

# Decision

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## **OPR Guidance 2023 decision**

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Contact: Ayena Gupta

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Team: DCC Oversight and Regulatory Review

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Telephone: 020 7901 7000

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Email: [DCCregulation@ofgem.gov.uk](mailto:DCCregulation@ofgem.gov.uk)

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The Operational Performance Regime (OPR) financially incentivises the Data Communication Company's (DCC) performance in three main areas: system performance, customer engagement and contract management.

The contract management incentive completed its first year of operation in Regulatory Year 2021/22. We consulted on changes to the OPR Guidance in January 2023 to enable DCC's performance to be better reflected following an audit of its contract management and procurement processes.

This document sets out our decisions and the reasons for them. Alongside this document we have published the final versions of the OPR Guidance (2023), Terms of Reference, and modified National Audit Office Contractual Relationships Framework (NAO Framework).

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## 1. Introduction

### Context

- 1.1 DCC is the central communications body licensed to provide the communications, data transfer and management required to support smart metering in Great Britain. It is responsible for linking smart meters in homes and small businesses with energy suppliers, network operators and energy service companies. It is important that as a monopoly company DCC faces sufficient incentives to perform its role well, delivering value for money and high quality services. This is key to ensure consumers are able to fully take advantage of the benefits of the smart meter rollout.
- 1.2 The Licence<sup>1</sup> stipulates that DCC's Baseline Margin be put at risk each Regulatory Year under the relevant performance incentive regimes. These comprise the Baseline Margin Project Performance Schemes and the Operational Performance Regime (OPR). DCC's Baseline Margin is 100% at risk against these incentive regimes, with the majority at risk against the OPR.
- 1.3 In May 2020 we published a consultation reviewing the OPR framework, setting out proposals to financially incentivise three areas: system performance, customer engagement and contract management.<sup>2</sup> Respondents largely agreed with our proposals and in October of that year we published our decision to implement the new OPR.<sup>3</sup> As part of our decision, we implemented a Licence change to enable Ofgem to publish guidance regarding the process, procedures and criteria of the OPR. We published the original OPR Guidance in March 2021, and a revised OPR Guidance in March 2022.<sup>4</sup>

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<sup>1</sup> The Smart Meter Communication Licences granted pursuant to Sections 7AB(2) and (4) of the Gas Act 1986 and Sections 6(1A) and (1C) of the Electricity Act 1989. Those Licences are together referred to as 'the Licence' throughout this document.

<sup>2</sup> DCC Operational Performance Regime Review: May 2020 Consultation - [www.ofgem.gov.uk/publications/dcc-operational-performance-regime-review-may-2020-consultation](http://www.ofgem.gov.uk/publications/dcc-operational-performance-regime-review-may-2020-consultation)

<sup>3</sup> DCC Operational Performance Regime Review: October 2020 Decision - [www.ofgem.gov.uk/publications/dcc-operational-performance-regime-review-october-2020-decision](http://www.ofgem.gov.uk/publications/dcc-operational-performance-regime-review-october-2020-decision)

<sup>4</sup> Revised OPR Guidance (March 2022) - [www.ofgem.gov.uk/sites/default/files/2022-03/Revised%20OPR%20Guidance%20%28March%202022%29.pdf](http://www.ofgem.gov.uk/sites/default/files/2022-03/Revised%20OPR%20Guidance%20%28March%202022%29.pdf)

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## Our decision-making process

- 1.4 We indicated in our RY21/22 Price Control consultation that we intended to consult on the OPR Guidance to explore changes to the contract management framework.<sup>5</sup> We held a stakeholder event in December 2022 to discuss our Price Control positions, and also invited stakeholders to comment on potential changes to the contract management framework as part of their Price Control consultation responses.
- 1.5 We consulted on changes to the OPR Guidance in January 2023 (our “January consultation”), setting out three options we had considered for the contract management scoring framework. This incorporated views we had already received as part of stakeholders’ responses to the Price Control consultation.
- 1.6 We received three responses to this consultation. All non-confidential responses are published on our website.<sup>6</sup> We have fully considered all responses received to our consultation. We have summarised the key points received from the responses and provide an explanation of the reasons for our decisions.

## Further information – System performance

- 1.7 We also noted in our January consultation that we expected there may be further changes to the system performance chapter of the OPR Guidance to enhance clarity around the implementation of the performance measures and metrics. We consulted on these changes in March 2023 with DCC, as required by Condition 38.9 of DCC’s Licence.<sup>7</sup> DCC agreed with our proposed changes. We consider these changes to be minor changes to ensure the OPR Guidance remains accurate. A summary of these further changes can be found in appendix 1.

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<sup>5</sup> Please see our RY21/22 Price Control consultation, paragraph 4.40:

[www.ofgem.gov.uk/publications/dcc-price-control-consultation-regulatory-year-202122](http://www.ofgem.gov.uk/publications/dcc-price-control-consultation-regulatory-year-202122)

<sup>6</sup> Revised OPR Guidance consultation January 2023 - [www.ofgem.gov.uk/publications/revised-opr-guidance-consultation-january-2023](http://www.ofgem.gov.uk/publications/revised-opr-guidance-consultation-january-2023)

<sup>7</sup> The Smart Meter Communication Licence, available here:

<https://epr.ofgem.gov.uk/Content/Documents/Smart%20DCC%20Limited%20-%20Smart%20Meter%20Communication%20Consolidated%20Licence%20Conditions%20-%20Current%20Version.pdf>

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## **Related publications**

Decision on DCC Operational Performance Regime Review October 2020:

[www.ofgem.gov.uk/publications/dcc-operational-performance-regime-review-october-2020-decision](http://www.ofgem.gov.uk/publications/dcc-operational-performance-regime-review-october-2020-decision)

2018/19 Price Control Decision: [www.ofgem.gov.uk/publications-and-updates/dccprice-control-decision-regulatory-year-201819](http://www.ofgem.gov.uk/publications-and-updates/dccprice-control-decision-regulatory-year-201819)

Decision on DCC's Operational Performance Regime September 2017:

[www.ofgem.gov.uk/publications/decision-dccs-operational-performance-regime](http://www.ofgem.gov.uk/publications/decision-dccs-operational-performance-regime)

DCC Operational Performance Regime: Principles and Objectives March 2016:

[www.ofgem.gov.uk/publications/dcc-operational-performance-regime-principles-and-objectives](http://www.ofgem.gov.uk/publications/dcc-operational-performance-regime-principles-and-objectives)

## **General feedback**

We believe that consultation is at the heart of good policy development. We are keen to receive your comments about this report. We'd also like to get your answers to these questions:

1. Do you have any comments about the overall quality of this document?
2. Do you have any comments about its tone and content?
3. Was it easy to read and understand? Or could it have been better written?
4. Are its conclusions balanced?
5. Did it make reasoned recommendations?
6. Any further comments

Please send any general feedback comments to [DCCregulation@ofgem.gov.uk](mailto:DCCregulation@ofgem.gov.uk)

## 2. Contract Management

### Section summary

This section sets out our decision on the contract management scoring framework.

Following consideration of responses, we have decided to amend the contract management scoring framework to reflect option 3 set out in our consultation, which increased the number of levels of attainment from three to four and modified the descriptions of each attainment level in the NAO framework.

Alongside this document we have published: the updated OPR Guidance 2023 which reflects the changes to the contract management scoring framework; the updated Terms of Reference for the audit with updated dates and process; and the amended NAO framework, which now includes the extra attainment level and modified descriptions as set out in our consultation.<sup>8</sup>

### Questions posed at consultation

- Q1. What are your views on the options we considered for the scoring framework? Do you agree with our preferred option? (option 3).
- Q2. Do you consider any further changes are required to the framework?

### Context

- 2.1 RY21/22 was the first year that the contract management incentive came into effect. DCC was assessed by an independent auditor against the supporting questions and attainment levels set out in a modified version of the National Audit Office (NAO) Contractual Relationships framework. DCC would be awarded a score of 0, 1, or 2 for each supporting question, and the overall score would be produced using an average across all supporting questions.
- 2.2 The auditor provided a final report to Ofgem which set out its view of DCC's performance and awarded a score out of 2, in line with the scope and requirements set out in the OPR Guidance.
- 2.3 Following the first year audit, we received feedback from the auditor that the overall score may not be truly reflective of DCC's performance. We therefore consulted on the OPR Guidance to explore potential changes to the scoring

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<sup>8</sup> Please see accompanying documents published alongside our decision on this page: [www.ofgem.gov.uk/publications/decision-revised-opr-guidance-march-2023](http://www.ofgem.gov.uk/publications/decision-revised-opr-guidance-march-2023)

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framework for the next year of the audit. We proposed three options for the scoring framework, indicating that option 3 was our preferred option:

- **Option 1** – to align with the customer engagement incentive scoring, increasing from three to four attainment levels. We would indicate what the required standard for good performance would look like for each NAO framework supporting question, and the auditor would assess how well DCC met this standard, awarding a score of 0, 1, 2 or 3.
- **Option 2** – to use the existing NAO framework attainment levels and allow half marks, increasing from three to five attainment levels. We proposed that the description of the attainment level 0 should be amended, to make a 0 score more reflective of what would be unacceptable performance for DCC. The auditor would assess DCC against each NAO framework supporting question, awarding a score of 0, 0.5, 1, 1.5, or 2.
- **Option 3** – to increase the NAO framework attainment levels by one, from three to four levels. We proposed that the description of the attainment level 0 should be amended, to make a 0 score more reflective of what would be unacceptable performance for DCC. We also modified the descriptions for attainment levels 1 and 2 to accommodate the additional level. The auditor would assess DCC against each NAO framework supporting question, awarding a score of 0, 1, 2 or 3.

2.4 For all three options, the overall score would then be calculated by a simple average across all supporting questions.

2.5 For a full description of all three models, including examples and rationale, please refer to our January consultation document.<sup>9</sup>

## **Q1 – Scoring framework**

*Proposal at consultation: we sought stakeholder views on the three options we had considered for modifying the scoring framework. We noted our preference for option 3, which was to modify the existing NAO attainment levels from three levels to four levels.*

*Decision: To implement option 3, increasing the NAO attainment levels from three to four. We have amended the OPR Guidance and NAO framework accordingly, and have published them alongside this document.*

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<sup>9</sup> Please see our consultation document for a description of option 1 (paragraphs 2.19-2.23), option 2 (paragraphs 2.24-2.28), and option 3 (paragraphs 2.29-2.32): [www.ofgem.gov.uk/publications/revISED-opr-guidance-consultation-january-2023](http://www.ofgem.gov.uk/publications/revISED-opr-guidance-consultation-january-2023)

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## **Respondents' views**

- 2.6 All respondents supported our preferred option 3. Two agreed that it would provide increased granularity in the scoring framework.
- 2.7 One respondent noted that they considered option 1's alignment with the customer engagement incentive would not add real value in the longer term. They considered that, given the comprehensive links to the NAO framework, alignment to customer engagement wasn't needed.
- 2.8 One respondent commented that it would have been interesting to see what a five-point scale would have looked like which included descriptions for each attainment level in the NAO framework, as this may have additional merits. Another further noted that they had called for such increased granularity in their Price Control response.
- 2.9 DCC noted its concern at the introduction of "or limited evidence of" in modifying the wording of attainment level 0. DCC considered it raised further ambiguity rather than making the scoring clearer and easier to use, and suggested it should be removed.

## **Our response**

- 2.10 After assessing stakeholder responses, we have decided to implement option 3. We consider this will increase granularity and flexibility in the scoring framework and take better account of different levels of performance from DCC.
- 2.11 We note and have given careful consideration to the suggestion of an additional attainment level (ie a five-point scale rather than four). However, in developing the draft framework, we found that an additional level reduced the degree of clear separation between the descriptions of each attainment level. This could make it more challenging for the auditor to assess which level of attainment DCC should achieve, which would increase ambiguity in the framework.
- 2.12 We note DCC's concern around the inclusion of "or limited evidence of" for attainment level 0. However, we consider this wording reflects the expectations upon DCC more clearly and better indicates how the audit may work in practice. We expect DCC to be able to provide evidence of its activity, and consider the change reflects how the auditor may use its judgement in assessing DCC's performance.
- 2.13 For example, for supporting question 5.3 "is DCC meeting its obligations?", attainment level 0 previously stated "there is no monitoring of DCC performance

against obligations”. Amending this to “there is no or limited evidence of monitoring of DCC performance obligations” makes it clear DCC is expected to be able to evidence that it monitors performance, and that the auditor would be using its judgement to determine whether the evidence is sufficiently indicative of DCC carrying out good practice.

- 2.14 We note that DCC will engage regularly with the auditor and has several opportunities for right of reply. When DCC receives the interim report from the auditor, DCC is able to provide further evidence for the auditor to take into account in preparing the audit report. DCC is also able to provide additional evidence for us to consider as part of its Price Control submission. We would in any case publish DCC’s proposed score for contract management as part of our annual Price Control consultation. DCC and wider stakeholders then have the chance to respond to the scores and provide further justification and evidence as part of their response to the Price Control consultation.

## **Q2 – Further changes to the contract management framework**

*We asked whether stakeholders considered that any further changes were required to the framework.*

### **Respondents’ views**

- 2.15 One respondent did not consider any further changes were required at this stage. However, they noted that it would be beneficial to review the OPR again to consider if any amendments would be required for the customer engagement and contract management incentives for RY24/25.
- 2.16 DCC commented that all attainment criteria should be SMART (Specific, Measurable, Achievable, Relevant and Time-bound). DCC suggested the attainment criteria could specify how many areas of concern could be permitted under each score, what types of concern may be relevant, and over what time period. DCC also suggested examples could be provided of what constituted a ‘material area of concern’ or a ‘minor area of concern’.
- 2.17 DCC also noted that the OPR remains a ‘downside’ only regime and suggested the attainment levels should reflect this. It suggested that level 3 should not indicate ‘best in class’ performance. DCC suggested an additional level should be added, which would be reserved for best in class or outstanding performance, which would provide DCC with an opportunity to earn additional margin. DCC further suggested this could be left dormant until a point in future when this process could be agreed upon.

## Our response

- 2.18 We agree that as part of our annual review of the OPR we would consider whether further changes are required for the third year of the audit. We would expect to engage where necessary with stakeholders following the second year audit, either through our annual Price Control consultation process, a separate consultation, or other engagement.
- 2.19 We would not want to prescribe what the auditor would consider a material or minor area of concern. We would expect that material areas of concern may comprise particular issues which the auditor considers fundamental in indicating good performance or following good practice in its contract management and procurement processes.
- 2.20 However, we would generally expect the scale of an issue to be a factor, and we may take this into account when making our final assessment of the auditor's recommended score. For example, an assessment into how material an issue is could include:
- how widespread an issue is (eg whether an issue persists throughout DCC's processes or is isolated; whether an issue persists across the lifetime of a contract or is short-lived)
  - whether the issue has knock-on effects across a programme, and how significant that effect is (eg impact on delivery)
  - whether steps have been taken to identify and/or mitigate an issue
- 2.21 We expect to keep this under review, and may consider making further clarification or changes if required following the second year audit.
- 2.22 We consider that including reference to material or minor areas of concern in the NAO framework more accurately reflects that the examples of attainment and evidence of good practice are non-exhaustive, and that the auditor is able to use its judgement to determine DCC's score and the level of concern over each issue. We therefore consider that an assessment of materiality is already present in the framework. We also note DCC's multiple opportunities for right of reply as described in paragraph 2.14.
- 2.23 We note DCC's comments on the 'downside only' aspect of the OPR. Contract management is and has always been core to DCC's delivery and service model. We would therefore expect DCC to be performing according to best practice in contract management as part of its standard processes. We also note that DCC performed well against some of the supporting questions in the first year audit,

achieving the highest attainment level against those questions.<sup>10</sup> We therefore consider that the highest attainment level is indicative of good practice, and not unachievable.

## **Scope**

- 2.24 In our January consultation we stated that we considered the scope of the audit sufficiently broad to incentivise DCC to carry out good practice in contract management and procurement activity, without being too broad such that the audit process becomes too onerous. After assessing stakeholder responses, we confirm that we are not making changes to the scope at this time.<sup>11</sup> We consider that areas where stakeholders have raised specific concerns previously, such as the DSP programme, Working Capital Charges, and SEC mod Impact Assessments, are included within the existing scope, and we expect these areas to be scrutinised in the RY22/23 audit.
- 2.25 However, we recognise that new circumstances may come to light during the next Regulatory Year, and it may be appropriate to consider a change in scope for the third year of the audit which assesses RY23/24. It may also be appropriate to consider further changes, such as amending the respective weighting of the supporting questions, or the weighting of the areas in scope. If we were to propose any changes to the OPR Guidance for the third year audit, we would at minimum consult with DCC, and consult with wider stakeholders if required.<sup>12</sup> As we stated in our January consultation, we expect DCC to be applying good practice across all of its contracts. Therefore, the change in scope would not require DCC to change its business practices and would just change the sample of contracts/activity the auditor looks at.

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<sup>10</sup> Please see our RY21/22 Price Control consultation, Table 4.3 (pages 109-111), for a summary of the scores awarded against each supporting question in the first year audit:

[www.ofgem.gov.uk/publications/dcc-price-control-consultation-regulatory-year-202122](http://www.ofgem.gov.uk/publications/dcc-price-control-consultation-regulatory-year-202122)

<sup>11</sup> Please see the OPR guidance 2023, paragraphs 5.12-5.18 for the scope of the audit:

[www.ofgem.gov.uk/publications/decision-revised-opr-guidance-march-2023](http://www.ofgem.gov.uk/publications/decision-revised-opr-guidance-march-2023)

<sup>12</sup> As set out in Licence Condition 38.9, changes to the OPR Guidance would require - as a minimum - consultation with DCC. Ofgem will determine whether any given modification requires a public consultation with wider stakeholders. In general, we will publicly consult on modification to this guidance that could have a material impact on DCC's retained revenue, or that would lead to a material change to the focus of the OPR.

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## Appendix 1 – Summary of changes to OPR Guidance

A1.1 Table A1.1 below details the changes to the OPR Guidance following consultation. It includes changes to both the contract management and system performance chapters, as well as a rationale for the change. Changes related to system performance were consulted on separately with DCC, as we were engaging with DCC on these changes throughout February. We consider these changes to be minor, and simply add clarity on which penalty mechanism applies under each performance measure. For the avoidance of doubt, there have been no changes to the performance measures themselves.

**Table A1.1**

<b>Paragraph /Location</b>	<b>Summary of change</b>	<b>Rationale for change</b>
Table 3.1	Added footnote 20 to Prepayment (Interim Response Times) row.	This provides clarity over what is included in the Prepayment (Interim Response Times) metric, in line with other metrics
3.37	Included information on what meter type and region each metric is applicable to.	This adds clarity to the document by explicitly stating what metrics are applicable. Certain metrics are only applicable to specific meter types or regions.
3.38	Specified which metrics each formula is related to	This adds clarity to the document. The wording now indicates more clearly which formula should be used for a given metric.
3.39	Clarified that penalty mechanism B will be applied for metric RT1, and penalty mechanism A will be applied for metrics RT2, RT3 and RT4	Penalty mechanisms A and B apply over different regions/meter types. This change adds clarity by explicitly stating when mechanisms A and B apply.
3.63	Inserted Prepayment (Interim Response Times) measure into the paragraph to indicate the meter generation split is not applicable for this measure	This adds further clarity to the document, as the meter generation split is not applicable for this measure.
5.3	Inserted a line of text stating the contract management incentive came into effect.	It is useful to update the background information in the guidance for accuracy. We included this change in our January consultation.
5.4	Amended the audit timeline	The first year audit has completed, and certain parts of the timeline are no longer relevant. We included this change in our January consultation.
5.19-5.27	Changed any instance which referred to three attainment levels of the contract management scoring to four	We decided to increase the number of attainment levels, so we updated the guidance for accuracy. We included this change in our January consultation.