

15 July 2024

Jakub Komarek
DCC Oversight and Regulatory Review Team,
Office of Gas and Electricity Markets,
10 South Colonnade,
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London
E14 4PU

Dear Jakub,

DCC Review Phase 2: Governance and Centralised Registration Service arrangements

Funded, governed and owned by the gas industry on a not-for-profit basis, Xoserve is central to Great Britain's wholesale gas market. We are responsible for the central system delivery function underpinning the gas industry arrangements (including those contained within the Uniform Network Code (UNC)).

As the gas industry's Central Data Service Provider (CDSP), we provide a suite of vital services for gas Suppliers, Shippers, and Transporters. We ensure that Britain's retail gas market runs efficiently and reliably.

We provide a single, consistent point of service for our customers and make sure their data is transported securely.

- We provide information to gas transportation companies from our central register, which holds details about all premises that have a gas supply.
- We also provide data about gas flows across the entire network. This information helps us recognise which companies are responsible for gas entering and leaving the network, so it can remain 'in balance' between supply and demand.
- We maintain the central register and its related information flows through sophisticated computer networks and a suite of innovative data products.

We welcome the opportunity to respond to this consultation given our systems interface with the Central Switching Service. We are also interested in the different DCC governance models under consideration given its proposed move to a not-for-profit model and the parallel consideration of governance models for not-for-profit Code Managers as part of energy code reform.

DCC Board composition

1. 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.

Of the four presented options, we agree that the majority independent model (Option 4) is the most appropriate to take forward.

We agree that Option 4 would most effectively provide operational independence and minimise the perception of potential conflicts of interest.

We agree that ensuring a range of perspectives would help to ensure that issues are considered more broadly, rather than through a narrow, sector-specific lens. However, in introducing independent voices, it is important that we do not lose sight of the value that experienced industry voices can bring to industry-specific decisions. As such, we believe that an obligation for a majority of the Board to be Sufficiently Independent Directors should be accompanied by some flexibility over the strict application of independence requirements to ensure that an appropriate balance between perceived independence and industry expertise can be struck in the interests of the wider industry and its customers. We discuss this further in our response to question 2 below.

2. 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?

We agree that more discretion should be afforded to the Board when determining the independence of Board members to ensure that a balance is struck between perceived independence and maintaining the ability to draw in expert, industry-specific knowledge.

As stated above, we agree that the appointment of Sufficiently Independent Directors can bring broader perspectives and build industry confidence and trust by addressing concerns regarding potential conflicts of interest. However, if the criteria to define independence are too rigid or strict, this could exclude valuable industry voices and expertise and make recruitment and retention of Board members very difficult.

As such, we believe that if a majority of the Board is required to be “Sufficiently Independent”, there should be some scope for relaxation of, or exemption from, the current licence requirements subject to Authority / Ofgem oversight and review.

On balance, we believe that the current time restrictions should remain at 12 months rather than being increased to the UK Corporate Governance Code timeframes of 3-5 years. As stated in the consultation, there is no evidence that the 12-month requirement currently in place has had any adverse impact to date. Furthermore, our concern is that longer timeframes of 3-5 years would increase the volume of exceptions to those requirements sought by the Board and, therefore, increase the burden on Ofgem’s process of review and oversight. Such timeframes could also send the wrong message about the value of sector-specific insight and expertise.

We agree that the second independence requirement is the one that is likely to require the greatest flexibility. However, we believe that it would be prudent to retain the flexibility for Ofgem to consider derogations to any of the independence requirements if the Board wishes to make the case to Ofgem that this would be in the interests of the wider industry, and its stakeholders and customers.

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

We agree that the Chair of the Board should not be subject to the potential derogations to the independence requirements outlined above i.e. they should meet the requirements on ‘Sufficiently Independent Directors’ without exception.

It is important that the Chair of the Board should be fully independent and beyond reproach, in order to build industry trust and confidence in the Board. We agree that this is particularly important for the Chair of the Board, given their pivotal role in the appointment of other Board members, in guiding Board discussions and in casting a deciding vote.

4. 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?

We agree that it is neither appropriate nor necessary to introduce additional requirements or restrictions on the size of the future Board and on the number of executive members and shareholder representatives.

If Ofgem proceeds with Option 4, we do not see a need for further intervention regarding the size or composition of the Board beyond this primary requirement that the majority of the Board should be ‘Sufficiently Independent Directors’. It is important that Boards have the flexibility, beyond this fundamental principle, to constitute the Board in the manner that will best serve the interests of the industry and its customers.

Setting a minimum size for the Board could limit the agility of the Board and slow decision-making. We do not believe that there is a risk that the Board will be too small given Ofgem’s proposal to require that the Board ensures that it has the necessary skills and expertise. Limiting the number of executive members or the number of shareholder representatives would, given the requirement for the majority of Board members to be independent, indirectly impose restrictions on Board size, and could limit the skills and expertise available to the Board.

Board appointment process and requirements

5. 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?

We agree that there should be a licence requirement that the Board should possess expertise in certain areas. We agree with the core areas identified, and agree that the licence requirement should be applied at a Board level (Option 2).

We agree that the core areas of expertise proposed are appropriate, namely: the GB energy market (supply and distribution), commercial contract management, data and communication technology, and consumer advocacy. We agree that Option 2 is most appropriate i.e. that these requirements should be applied at a Board, rather than an individual, level. This would give the Board the flexibility to determine the appropriate balance of expertise across its Board, including in non-core areas, recognise that Board members may have expertise in more than one core area, and acknowledge the value of Board member contributions across all expertise areas, rather than pigeon-holing them to one particular area.

6. 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?

We agree that the licence should require the Board to include a Sufficiently Independent Director with proven consumer advocacy experience.

Notwithstanding our response to question 5 above, we agree that consumer advocacy experience is sufficiently distinct from the other core areas of expertise identified and sufficiently important, to merit a dedicated independent Board member. This would ensure that the Board does not lose sight of the ultimate beneficiaries of a smooth-running sector.

7. 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?

We do not believe that it is either necessary or appropriate for Ofgem to have a role in the Board appointment process of non-executive directors. However, if a role for Ofgem is deemed necessary, we believe that the Authority retaining a right of review (Option 1) would be the most proportionate solution.

We believe that it is important for the DCC to maintain operational independence from Ofgem. Where Ofgem oversight is required, we believe that this should seek to be light-touch, and targeted so that Ofgem staff are not over-burdened, and Ofgem resources are focused on areas where there is a clear customer interest.

Given the other licence obligations proposed as part of this consultation, it is not clear that an Ofgem role in the appointment of non-executive Board directors is necessary or appropriate. As we explain in our response to question 9 below, we agree that, given the importance of the role of Chair, Ofgem should be consulted on the appointment of the inaugural Chair. We also note Ofgem's proposals to allow the Board greater discretion in applying the licence requirements for 'Sufficiently Independent Directors', subject to seeking, and having regard to, the Authority's view in the event that one of the independence requirements is not met by the proposed appointment. We believe that in these instances, a role for Ofgem is appropriate. These measures will allow Ofgem to focus on the strategically important appointment of the inaugural Chair and assess the relative merits of derogations from the pre-determined independence requirements on a case-by-case basis. However, where the proposed appointments of standard non-executive directors are compliant with the conflict of interest provisions of the DCC licence, it is not clear that further Ofgem oversight would be appropriate or proportionate, particularly given the additional proposals for obligations in relation to the skills and expertise of the Board, the independence of its Chair, and the need for a dedicated independent Board member with consumer advocacy experience.

However, if an Ofgem role is deemed to be necessary, Option 1, where the licensee would be required to notify the Authority of its intended appointment by a minimum set period preceding the appointment date, would be the most proportionate solution.

8. 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?

We agree that stakeholder involvement within the Nomination Committee would be the most appropriate way of involving stakeholders.

We agree that stakeholders involvement within the Nomination Committee would enable stakeholders to directly input into the appointment process while protecting the autonomy of the Board and its members.

Indeed, our Board is nominated by our stakeholders, with two members nominated by the Gas Distribution Networks, one member nominated by National Gas Transmission; one member by the Independent Gas Transporters (IGTs), and four members nominated by the Gas Shippers. While Board members have been nominated by particular stakeholders or stakeholder groups, once nominated, those Board members act in a manner that is independent of those groups – they do not sit as representatives of those stakeholders. We note that the Companies Act already provides protection by placing duties of independence on all company directors. Our Board members are, at all times, cognisant of their statutory obligations as Board members and act in the collective interests of the wider industry and we have found the industry knowledge that our Board members bring to the Board table to be invaluable.

9. 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?

Given the importance of the role of Chair, we agree that Ofgem should be consulted on the appointment of the inaugural Chair.

We have already noted above the importance of the role of Chair of the Board. It is important that the Chair of the Board should be fully independent and beyond reproach, in order to build industry trust and confidence in the Board. We agree that this is particularly important for the Chair of the Board, given their pivotal role in the appointment of other Board members, in guiding Board discussions and in casting a deciding vote. We think that an approval role for Ofgem in the appointment of the inaugural Chair would be a proportionate approach which would provide assurance to the wider industry and its stakeholders. It is not clear that Ofgem should play a proactive role beyond the inaugural appointment of the first Chair, as subsequent Chair appointments should be less controversial once the Board is established and has built industry trust. We note that, under current proposals, all Chair appointments would need to be fully compliant with the independence requirements within the DCC licence with no scope for derogations or exceptions, and stakeholders would have a role in the nominations committee. In our view, these provisions should provide sufficient assurance and confidence in the process.

Incentivisation of DCC Board and executive

10. What are your views on changes to the term of appointment of nonexecutive 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?

We agree with the proposed changes to the terms of appointment of non-executive directors. However, there should be greater recognition of the value to the organisation of retaining pre-existing, and well-performing, Board members, and in such cases reappointment should be encouraged.

The proposals for the term of appointment for all non-executive directors are reasonable. However, in order to maintain institutional knowledge and corporate memory, some staggering of reappointments would be desirable. It would not be optimal for the entire body of non-executive directors to be replaced en masse every three years. As such, it should be

recognised that it is not only permissible, but desirable, for non-executive directors that have acquired the necessary institutional knowledge and that are performing well, to be reappointed should they wish to continue in their role.

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

We agree that reputational incentives alongside strong stakeholder scrutiny can provide powerful incentives in a not-for-profit model. We agree with Ofgem's proposals for reputational incentives for OPR system performance and customer engagement, as well as the ongoing independent scrutiny of contract management performance. We also agree that incentives for high-quality business planning and cost management will be important under an ex-ante framework. However, the detail of such incentives should be considered alongside specification of that ex-ante framework.

We agree that for not-for-profit organisations, a combination of KPIs and customer surveys can help to track, and incentivise improvements in, performance. We have first-hand experience of our performance being monitored by stakeholders and the tracking of regularly published KPIs, and can confirm that stakeholder scrutiny can be robust and insightful and a clear motivator for performance improvement.

We also periodically survey stakeholders to garner both quantitative and qualitative feedback, which we then use to improve service delivery. We report the outputs of surveys (including independent surveys such as the Institute of Customer Service) on our website and in dedicated stakeholder forums. We have found this approach to be effective and proportionate, and it has helped to build trust with our stakeholders and allowed us to focus on what truly matters to them.

As a result, we agree with Ofgem's proposals to publish DCC Operational Performance Regime (OPR) system performance against targets to facilitate such scrutiny. We also agree that introducing a customer satisfaction survey to facilitate the monitoring of OPR customer engagement and satisfaction is worthy of further exploration. Furthermore, continuation of an annual assessment by an independent auditor of DCC's contract management performance makes sense to identify any areas for improvement, and a requirement on DCC to reflect and respond to those findings is appropriate.

We agree with the importance of high-quality business plans and the ongoing management of costs, particularly given the shift towards the up-front approval of costs within a not-for-profit model. However, we do not feel able to comment on the details and relative merits of such incentives without further details of the ex-ante price control framework that will be put in place.

12. 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.

We agree that the remuneration committee should be fully independent. We also agree that there could be a potential role for the financial incentivisation of key staff subject to benchmarking executive remuneration against comparable not-for-profit central bodies. However, this should be carefully considered to avoid unintended consequences and to ensure compatibility with the price control framework ultimately put in place.

We agree that there could be a potential role for the financial incentivisation of key personnel. However, any such scheme should be subject to the benchmarking of executive remuneration against comparable not-for-profit central bodies. It would also need to be consistent with the overall ex-ante price control and funding framework put in place and carefully designed to avoid creating a 'box-ticking' culture that loses sight of what really matters for industry stakeholders and customers. As such, Ofgem should avoid being too prescriptive in this regard.

Irrespective of the scope and scale of financial incentivisation, we agree that the remuneration committee should be fully independent i.e. comprise only Sufficiently Independent Directors.

13. 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?

It should not be necessary for stakeholders to have the power to periodically issue a (non-binding) motion of “no confidence” if there is proper governance and oversight in place. However, if such a mechanism is deemed necessary, of the voting options explored in the consultation, we believe that Option 1 (“one party, one vote”) would be the most stable and simple to administer, provided it is subject to a minimum threshold.

It is important that stakeholders have a voice and a mechanism through which they can highlight concerns. In the absence of direct stakeholder representation on the Board, the DCC should facilitate an open and ongoing dialogue with stakeholders such they are able to scrutinise DCC activity and costs, and raise queries as appropriate. Given the measures proposed as part of this consultation to ensure the independence of the Board with a customer advocate in place and stakeholder involvement in the nominations committee, it is not clear that a mechanism for a non-binding motion of “no confidence” is necessary or proportionate. If stakeholders feel the need to raise a “no confidence” motion, this would signal a failure of this process and the other measures implemented.

However, if such a mechanism is deemed necessary, given the Ofgem, industry and DCC resources needed to raise, and respond to, such a “no confidence” motion, and the proposed not-for-profit status of the DCC, we believe that prohibiting more than one such motion in any 12-month period would be essential.

Furthermore, we agree that, of the four options for the allocation of votes considered, implementing either Option 2 (proportional to charges paid) or Option 3 (proportional to network usage) would involve disproportionate complexity and should be avoided. Of the remaining options: Option 1 (one party, one vote) and Option 4 (voting by stakeholder groups as per SEC), we believe that Option 1 (subject to a de minimis threshold) would be the simplest and most transparent, and would avoid any issues and uncertainties caused by the programme of code reform.

Due consideration should also be given to the detail of such a mechanism. For example, the quorum and threshold percentage of votes necessary for a vote to carry should be calibrated to avoid unintended consequences and ensure that any vote is meaningful.

Interim changes to governance

14. 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?

We have focused our response on longer-term issues, so we have no comment on interim changes.

15. 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?

We have focused our response on longer-term issues, so we have no comment on interim changes.

Centralised Registration Service (CRS)

16. Do you agree with our proposal that it would be appropriate to remove provision of the Centralised Registration Service (CRS) from the DCC Licence and transfer the obligation to the Retail Energy Code (REC) to be delivered by RECCo?

Yes, we agree with the proposal to transfer CRS responsibilities from the DCC licence to the REC, for delivery by RECCo.

We agree that it is now appropriate to review where CRS responsibilities should sit as circumstances have changed, and much of the rationale for their initial assignment to the DCC is no longer applicable. Indeed, we agree that your preferred option – transferring the full scope of CRS responsibility to the REC for delivery by RECCo – is the right way forward. We believe that this would be net beneficial for industry stakeholders and customers by aligning the delivery of the CRS with its governance. Specifically, we believe that the transfer of CRS would:

- **Allow the DCC to focus on its core functions** and smart metering obligations, given that the delivery of switching services is materially different to the other services delivered by DCC.
- **Streamline governance and decision-making** by minimising duplication and hand-offs.
- **Facilitate faster, and more efficient, delivery of operational improvements to Switching** by creating a direct relationship with service providers. In addition, REC Technical Services could act as Design Authority to streamline the process, removing additional steps from the current process and reducing layers of complexity due to RECCo not having to work through a third party.
- **Increase accountability and responsiveness** by creating a direct relationship between the recipients of the CRS and the associated governance arrangements, giving industry a greater voice in the process and allowing RECCo to directly hold service providers to account for their performance via both the REC Performance Assurance Board (PAB) and its contract management process.

17. What are your views on the considerations we have identified under option 1?

While there are a number of factors that would need to be considered if the decision is taken to transfer CRS responsibilities to RECCo, we cannot see any obstacles that would be insurmountable. However, Ofgem should recognise the constrained bandwidth of industry parties to manage too much change at any given time and time the reform of affected codes accordingly.

We do not wish to comment in detail on issues associated with transitioning the CRS from DCC to RECCo. Whilst any transition is likely to have areas of complexity and need careful management, we cannot see any obstacles that would be insurmountable or any costs associated with either the transfer or the new model that would challenge the viability or

relative merits of the transfer itself. However, it is important that any transfer should seek to minimise both the loss of corporate memory and knowledge, and the impact of the transition on users.

We note that the timing of the expiry of DCC contracts means that the timing of contract novation associated with the transfer of CRS responsibilities does matter. We also note that reform of the REC is planned as part of Phase 1 of code reform, with reform of the SEC planned as part of Phase 3. Ofgem should seek to ensure that the industry, and relevant code parties, are not over-burdened by too many significant policy projects and associated code changes at any given time. As such, Ofgem should seek to ensure that there is not a significant overlap between reform of the REC or the SEC and the associated appointment of the relevant code managers, and transfer of CRS responsibilities.

If there are any areas of our response that you would like to discuss with us in more detail, please contact me at clive.nicholas1@xoserve.com.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Clive Nicholas', written in a cursive style.

Clive Nicholas
Director of Strategy and Development