

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

20 August 2020

Dear Colleague,

Statutory Consultation – Supplier Licensing Review: Ongoing requirements and exit arrangements

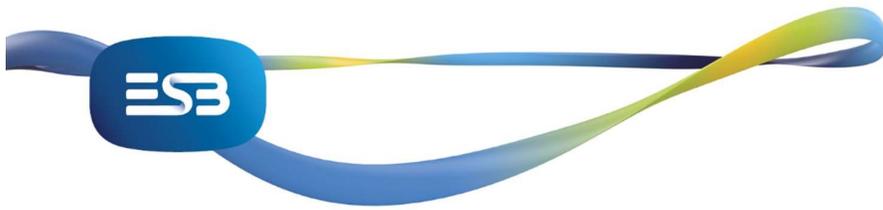
ESB welcomes the opportunity to respond to your statutory consultation¹ on supplier licencing. You've made the policy decision to proceed with most of your proposals, with one notable exception. Instead of a prescriptive cost mutualisation protection, you have elected to proceed with a Financial Responsibility Principle.

We do not believe the proposed Financial Responsibility Principle will reduce the cost of mutualisation per customer, per supplier failure. The reason for this is simple. When a supplier gets into financial difficulty and is faced with the choice of spending customer credit balances to stay in business or winding up the company, they will spend the credit balances in the hope of turning the business around. When they ultimately fail, customers' money will be gone. The Principle does not protect consumers in this scenario. Instead it focuses on attempting to prevent supplier failure in the first place by encouraging prudent behaviour in a general sense. However, as you have stated in previous consultations, supplier failure is to be expected in a well-functioning market. Therefore, we strongly encourage you to proceed with consulting separately on more prescriptive protections in order to protect credit balances and environmental obligations once suppliers inevitably enter financial jeopardy. We are more than happy to engage with you bilaterally on this matter if you would find that helpful.

As we've stated in our response to your policy consultation, we believe that many aspects of proposed package of remedies will add cost to consumer bills without providing any real benefit in return. You have decided to proceed with your proposals, but we think it is entirely reasonable to evaluate the effectiveness of your intervention soon after they are in place. Once 3-4 Supplier of Last Resort (SoLR) events have occurred, it should be relatively straightforward to check what remedies should be retained, amended or removed, as appropriate. We have suggested the key questions you should ask when doing this:

Remedy	Measure of Effectiveness
Financial Responsibility Principle	Has Ofgem met the modest target of an 18% reduction in mutualisation costs set out in their policy consultation impact assessment?
Ongoing Fit and Proper Test	Were the persons with Significant Managerial Responsibility or Influence within the failed suppliers fit and proper in retrospect? If they weren't, then why was this not picked up earlier?
Open and Co-operative Principle	Was there a marked improvement in the co-operation of failing suppliers when compared to before this obligation was introduced?
Supplier Continuity Plans	Did the failing supplier have a continuity plan in place? Was the plan up to date? Was the plan put to good use during the SoLR process?
Customer Interactions with Administrators	Have administrators behaved in a manner which is consistent with the additional standard conditions of the supply contracts?

¹ [https://www.ofgem.gov.uk/system/files/docs/2020/06/240620 - slr statutory consultation final.pdf](https://www.ofgem.gov.uk/system/files/docs/2020/06/240620_-_slr_statutory_consultation_final.pdf)



We hope you've found this feedback helpful. We're more than happy to engage and provide assistance on the further developing cost mutualisation protections in the next phase of your work. Please don't hesitate to get in touch.

Yours Sincerely,

Paul Fuller
Regulation Manager