

4 July 2024

By email:

DCCregulation@ofgem.gov.uk

Consultation on Code Reform Licensing

Alt HAN Co (AHC) welcomes the opportunity to respond to the Ofgem consultation related to DCC Governance. We note that the AHC model was used as an option for consideration alongside previous governance options and have therefore included a few observations on the Alt HAN Forum and Board decision making for clarity.

Our responses are limited to the questions on DCC Governance as we have no views on the proposals for where the Central Switching Service should reside.

Consultation Questions
Q1: What are your views on the presented options for the future DCC board composition? Do you agree with our analysis that Option 4 (majority independent model) is the most appropriate to take forward? Please state your reasoning.
<p><i>AHC response: AHC believes a number of the models could be made to work and we do not express a preference. As an 'AHC type' model is cited as Option 3 we thought it useful to make a few observations on the Ofgem assessment of Option 3.</i></p> <p><i>The benefit of an Alt HAN model has been to ensure that the stakeholders remain focused on delivery of the core Service and Activities. Stakeholders can hold Alt HAN Co to account through its budget setting and assessment of service provision using a balanced scorecard reporting approach. The Board members are subject to 2 year terms and are required to seek reappointment beyond this term, therefore the Forum has the capability to choose Board members based on experience and performance. The framework within which the Alt HAN Board and Forum make decisions requires that those decisions are judged against a clear set of objectives. As a result both the Board and Forum are focused on decisions that meet stakeholder needs in an efficient and economic way and in a way that best meets the objectives established in the Smart Energy Code (SEC).</i></p> <p><i>Decisions taken under future DCC Governance will need to be taken in accordance to how these best meet: (1) the DCC licence and its relevant objectives; (2) the SEC and its relevant objectives; and (3) the Strategic Direction provided by the Authority. The requirement to deliver the core services on a cost pass through basis also aligns to the Alt HAN model and this will also limit the potential conflict for the licensee to focus on profit making activity at the expense of the cost pass through element.</i></p> <p><i>The AHC option provides greater oversight by stakeholders but arguably greater influence than say, a Stakeholder Advisory Board, in providing direction to Alt HAN Co.</i></p>

Historically DCC has had oversight from a mixture of DESNZ, Ofgem and SEC Parties (via SEC Governance). Whichever model is chosen it should be clear where oversight is being provided and how such oversight is exercised (e.g. through the approved budget setting process, performance against agreed KPIs/measures or licence control regime).

Ultimately any of the models could be made to work given the focus of activity is clearly defined and framed in objectives the licensee must meet. An independent Chair (or Chairs) for any Governance bodies would also assist in removing any perceived conflicts.

It should be clearly defined who has responsibility for setting the performance framework for the future DCC Board.

Q2: What are your views on the current and proposed Licence requirements on Sufficiently Independent Directors? Do you agree that one or more of the current Licence-imposed Independence Requirements may be relaxed in favour of more discretion afforded to the Board?

AHC response: The proposals seem sensible and align largely with the guidance in the UK Corporate Governance Code even with a limitation of independence being set at 12 months from any associated entity. The requirements should not prevent the Board being populated by individuals with suitable experience of the services and industry the DCC must operate within. The use of Directors with relevant experience in industry, technical, commercial, financial and operational experience has benefitted the Alt HAN arrangements even though membership is drawn from current industry participants. It should be noted however that the Alt HAN Board functions differ slightly from other Boards, given the primacy of the Forum for decision making.

Q3: Do you agree with our proposal that the Chair of the future DCC board should meet the requirements on ‘Sufficiently Independent Directors’ without exception?

AHC response: Yes.

Q4: What are your views on our analysis and proposal not to introduce additional requirements or restrictions on the size of the future Board and on the number of executive members and shareholder representatives?

AHC response: AHC would agree that no further requirements are necessary here. Ultimately the Chair and Board should ensure there are sufficient members to conduct business effectively and decisions will be driven by their alignment to the licence conditions and code objectives/strategic direction.

Q5: Do you agree with a possible requirement on the Board to possess expertise in certain core areas? Do you agree with the areas we have identified? What are your views on the implementation options?

AHC response: AHC would agree that the Board collectively should have the breadth of experience of relevant commercial, energy industry, consumer and technology experience rather than these being represented by individual Board members. Such an approach has benefitted the Alt HAN arrangements through its Board being comprised of members with broad experience in core areas of the Alt HAN services.

Q6: Do you agree with our proposal to represent consumer voice via a requirement on the appointment of a Sufficiently Independent Director with consumer advocacy experience?

AHC response: Yes.

Q7: What are your views on Ofgem’s role in the Board appointment process? Do you agree with our proposal that the Authority could have a role in the appointment process of non-executive directors? Which option would provide the most appropriate and effective accountability framework, and why?

AHC response: We are unsure why, with the other requirements placed on the Board composition, Ofgem would need a further role in the appointments process. However the Authority could retain the right to appoint

(or request the appointment of) an additional Board member if it identified that there was a knowledge gap in the Board composition. This would be distinct from the options set out in the consultation.

Q8: What are your views on the role of DCC customers and other stakeholders in the Board appointment process? Do you agree with our proposal to provide representation for DCC customers on the Nomination Committee? What should be the role of an industry representative in such an arrangement?

AHC response: We have no views on the options proposed and note that all options could be made to work.

Q9: What are your views on our proposals for an additional requirement on the Chair's experience and Ofgem's role in the initial appointment of the Chair? In what other way should the appointment process for the Chair be different to that of other DCC Board members?

AHC response: We have no views on the options proposed.

Q10: What are your views on changes to the term of appointment of non-executive directors? Do you agree with our proposals to limit the initial term of appointment for non-executive directors to 3 years, and to allow for up to two reappointments with the total term limited to a maximum of 9 years?

AHC response: AHC agrees the changes will align the arrangements more closely with the UK Corporate Governance Code.

Q11: What are your views on the identified reputational incentives and associated enhanced regulatory requirements? How effective do you believe these incentives can be?

AHC response: AHC agrees that the types of incentives identified in the consultation are suitably relevant. In addition we note that the pace and cost of change are often cited by energy industry stakeholders as a challenge. It may be prudent therefore to ensure the incentive framework contains suitable incentives related to assessing and implementing change. Given the concept that the DCC service forms a digital spine for energy industry innovation and services it must be important to assess the performance in delivering change effectively, efficiently and economically.

Q12: What are your views on direct financial incentivisation of executive leadership and key staff? What would make those incentives effective? Please consider their interlink with the reputational incentives

AHC response: AHC would note that performance regimes should accurately reflect what is directly within the organisations control. As DCC will be setting a Business Plan and budget ex ante it should be relatively easy to measure the performance against those commitments. However the regime must be flexible to account for impacts outside the organisations control (e.g. significant policy shift, emergency measures). AHC operates a scheme where individuals are measured against their own targets as well as organisational commitments.

Q13: What are your views on the proposal to grant stakeholders the power to issue a (non-binding) motion of "no confidence", its objective and requirements? If implemented, what should be the methodology for determining a qualified majority and distribution of votes among stakeholders?

AHC response: AHC has no view on this. However, if there is a mechanism for stakeholders to feed into the Board appointment process this should suffice rather than the creation of a distinct process for pass no confidence motions. Arguably, if such a motion were warranted, it would likely already be related to deficiencies against the licence which Ofgem would likely be investigating. We have noted in our response to the Code Reform proposals there may be a need for 'step-in' rights under licences.

Q14: Do you agree with the identified priority areas of interim changes? Are there other governance changes that should be implemented in the Licence extension period?

AHC response: AHC agrees the list looks sensible, of particular importance is Ofgem's oversight of any handover process to ensure continuity of service.

Q15: What are your views on the possible retention of current Sufficiently Independent Directors on the Board of DCC2? What provisions may need to apply to facilitate this?

AHC response: AHC has no view.

If you have any questions regarding our response please liaise with my colleague David.jones@althanco.com in the first instance.

Yours sincerely

A handwritten signature in blue ink that reads "Paul Cooper". The signature is written in a cursive style with a large initial 'P'.

Paul Cooper
Managing Director
AltHAN Co