placing sensitive information in the public domain.
- Stakeholders felt that a one to two month implementation period was likely to be too short. Many suppliers argued that there would be a significant up-front cost involved in producing a living will for the first time.

Fit and proper requirements

A majority of stakeholders were supportive of an ongoing fit and proper requirement in principle, and many considered this to be among the top priority policy areas for the Supplier Licensing Review as a whole. The key comments made by participants included:

- Some stakeholders thought that the requirement would not stop all unsuitable individuals from entering the market, but that it would act as a good starting point and send a positive

message to the industry. Other attendees noted that this type of requirement has worked well in other regulated industries such as financial markets.

- Some attendees expressed concerns about suppliers' ability to do the necessary checks, as not all relevant information may be in the public domain. Some also raised concerns that the requirement may inadvertently penalise well-run companies who may have to duplicate the reporting and checks they already conduct. A small non-domestic supplier said that self-certification of the requirement would weaken the effectiveness of the policy as a preventative measure.
- Some participants thought the proposed licence condition drafting was too broad. They wanted more clarity on the criteria that would be used to judge whether a relevant person was fit and proper. A number of stakeholders suggested the proposal potentially duplicates requirements under the Companies Act (2006). One participant suggested that existing regulations should be sufficient to meet the policy intent of a fit and proper requirement.
- Many stakeholders expressed concerns about the enforceability of this requirement. They felt that the requirement should be set out in such a way to ensure direct action can be taken where the fit and proper requirement is not adhered to. A couple of participants said that Ofgem should make the consequences of not meeting the fit and proper requirements more explicit.

Other policy areas

- Stakeholders generally suggested that the licence drafting for proposals around independent audits should be clarified to better convey the policy intent.
- Participants wanted more details on how portfolio splitting would work in practice, though many expressed support in principle, particularly for domestic/non-domestic splitting.
- Stakeholders supported the intentions of both the open and cooperative principle and the operational principle, though felt that these may duplicate existing requirements.
- Attendees queried whether Ofgem has the power to enforce contract terms and conditions when administrators are appointed for failed suppliers. They encouraged greater engagement with the Insolvency Service.

Appendix 1 - Attendees

Avro Energy Limited	BEIS	BES Utilities
BP Gas Marketing Limited	Bristol Energy	Bulb
Business Power and Gas Ltd	Centrica	Citizens Advice
Contract Natural Gas Ltd	Cornwall Insight	Crown Gas & Power
E	E.ON	Ecotricity
EDF Energy	Edgware Energy Ltd	Elexon
Energy UK	Engage Consulting Limited	ENSEK Ltd
ESB Energy	Flow Energy	Gazprom
Gemserv	Gilmond Consulting Ltd	Good Energy
Green Network Energy	Green Star Energy	Haven Power
National Grid ESO	National Grid Metering, National Grid Ventures	NERA Economic Consulting
New Energy Consulting	Npower	Octopus Energy
Ombudsman Services: Energy	Orbit Energy	Ovo Energy
PFP Energy Ltd	Rebel Energy	Regent Gas Limited
Robin Hood Energy Ltd	Scottish Power	Shell
Shell Energy Retail Limited	SmartestEnergy	So Energy
Social Energy	Square1 Energy Limited	SSE Domestic Retail
SSE Plc	Utility Warehouse	Together Energy
Tonik	Utiligroup	Utilita
Utility Point	Waters Wye Associates Limited	Zebra Power

Appendix 2 – Live poll results





