

Reference:



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Mark Feather  
Director, Industry Codes and Licensing  
The Office of Gas and Electricity Markets  
9 Millbank  
London SW1P 3GE

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

Dear Mark,

## **ELEXON RESPONSE TO OFGEM'S REVIEW OF INDUSTRY CODE GOVERNANCE**

We welcome the opportunity to comment on Ofgem's proposed review of industry code governance and to provide our views on its scope. Several codes have been in place for a number of years and a review provides an opportunity to build on the industry's collective learning from past experience of code operation, to reflect recent industry changes, to adopt best practice and to ensure that the code structures are sufficiently flexible to accommodate future developments whilst delivering best value.

In this response we set out our views on the key issues that should be included within the scope of your review. We would welcome the opportunity to discuss these issues in more detail if that would be helpful and to participate in the review as it progresses.

As a code administrator there are two broad themes that are of particular relevance and interest. The first of these is ensuring the effectiveness of the industry change process. The second is ensuring that the bodies responsible for administering Codes (including ELEXON and the BSC Panel) are structured and operate in a way that delivers best value to the industry.

### **Industry Change Process**

There are four key areas we feel could be usefully explored to see where and how the change process could be enhanced.

#### *1. The alignment of Ofgem and code objectives*

As you note, the wider statutory framework has changed and Ofgem's statutory duties now extend well beyond the objectives contained in the BSC and the other codes. In certain circumstances this may lead to modification proposals being assessed against a differing set of criteria (or differing weights being given to the criteria) and to the Authority's decisions being different to the Panel's recommendations. This ultimately may lead to more frequent appeals against the Authority's decisions, with all the uncertainties and delay this could entail.

Importantly also it could mean that information, analysis and consultations are based on and assessed against a narrower set of criteria. For instance, using the BSC as an example, the Modification Groups and Panel, focusing on the BSC criteria, may not gather, consider or test some data that Ofgem would find helpful to inform its decisions. Instead this data and

analysis has to be subsequently sourced by Ofgem (e.g. as part a Regulatory Impact Assessment). It therefore does not have the benefit of consideration and analysis by Modification Groups and the Panel as part of modification process, which might be of assistance to or inform the Ofgem decision making process.

We are also aware that parties have said that they face a considerable consultation burden. Collecting the data once could simplify the data collection process, reduce the timeframes involved (even where a Regulatory Impact Assessment is still necessary) and reduce the consultative burden on participants. It would also be useful to explore whether a greater alignment of objectives or criteria would assist in improving the depth of analysis and quality of response at the modifications stage rather than, as potentially might occur, being left to the Regulatory Impact Assessment stage.

We would welcome the opportunity to discuss how code objectives might change and what effect that might have on the change process as well, including whether it might require a change to the composition of the Panel or Modification Groups (e.g. in order to capture expertise in sustainability or any other supplemented objectives). There may also be impacts on other aspects of working practice around modifications, for example to ensure fuller consultation and a wider requirement to or acceptance of the need to procure appropriate expert analysis and support around these other issues.

If changes were made to the objectives it would be useful to explore whether guidance on how these might be applied would be helpful. There might also be some benefit in a wider discussion around the current competition objective (in which respect your draft guidance on regulatory impact assessments is helpful) and on the efficiency objective which, in the BSC at least, has a specific meaning which could be seen as inhibiting the more effective progress of otherwise desirable and sensible change.

## *2. Overall industry design authority and forward outlook*

It would be helpful to explore whether the current industry change process, facilitated through the various codes, is actually the most appropriate and efficient mechanism for considering the long term future needs of the industry and delivering substantial cross industry change, particularly given the current environmental and other pressures as well as changes which may be required to facilitate any widespread roll out of smart metering.

There is currently no effective cross industry forum to discuss what the long term broad ranging future requirements might be, in order to help the industry take important decisions beyond the 'uncertainty horizon'. The current change regime is centred around small, incremental changes and is reasonably effective in doing so. However, the absence of any obvious fora or mechanism for considering the longer term direction of the arrangements could be seen as resulting in the risk that industry (including code administrators) undertake planning, change and work that is of limited long term benefit. It also means that solutions can be short-term palliatives (as solutions are judged only against the current code baselines) and may also contribute to an environment where issues trigger competing Modification Proposals following different progression timescales (which can cause procedural difficulty and may lead to a sub optimal solution).

ELEXON has tried to encourage the use of the standing Issues procedure within the BSC to provide a forum where industry can consider wider issues, but of necessity this can only be somewhat limited or more piecemeal or ad hoc in nature.

Whilst the various code arrangements and the code administrator roles are not always directly comparable, the overall aim of each is to minimise the cost to the industry of those systems and processes which underpin the arrangements over their lifetime, while not exposing the arrangements to unacceptable risk. The total cost of ownership can be substantial and includes the cost of operating, maintaining and developing the systems and services across their lifetime and within a particular industry model. There are two key elements in determining these costs: the business requirements and the architecture of the supporting systems. In order to both drive down costs and improve services a view needs to be established on the industry's longer term aspirations for these two elements.

We would therefore welcome a debate on whether there is some means to facilitate the assessment of change against both current and future scenarios (e.g. giving some consideration to the changing production and consumption patterns, developing technologies, etc.). As part of this debate, it would be useful to consider whether there is a pressing need for an industry design authority which has a vision of how the business requirements and supporting systems will evolve.

Some form of industry design authority may also assist in the more efficient implementation of change, as progressing changes which require amendments to more than one code/agreement can lead to duplication and inefficiencies in time and cost.

### *3. Industry engagement on change*

We recognise that the volume of change across codes means that it is difficult for many interested parties to resource this process and to provide the necessary information to inform both the relevant industry Panels' and the Authority's view on change. We would welcome consideration of whether there are any changes which could help address this concern, including whether parties might find it helpful to procure independent expert analysis to inform the modification process.

It is also clearly important, to facilitate the consultation process, that the relevant documentation is clear, concise, comprehensive and engaging and that it gives transparency to industry. As a company ELEXON is actively seeking to improve both the documentation and to foster best practice discussions across code administrators.

However, we also recognise that from a commercial perspective the present transparent and open processes may inhibit parties from providing information on costs and benefits and would welcome a cross industry debate on how this issue can be addressed. We further recognise that a quantitative cost benefit analysis may not be appropriate in every case and would welcome consideration of whether there could be any change to the objectives, rules or working practices that might address this aspect.

We would also welcome consideration of whether the modification process could be better informed through introducing scheduled reviews of specific areas of the cross industry arrangements. If these reviews were signposted in advance, this could assist the industry to

'gear up' to feed into the assessment of potential developments in that area and could therefore increase the level of engagement and facilitate the provision of supporting evidence.

#### *4. Refinements to the existing Modification Procedures*

We would welcome the inclusion in the scope of the review a consideration of whether there is an opportunity to refine the existing modification procedures in light of a number of years of operational experience. We also see the review as an opportunity to assimilate best practices from across all codes and thereby improve the BSC arrangements.

We believe there may be a number of areas from across the full cycle of the modification process that are worthy of discussion. Some examples include:

- Is the level of information that is required in order to launch a Modification Proposal right?
- Should there be an ability for all BSC Committees to raise proposals?
- 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' modifications similar to the consent to modify arrangements in other codes?
- Might there be benefit in conducting more post implementation reviews of implemented changes?

We are happy to share detailed information on these and other related issues as the review progresses.

#### **Governance Model and Incentives**

We note the different governance models across gas and electricity and believe it would be helpful to consider whether there is a best practice governance model that would increase the ability to control costs and deliver improved services and greater value to the industry. Consideration of the fragmentation of the code or governance models could usefully form part of this.

We also note that some code administrators have a more restricted role than others and it would be useful to examine whether this is an advantage or whether it might prevent leverage of one service against another and the ability to offset the additional income to the benefit of the industry and/or to provide certain services in-house if that would be more efficient or cost effective.

We are aware of certain inefficiencies caused by fragmented governance, for example from the perspective of a new entrant to the market. While we have already taken steps to coordinate as far as possible with other administrators around such cross-code processes, a cross industry review of whether there is scope to further improve the current arrangements could be useful.

We would also be happy to contribute to any discussion around efficiency incentives and KPIs for code administrators, and would be happy to share any relevant best practice as this is an area on which we are already focusing as a company.

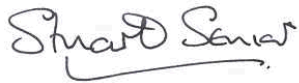
**Next Steps**

We would be happy to discuss the points we have made above with you in more detail and, if it would be helpful, to provide you with a list of the various secondary issues we have identified during our administration of the BSC change process over the past 7 years.

We look forward to receiving further details of how the review will be progressed and remain committed to participating throughout the process.

Please note the BSC Panel Chairman is submitting a separate response on the Panel's behalf.

Yours sincerely

A handwritten signature in dark ink, reading "Stuart Senior". The signature is written in a cursive style with a horizontal line underneath the name.

Stuart Senior  
Chief Executive