

22 January 2008

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By email: [industrycodes@ofgem.gov.uk](mailto:industrycodes@ofgem.gov.uk)

Dear Mark,

I am writing, on behalf of the BSC Panel, in response to your open letter of 28 November 2008 on the review of industry code governance. The BSC Panel welcomes the opportunity to contribute to this review. We agree that it is timely and feel that it presents an excellent opportunity to enhance the existing arrangements, building on learning from past experience of code operation and sharing best practice wherever possible.

Having discussed the matter collectively, we feel that the scope of the proposed review described in your letter is appropriate. There are a number of particularly important issues that we expect to fall within that scope and around which we would encourage a full and informed discussion. We highlight these below.

#### *Code objectives*

We would very much welcome a debate around whether greater alignment of the Authority and Panel's criteria would enhance the quality and effectiveness of the overall change process.

With Ofgem's wider statutory duties now extending beyond the BSC Objectives as currently drafted there is inevitably scope for the Authority's decisions being different to the Panel's recommendations more frequently than would otherwise be the case (and thereby potentially resulting in more appeals).

When we set the terms of reference for assessment of change proposals, we are keen to ensure that the information to be collected, analysed and assessed includes all the information that the Authority will require in order to make its decision. Ideally there should be no systematic need for Ofgem to seek different or additional information (e.g. via Regulatory Impact Assessment). We would encourage consideration of whether this would be aided if the relevant code and statutory objectives were fully aligned.

It may also be helpful to consider whether any such alignment might impact on the composition of the Panel (or Modification Groups). While we already benefit from consumer expertise on the Panel, might it also be necessary to extend this in light of any sustainability or other objectives?

We would also welcome any additional clarity that might fall out of the review as to the existing objectives, particularly those around competition and efficiency, and ensuring the optimal use of the Panel's ability to raise modification proposals on these grounds.

### *Quality parameters*

As a body charged with making recommendations to the Authority on the merits of change proposals, we wholly share your desire to ensure that the information and analysis on which our decisions are based is of an appropriate quality and relevance.

We feel that there is an opportunity for the review to elucidate the precise requirements, expectations and best practice around this. It will then be our responsibility as custodians of the BSC modification procedures to direct our processes and resources to deliver output that always meets those standards. We must strive to do so in a way that strikes the right balance between cost, efficacy and necessary checks and controls (including a broad range of stakeholder participation), in the specific context of the code that we oversee. While we are keen to adopt best practice and value consistency, we do note that the scope and function of the BSC may necessitate a greater or lesser degree of procedure and information than some of the other codes within the scope of your review given the scale of the contractual obligations it creates between parties.

### *Approach to large or complex development issues*

We believe that the current approach to industry change would be significantly enhanced if there were a process better suited to considering some of the more complex, large scale and challenging development issues (we are thinking of areas such as pricing, smart metering and profiling, by way of example). The rigidities of the code modification procedures and the limits on alternatives might not always be best suited to this task.

The standing Issues procedure within the BSC was intended to move some way towards addressing this defect, but of necessity, while useful, can only be of limited assistance in this regard. We therefore feel that there would be value in the review considering whether some broader form of developmental workstreams could be introduced, which could facilitate a more directive (as opposed to reactive) approach to delivering industry change. In this context the review mechanism already adopted for gas under the UNC provides an obvious point of difference.

### *Modification Procedure refinements*

Some variations exist within the detailed modification procedures of different codes. There is an opportunity through the review to identify those best practices that may have evolved since the BSC was implemented and to promulgate these. We believe there may be a number of areas that are worthy of discussion. For example, should there be a controlled process to allow the withdrawal of modifications? Could a simplified process be introduced for non-contentious changes, such as 'housekeeping' type modifications? Should Panel Committees other than PAB and TDC have rights to propose change? Should Elexon or the Panel have additional rights to bring forward non-controversial changes?

*Fragmented governance*

We would welcome consideration of whether there may be scope to improve arrangements for progressing matters that require cross-code coordination.

*Panel appointment and composition*

In light of operational experience and the evolution of alternative models, we would welcome the opportunity to test whether the industry still believes that key features of the BSC Panel model remain valid. This could valuably include consideration of such aspects as the Panel composition which the panel generally feels is balanced, including consumer representation in the light of the disappearance of energywatch this year, the requirements on the members to act with independence, the election and appointment process, and the situation where some members hold paid appointments but others do not despite the requirement to act independently. Again, we are keen that any best practice is identified and shared to the benefit of the industry.

I would be more than happy to discuss the matters set out in this letter if you would find that helpful. The Panel looks forward to engaging further with you on these as the review progresses. I also very much look forward to presenting at your Powering the Energy Debate event in February.

Yours sincerely

A handwritten signature in black ink that reads "Nick Durlacher". The script is fluid and cursive, with the first name "Nick" and last name "Durlacher" clearly distinguishable.

Nick Durlacher  
BSC Panel Chairman