

SLR Industry Codes Workgroup

Meeting 1, 21st October 2005

Minutes - FINAL

Attendees:

Ian Anthony (Chair)	Ofgem	IA
Roger Barnard	EDF	RB
Alison Beard	Centrica	AB
Emma Carr	NGT	EC
David Edward	Ofgem	DE
Paul Finch	nPower	PF
Alex Mackinnon	Scottish Power	AM
Samantha McEwen	Ofgem	SM
Jeremy Morgan	Gemserv	JM
Nigel Nash	Ofgem	NN
Laone Roscorla	Elexon	LR
Nicholas Rubin (Secretary)	Ofgem	NR
Abid Sheikh	energywatch	AS
John Sykes	SSE	JS
Alex Travell	E.ON	AT
Mark Watson	ERA	MW

Purpose and Background

1. IA welcomed the Supply Licence Review Industry Codes Workgroup (the Group) to its inaugural meeting. The members of the Group were introduced.

IA explained that it was intended that the Group should by the end of the meeting have (i) agreed the Group's terms of reference, (ii) had an initial discussion of the issues facing the Group as highlighted in Ofgem's discussion document and (iii) developed an initial way forward for the Group to follow.

2. NN gave a short introduction to the Supply Licence Review (SLR). This included an explanation for carrying out the review and a top-down view of the way forward. NN explained that the SLR was essentially split into two parts. It is intended that Part 1 will run between September 2005 and June 2006 and will involve the Steering Group and the different Working Groups meeting to determine the policy issues for the new supply licence. By April/May 2006 the Working Groups will deliver a report outlining their policy recommendations to the Steering Group. In turn the Steering Group will then report their recommendations to Ofgem by June 2006. Ofgem will consult on the policy proposals.

Part 2 of the review will be preparing the legal draft of the revised Supply Licences given the policy recommendations developed in Part 1.

3. RB pointed out that the Working Groups could conclude earlier than the April 2006 deadline.

4. IA and NN reported that the Steering Group were concerned that the Group would fall victim to 'Project Creep' and therefore felt that the Group's terms of reference should be particularly clear.

5. PF reminded the Group that the Performance Assurance Framework (PAF) is currently being reviewed and that the Group's terms of reference should note the PAF review. NN agreed that the PAF review should be noted and that it may give clear pointers for the role of the licence in compliance arrangements with regard to the BSC.

6. AB questioned whether standard licence conditions (SLCs) not included in Appendix 1 of the Group's terms of reference could be considered by the Group for redrafting. She suggested Gas SLC 22B as an example. NN clarified that Gas SLC 22B would be dealt with under the Supplier of Last Resort arrangements in the Working group dealing with Part B of the licence. RB suggested the Group should give consideration to SLCs out of scope because although they may not explicitly refer to an industry code they may have an implied effect. NN used a Supplier's relationship to a Network Code (NC) via SLC 32 as an example. Given such an interrelationship between SLCs, it was noted that the absence of some SLCs from the Group's terms of reference should not prevent the Group from considering the effects that any policy recommendations developed by itself could have on another Working Group's recommendations, and vice versa.

ACTION – Ofgem to circulate a copy of a letter written in 2003 that explains a Supplier's obligation under SLC 32 and securing a relevant Shipper for Network Codes.

7. AS pointed out that SLC 5 in Appendix 1 referred to the 'Grid Codes' rather than the 'Grid Code' and therefore asked whether the reference to this SLC in the terms of reference should not reflect the post-BETTA position of a singular GB 'Grid Code'.

POST-COMMITTEE – To clarify, SLC 5 does in fact refer to a singular 'Grid Code'.

8. RB also pointed out that the evolution of the Distribution Use of System Agreement (DUoSA) into a common network access agreement (the Distribution Connection and Use of System Agreement (DCUSA), which is potentially due to go live in July 2006) should be considered by the Group. The Group agreed.

9. The terms of reference were approved by the Group although it was noted that they may be amended in the future to accommodate any valid and necessary changes to the Group's scope of work.

General Discussion

Compliance Arrangements

10. RB pointed out that the Group should recognise the difference between those Codes that are contractual and those that are not (eg. the Grid Code and Distribution Code).

11. There was a discussion of what was meant by 'adequate sanctions' found in Principle 3 (Appendix 2 of the Discussion Document). RB suggested that the Group should take a view on the different compliance arrangements of Codes because there are many varying perspectives held by parties of the compliance arrangements in codes

and agreements and how they are applied to a breach of an obligation. It was agreed that although the Group could not take on a detailed examination of the operation of the various compliance arrangements, an overall view of their effectiveness would be needed.

12. AS asked how far Industry Codes could self-regulate themselves. The discussion recognised that there are limits to self-regulation (JS referred to a glass ceiling) due to legal constraints or the way the codes had been established. RB reminded the Group that Ofgem will always have an interest in the compliance arrangements of the different codes, given the role the Codes and Agreements play in helping Ofgem meet their statutory duties.

13. AS also reminded the Group that the development of greater self-regulation was not necessarily in the interests of customers as this could result in a diminishing opportunity to influence a Code's operation, development or compliance arrangements given that customers themselves were not direct parties to the various codes.

14. There was discussion and some support for developing compliance arrangements so that breaches would be dealt with proportionately and escalation to Ofgem would occur only where, for example, a party was persistently in breach of a Code's obligations.

Implicit versus Explicit SLCs

15. NN asked the Group to consider the differences between Electricity and Gas SLCs. That is, to consider the virtues of explicit SLCs (in Electricity) and implicit SLCs (in Gas). In particular, NN referred to the wording of SLC 3 in the Shipper Licence. RB suggested the differences might be rooted in each market's own history and evolution since privatisation.

16. There was a discussion about whether a licensee should be explicitly required to sign up to a Code or whether it should be obliged to not 'prejudice' the functioning of a Code. The Group was not wholly convinced that SLCs that implied a need to be a party to a code would work effectively nor provide adequate assurance to other market participants. Interoperability defined by the Codes and Agreements in operational baselines represented a significant investment by parties in the systems and processes to support the workings of the market. The supporting governance arrangements would need to be robust enough to preserve interoperability and that implies that all relevant market participants should adhere to the common baseline. JS noted that the Codes and Agreements did not only create obligations on parties to perform in a particular way or to a particular standard, but also conferred rights of parties as to how each should expect the other to perform.

17. Some members of the Group were of the view that the Licences should ultimately provide an inclusive and fair environment for participating in the market.

18. With regard to the wording of the Shippers SLC 3, JS was unsure how "prejudice" should be defined and also suggested that to determine whether a licensee was prejudicing the operation of a code one may in fact require a greater burden of proof than for an explicit SLC.

19. NN asked whether there were any other arguments for reducing regulatory involvement. Centrica and nPower responded in support of less regulation. nPower in

particular is keen to explore enduring compliance through self-regulation (rather than through an enforcement role for Ofgem) and the extent to which compliance arrangements within the Codes could/should be strengthened e.g. a more penal regime. EDF and Scottish Power (not SSE?), on the other hand, believe that Ofgem should ultimately provide definitive direction for compliance arrangements.

The way forward

20. In order to develop the Group's policy recommendations Group members have requested that the arrangements adopted by alternative industries are researched (eg. OFT, Banking, Rail), that a matrix is developed outlining the current compliance arrangements of all relevant Industry Codes and that a straw man report is drafted outlining the Group's initial thoughts for potential policy recommendations.

ACTION – Ofgem to research the relationships between licences and codes and supporting compliance arrangements found in alternative industries.

ACTION – Ofgem to collate existing compliance arrangements for all Codes that suppliers are currently obliged to comply with.

ACTION – AT to forward a copy of his matrix of compliance arrangements.
COMPLETED

ACTION – Ofgem to prepare a draft straw man report which will outline the Group's initial thoughts on potential policy recommendations.

21. NN reminded the Group that eventually an opinion will be needed for all Codes with regard to whether a licence should oblige suppliers to establish and maintain, sign and comply, just sign or just comply.

22. AM wanted to clarify that the Group should not propose changes to the Codes. NN agreed that the Group would not be making changes to Codes, however JS pointed out that the Group should not rule out recommending changes to Codes.

23. The next meeting will be held at Ofgem's offices on 17 November 2005. This date may change depending on progress made with regard to the actions above. Therefore, Ofgem will confirm the date and time of the next meeting by 3 November 2005.