

Industry Codes and Licensing
Ofgem,
9 Millbank
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22nd May 2009

Review of Industry Code Governance – Code Administrators’ Working Group

Dear Mark,

Thank you for the invitation to respond on the issues in your letter and the recommendations of the Code Administrators’ Working Group (“CAWG”). This response is on behalf of the following RWE companies; RWE npower plc, RWE Supply and Trading GmbH and RWE Innogy.

The response is split into two with a general conclusion followed by a more detailed response to the questions posed in your letter and comments on the recommendations.

The industry has over the last five years, where it has deemed appropriate, explored and implemented changes to the industry change processes to extract additional value. This has included a review of BSCP 40 Change Management, Pre-assessment Procedure in the MRA, a standing issues group in DCUSA, the creation of DCUSA and a revision of the original SPAA change process. These have been led by industry participants and we take some pride in undertaking a significant role. The drivers for these have always been a desire to ensure that all modifications or change proposals are fully analysed and that all parties understand the consequences.

We also note that some codes are retail focused, others wholesale and a further group which is technical/ engineering in nature. At this stage we do not believe a 1-size fits all approach is appropriate given the diversity of coverage by these codes.

Whilst some of the CAWG recommendations will probably create benefits, the costs associated with the changes have not been fully explored and in many cases would result in little or no net added value to the process. While we are not convinced of the value of a Code of Practice we note that you plan to take this ahead on the basis of the response to the consultation on the role of code administrators and small participant/ consumer initiatives.

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We would argue that the Code of Practice should be a set of principles that each code administrator with the relevant industry parties would examine and introduce, if appropriate. This would therefore need to be non-binding but represents best practice. The definition of appropriateness needs to be associated with the ability of the change to bring realisable benefits in the near future.

Another consideration is that with the Government's announcement on Smart Metering and the introduction of Advanced Metering there are almost certain to be some repercussions on Code Governance. We are aware that discussions have taken place on this issue. It would not make sense to make changes to existing codes if within a year or two new codes are to be introduced or that significant changes take place with the current set of codes. The payback period of some of the recommendations would be very short. In addition the Government's policy continues to evolve around the Low Carbon agenda which may have further impacts on the codes and the way they are governed.

All the above will take scarce resources away from this area and there is a danger that any changes would not be as thorough as we would deem necessary.

We would be happy to clarify any points we have made and look forward to participating in future work in this area.

Yours sincerely

Alan McAdam
Wholesale Economic Regulation Manager

Responses to the questions

The usage of the term “Panel” below covers the code governance body responsible for the process and voting/ recommendations to Ofgem. For example the BSC Panel or the MRA Development Board (MDB).

Questions for respondents

1. *What status the Code of Practice should have;*

We do not agree that a Code of Practice is necessary but in the event that the Authority decides to create one our preference would be for a voluntary agreement that details the principles of best practice. The various codes and agreements should try to move towards these over time but only where the parties to each code can demonstrate a positive net benefit from doing so. Reform is possibly more important for some codes than others. It should also be remembered that the advent of Advanced and Smart Metering suggests that resources are required to ensure that these are implemented smoothly while still maintaining and developing the existing codes.

2. *Whether the CAWG should be reconvened under revised Terms of Reference to deliver the proposed Code of Practice;*

There should be a single work group delivering a single Code of Practice as described in our answer to question 1 above. It needs to have access to the appropriate knowledge and skill sets. From the experience of the CAWG it is clear that dedicated and independent administration is required to ensure that the deliverable and its target date is met.

3. *Each of the recommendations contained within the CAWG report; and*

While we believe the recommendations contained in the CAWG report form the basis of a set of principles associated with probable best practice there are a number of checks and balances which are not included, such as;

- the treatment of alternatives,
- the ability to terminate modifications/ change proposals,
- the use of Issues Groups prior to formal modifications, and
- the “Panel’s” ability to refuse or require further work on modifications or proposals that do not meet the Code’s “entrance” criteria.

We have commented below where we believe it is appropriate but note that other principles probably need to be considered

4. *Whether the CAWG (under revised Terms of Reference) remains an appropriate means of progressing those recommendations, or alternatively whether they should be devolved to each of the relevant codes to progress.*

We believe that the recommendations will form the basis of a Code of Practice and the best way to create a single document is for an industry workgroup to create it. After the CoP has been created then the “Panel” of each of the

codes should seek to assess itself against the principles and take action where significant benefits are to be realised.

<u>Recommendation</u>	Inclusivity	Transparency	Independence	Rigour	Cost effective	Flexible	Proportionate	<u>Response</u>
The proposer should at all times be the owner of any modification they originate. The same applies to the proposer of any alternative.	Y	Y		Y				<p>We would agree with this principle but it only deals with a part of the issue. Linked to the ownership question is the need to be able to create alternatives and who owns them. Otherwise parties may feel disenfranchised by the control exerted by the main proposer on its own modification.</p> <p>The ability to withdraw either the modification or alternatives is a principle that works well in CUSC and DCUSA. It should be for consideration as a principle that other codes ought to look to adopt along with the ability for any other party to take up sponsorship of any dropped modifications within defined timescales.</p>
Legal text should always be consulted on – agreed in principle by the group but a number of them felt that it would depend on the exact time and processes involved and the panel should also have an opportunity to request legal text not be produced.		Y		Y	N	N		Agree with the principle. It is important that major changes include the legal text to ensure that it delivers the business case stated in the modification.
CA should procure legal advice to produce legal text for mods and should also have discretion to procure specific expert support.	Y		Y	Y				This needs to have an appropriate check and balance to ensure that money is spent wisely particularly as industry parties will fund the cost either directly or indirectly. One proposal is that the “Panel” will agree a budget for any modification and any changes to it will be requested from the Panel. The CA would

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								need to be responsible to either a Contract Manager or “Board” for any expenditure undertaken which is already used in some of the codes.
Code administrators should be separate legal entities wholly owned by parties to the code, with a corollary between funding and representation.	Y	Y	Y	Y	?	?	N	<p>We do not believe that this one size fits all approach is appropriate. The current models have evolved over time to meet the challenges of the day. To move from those would require a significant amount of work and therefore a significant amount of net benefit needs to be produced. In general the more technical codes have to have access to specialists which usually resides within industry parties. In the main the other codes have independent code administrators with contracts in place with industry parties to provide the required services.</p> <p>We also believe that the model suggested would be expensive without achieving the principles.</p>
Under the UNC urgent modifications should be put forward to the panel for them to recommend whether it should be considered an urgent mod or not.	Y	Y	Y	Y	N	N	?	<p>Support.</p> <p>This would seem to be a cost effective and flexible method of ensuring that urgent modifications are handled in the appropriate manner.</p>
Alternative proposals should be subject to greater panel and working group scrutiny and where possible the same procedural steps as the original proposal.	Y	Y		Y	N	N		<p>This principle does not go far enough though it may be an improvement on the current situation. The quality of analysis of an alternative proposal should be at least as good as that for the original proposal. This may limit when and where in the process that alternatives can be raised but the additional rigour would result in better informed decisions being made.</p> <p>The ability to create and control the number of alternatives is required to allow time for rigorous analysis to be undertaken and to stop attempts to block/ slowdown the mods process. This may</p>

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	Green	Green	Yellow	Green	Red	Red	Yellow	<p>require some thoughts around the criteria which is likely to be a delicate balancing act.</p> <p>We would challenge that these proposals would adversely impact costs since more detailed analysis is likely to drive bad ideas out earlier in the process or exclude them.</p>
Plain English should be used in all reports where possible and a plain English synopsis of the modification, its impact and the panels' assessment against the relevant objectives should be prepared.	Y	Y	Yellow	Yellow	?	Yellow	Y	Agree with the principle that a report in plain English is prepared but that technical arguments/ appendices should be excluded since this is likely to be costly without making matters any clearer to those who read the reports.
The requirement for the CA to act as a "critical friend" should be included in the CAs terms of reference or objectives, potentially as part of a Code of Practice.	Y	Y	Y	Y	Y	Y	Y	We do not agree with this approach partly because the expertise for many issues resides within industry parties. A better approach could be the one adopted by the BSC, Panel, the MDB (MRA) and DCUSA Panel of using an Issues Group to examine ideas to discover what the likely impacts are. We would suggest that as an alternative that the principle is that the "Panel" are able to ask for work to be undertaken by a standing Issues Group rather than a formal Modification Group. It needs to be acknowledged that often the knowledge and/or skills required may only exist within industry parties.
There should be a consent process under the BSC.	Yellow	Yellow	Yellow	N	Y	Y	Y	Agreed but subject to appropriate checks and balances.
More use of the pre-mod process should be made in the BSC before a modification proposal is formally raised – this was agreed by the group as long as using the pre-mod processes were optional.	Yellow	Yellow	Yellow	Y	Y	Y	Y	This concept should be applicable as a general principle rather than being confined to the BSC. It would be expected that the Panel would examine any mod proposal and "advise" the relevant party that the mod required further work. In a sense there would be a "hurdle" process that would require more than just administrative compliance for any proposed change to any code. This could include the use of Issue Groups as mentioned

<u>Recommendation</u>	Inclusivity	Transparency	Independence	Rigour	Cost effective	Flexible	Proportionate	<u>Response</u>
								above. Only urgent modifications should be excluded from this process.
A non-binding Code of Practice should be produced.				Y		Y	Y	Subject to our answer given in question 1 we agree that if a code with a set of principles is produced, it should be non-binding. Any governance change should any be undertaken where significant benefits can be realised.
There should be common modification procedures for all codes and these should be entrenched in the licence conditions and prevail over core-documents – agreed with the caveat that it would depend on what those procedures were.	Y	Y		Y	?	N		We would not support this recommendation. We do not agree with the one size fits all principle but would rather that best practice was used where appropriate. This seems to conflict with the previous recommendations. As stated below we have some concerns that the Smart Metering governance would mean that much of this work would be redundant in the future and question the value of undertaking it at this time.
The documents related to modification procedures should be standardised using common names for the same processes, etc.	Y	Y			Y			Again we believe that best practice should be adopted where appropriate. Gains could be achieved where “retail” orientated change happens, sometimes across codes but we have some concerns that the Smart Metering governance would mean that much of this work would be redundant in the future and question the value of undertaking it at this time.
Panels should take a more holistic approach to setting implementation dates, considering all relevant factors, not simply system release dates.		Y		Y				The principle sounds fine but in practice most industry parties have adapted their internal processes to follow the 3 releases a year which has evolved over the last 10 years. Other types of changes could follow a different pattern. However there have been changes that cross the codes boundaries which we believe need to be more tightly controlled and this needs some consideration.

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Ofgem should publish papers, decisions, notes, etc related to modification decisions like CAs have to. The Authority should be more transparent.		Y		Y			?	Transparency where there is a cost benefit should be encouraged.
The costs of participation should be addresses, possibly through reduced reliance on physical meetings.	Y				Y	Y	Y	The principle should be that participation via teleconference is always available however physical meetings are always held should any participant require it. This would ensure that complex ideas and issues are fully explored. It should be noted that this happening in many of the code meetings.