



# Oil & Gas Authority

## **OGA’s general approach to assessing the ‘fitness’ of licensees, Directors of licensees, and individuals involved in the management of licensees; and of those who control licensees**

*This document is not legally binding. It is not a substitute for any regulation or law and should not be taken as legal advice.*

*We will consider each case on its merits and will apply the principles set out herein where it is appropriate to do so.*

*In the event that we decide to depart from the principles in any material respects, we will normally set out our reasons for doing so.*

### **Fitness as part of the OGA’s statutory duties and objectives**

The ‘fitness’ of existing and prospective licensees, Directors and individuals involved in the management of licensees, as well as those who control licensees, is critical to the OGA’s statutory duties and objectives.

The OGA’s function of assessing ‘fitness’ is inherent in the statutory scheme, in the public interest, and fitness is a factor which the OGA should apply and take into account wherever relevant. This derives, in particular, from the following parts of the OGA framework.

- a. *S. 3(1) of the Petroleum Act 1998*: provides that the OGA, on behalf of Her Majesty, “*may grant to such persons as the [OGA] thinks fit licences to search and bore for and get petroleum [...].*”
- b. *S. 8 of the Energy Act 2016*: sets out the factors which the OGA must have regard to, where relevant, when exercising its functions. These include: “*[t]he need to maintain a stable and predictable system of regulation which encourages investment in relevant activities*”; “*[t]he need for the United Kingdom to have a secure supply of energy*”; and “*[t]he need for the OGA to work collaboratively with ... persons who carry on, or wish to carry on, relevant activities.*”
- c. *S. 9A of the Petroleum Act 1998*: provides that the OGA must devise a Strategy for enabling the principal objective of maximising the economic recovery of UK petroleum to be met. The OGA Strategy, produced under section 9A, provides, by way of a Supporting Obligation in respect of Governance, that “*[t]he licensee of an offshore licence must apply good and proper governance at all times, including complying with any governance principles and practices as the OGA may from time to time direct*”.
- d. *The OGA Strategy*: [the-oga-strategy.pdf \(ogauthority.co.uk\)](https://ogauthority.co.uk/the-oga-strategy.pdf) also recognises the need to maintain the confidence of new and current investors.

### **How will the OGA assess fitness**

The OGA will consider fitness whenever an application for a licence is made, or where a licensee intends to take on or extend a commitment or obligation, for example on an assignment or change of control (for further detail see section 3 of the OGA’s [Financial Guidance](#)). The OGA may also decide to investigate the issue on its own initiative, for example, following a review of corporate governance).

The following is a non-exhaustive list of factors that the OGA will normally take into account when assessing the fitness of a licensee, Director or other individual if relevant, or major shareholder of the licensee or of an entity controlling the licensee.

- a. whether the licensee, Director or other individual is bankrupt and/or associated with any corporate insolvency proceedings, or liquidation or administration;
- b. whether the licensee, Director or other individual has any unspent conviction for a relevant offence; has been the subject of any adverse finding or any settlement in civil proceedings; has been the subject of, or interviewed in the course of, any existing or previous investigation or disciplinary proceedings by other regulatory authorities, government bodies or agencies, or in criminal proceedings; has been investigated, disciplined, censured or suspended or criticised by a regulatory or professional body, a court or Tribunal, whether publicly or privately; has been notified of any potential proceedings or investigations that might lead to proceedings of a disciplinary or criminal nature; or, has been involved with any business to which the above apply;
- c. whether the licensee, Director or other individual has been candid and truthful in all their dealings, including with any regulatory body (for example, in the provision of information), and whether the person demonstrates a readiness and willingness to comply with the legal, regulatory and professional requirements and standards, and to deal with regulators in an open and cooperative way;
- d. whether the licensee, Director or other individual has been involved with a company, partnership or other organisation that has been refused registration, authorisation, membership or a licence to carry out any trade, business or profession, or has had that registration, authorisation, membership or licence revoked, withdrawn or terminated, or has been expelled by a regulatory or government body; and
- e. whether the Director or other individual has been dismissed, or asked to resign and resigned, from employment or from a position of trust, fiduciary appointment or similar.

The OGA will consider all such cases on their own merits, taking into account factors which include (but are not limited to) the extent of the Director's or other individual's involvement in and responsibility for corporate acts or omissions; the causes of any insolvency, liquidation or administration; the nature and seriousness of any proceedings referred to above; the frequency of any conduct or omissions. The OGA will also have regard to the scale and scope of businesses controlled by the Director or other individual, in assessing the relevance of a factor (or factors) to a particular case.

In general (other than in exceptional circumstances), the OGA will raise any concerns that it has as to fitness with the relevant licensee or individual and provide them with an opportunity to comment, before making any final decisions based on such concerns.