

Inveralmond House
200 Dunkeld Road
Perth
PH1 3AQ

Jon Dixon
Head of Industry Codes and Licensing
3rd Floor, Ofgem
9 Millbank
London
SW1P 3GE

Telephone: 01738 455189
Facsimile: 01738 456415
Email: Rhona.McLaren@
scottish-southern.co.uk

Our Reference:

Your Reference:

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Dear Jon,

Code Governance Review: The Role of Code Administrators and Small Participant/Consumer Initiatives – Initial Proposals

Thank you for the opportunity to comment on the above paper.

Overall we believe that the industry codes work well and as such, we welcome Ofgem's initial view not to propose major structural reforms but rather progress proportionate changes to the workings and structure of the code panels to deliver significant improvements to the existing processes.

However, we have an underlying concern regarding the proposed means of implementation of a number of Ofgem's specific proposals, including the 'critical friend' role, an obligation to assist small participants / consumer representatives, powers to 'call in' and 'send back' modification proposals and explicit provision of reasons for panels' recommendations. Ofgem suggest that such measures could be introduced formally via licence modifications or code objectives – this does not represent 'light touch' regulation and, in our view, would be a retrograde step in Ofgem's approach to regulating industry.

Rather, we believe that such measures (with the exception of powers to 'call in' and 'send back' proposals, which should be progressed via code modifications) should be introduced under the auspices of the proposed Code of Practice for Code Administrators or a "Signatories' Charter" (which we expand on below), with provision made for reviewing the effectiveness of such measures in, say, 12 months time.

We believe that a "Signatories' Charter" may be more appropriate than a Code of Practice on Code Administrators. It would set out what a signatory to any of the codes can expect from the code administrator(s), including many of Ofgem's specific proposals for improvement. The Charter would apply across all the codes and small parties would therefore have a single clear statement of their rights under any of the codes. We believe that this may be a more effective means of implementing best practice across the code administrators than a Code of Practice.

We have set out our answers to Ofgem's specific questions in the attached Appendix.

I hope that our comments are helpful. If you would like to discuss any of the above further, please do not hesitate to call.

Yours sincerely,

Rhona McLaren
Regulation Manager

Appendix: Specific Questions by Chapter

Chapter Three

Question 1: Which activities should be considered within scope of the ‘critical friend’ approach?

As we stated in our earlier response, we see merit in relation to the more commercial codes such as the BSC, CUSC and UNC adopting a “critical friend” approach to the role of code administrator as outlined by Ofgem. However, it is essential that the role of “critical friend” is independent and operated at arms length from the licensee and therefore we do not believe that the role of “critical friend” should be extended to the role of the CUSC code administrator until the present CUSC arrangements are reviewed.

In our view, while it is possible to define the scope of the code administrators’ primary activities, it is less appropriate to do so for the secondary activities which are to be undertaken on request. Indeed, attempting to define the secondary activities may act to constrain the scope of requests of small participants/consumer interests.

Question 2: What is the appropriate mechanism to introduce the ‘critical friend’ approach?

We do not believe that licence modifications or indeed formal code objectives setting out the detailed quality assurance measures for code administrators would be appropriate. In our view, such detailed intervention in the minutiae of the code administrators’ activities (via the licence or the formal code objectives) would be disproportionate and could negatively impact on other, equally important functions of code administrators by shifting the focus. Rather, in our view, the appropriate mechanism to introduce the ‘critical friend’ approach would be to do so via the Code of Practice for Code Administrators proposed by Ofgem or a “Signatories’ Charter”, which we have expanded on below.

We believe that a “Signatories’ Charter” may be more appropriate than a Code of Practice on Code Administrators. It would set out what a signatory to any of the codes can expect from the code administrator(s), including what the ‘critical friend’ role entails, etc. The Charter would apply across all the codes and small parties would therefore have a single clear statement of their rights under any of the codes. We believe that this may be a more effective means of implementing best practice across the code administrators than a Code of Practice.

Question 3: Should a specific obligation be placed upon code administrators to assist smaller participants and consumer representatives?

While we have no objection to a specific obligation being placed upon code administrators to assist small participants and consumer representatives, we would be opposed to a separate licence/code obligation to create this general obligation on code administrators. Such an approach would be bureaucratic and inflexible.

Rather, we firmly believe that this can (and should) be effectively captured through the proposed Code of Practice or Signatories’ Charter (which we have outlined in answer to Question 2 above). In our view, if the ‘critical friend’ approach and an obligation on code administrators to assist small participants/consumer representatives are to be introduced via specific licence / code changes, there is little value or purpose in developing a specific Code of Practice or Signatories’ Charter.

Question 4: For the purposes of identifying those who will be offered greater assistance by the code administrator, what is the appropriate threshold between small and large participants for each category of party?

If an obligation on code administrators to assist small participants / consumer representatives is introduced via the Code of Practice / Signatories' Charter as we propose under Question 3 above, this would allow code administrators to adopt Ofgem's proposed thresholds as guiding principles while also allowing them the discretion to provide additional assistance to parties where there is a clear case that such assistance would be beneficial to the overall consideration of a modification proposal.

Question 5: Is it appropriate to modify the Gas Transporters licence in order to provide voting member status to consumer representatives on the UNC?

While we agree with this in principle, it is clear that such voting rights come with a responsibility on consumer representatives to ensure that they are fully engaged in the process and understand fully any issue on which they choose to exercise their voting rights.

Question 6: Are there any other bodies in addition to Consumer Focus which the Authority should consider as potential consumer representatives on the UNC?

No.

Question 7: Do you agree that the Authority should appoint the chairs of the UNC and CUSC panel in addition to the BSC?

We support the appointment of an independent Chair for the BSC, UNC and CUSC and believe that the most appropriate body to make such appointments is DECC (on behalf of the Secretary of State). This would be subject to the appointee clearly having the necessary industry expertise in order to add value.

Question 8: Should such an appointment be made only at the end of the current chairs ordinary tenure?

Yes.

Question 9: How should the salaries of the independent chairs be funded?

The salaries of the independent chairs should be funded through the price controlled allowance for administering the codes.

Question 10: What is the appropriate mechanism by which these proposals can be introduced?

These changes should be implemented via the appropriate modification proposals being raised by a party to the relevant codes and progressing through the industry code governance arrangements.

Question 11: Do you consider it necessary to include the powers to 'call in' and 'send back' modification proposals within the relevant licences?

While we understand the rationale for Ofgem to introduce powers to ‘call in’ and ‘send back’ modification proposals, we do not believe that it is necessary to do so via the relevant licences. Provision for these powers could be more appropriately set out in the relevant codes.

Question 12: Do you consider that a licence modification requiring more explicit provision of reasons for recommendations is appropriate?

We support a requirement for more explicit provision of reasons for recommendations in principle, but again we do not believe that a licence modification is the appropriate route to implement such a requirement. Rather, this could be captured through the Code of Practice / Signatories’ Charter.

Question 13: Do you consider that a regular scorecard evaluation of the code administrators’ conducted by Ofgem would be of value, particularly in influencing the behaviour of the code administrators?

It is entirely appropriate to undertake some form of performance evaluation of code administrators. A scorecard approach as outlined in the consultation paper would be appropriate, subject to it being sufficiently flexible to allow code differences to be fully taken into account and judged by independent review.

Question 14: Do you consider that code administrators’ should be required to obtain and maintain ISO9001 accreditation for their processes?

ISO9001 accreditation is normally sought by companies that are tendering for business contracts on a regular basis and there is clearly a cost associated with obtaining and maintaining such accreditation. We do not therefore consider that a requirement on code administrators to obtain and maintain ISO9001 accreditation for their processes would be appropriate.

Scottish & Southern Energy

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