



Consultation Response

By email to industrycodes@ofgem.gov.uk

23 May 2012

The Office of Gas and Electricity Markets
9 Millbank
London
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ELEXON's response to Industry Code Governance Review – second phase

We welcome the opportunity to comment on your [open letter consultation](#) containing your proposal to extend the outcomes of the Code Governance Review (CGR) into other industry codes.

Our response to the consultation is set out by question below. Several of the questions appear to duplicate areas covered by Ofgem's previous December 2011 consultation reviewing the effective implementation of the [Code Administration Code of Practice](#) under the BSC, CUSC and UNC. Where this is the case we have referred to our previous [response](#) rather than repeat it here.

If you would like to discuss any areas of our response, please contact me on 020 7380 4363 or by email to adam.lattimore@elexon.co.uk.

Yours faithfully

Adam Lattimore
Change Manager



Industry Code Governance Review: 2nd Phase

Question 1: Has the requirement on code panels to provide rationale for their recommendations been effective in improving analysis to support code changes?

The BSC Panel always provides rationale for its recommendations by reference to the Applicable BSC Objectives. Similarly, BSC Workgroups always provide analysis to support their recommendations to the BSC Panel. This was the case before the Code Governance Review, and we have not observed any change following the implementation of the Code Administration Code of Practice (CACoP). We have also not observed any obvious change in the working practices of other code panels.

Question 2: Has the concept of 'critical friend' been effectively embraced by the Code Administrators (i.e. an obligation to assist interested parties, particularly smaller participants/new entrants and consumer groups)?

We are unsure whether this question relates to the codes which are mandated to follow the CACoP (BSC, CUSC and UNC), or other codes which have adopted the CACoP principles voluntarily.

If the former, we refer to the [responses](#) to Ofgem's previous consultation reviewing the effective implementation of the CACoP under the BSC, CUSC and UNC which contained an identical question.¹

If the latter, then our observation is that the other code administrators have endeavoured to effectively adopt the role of 'critical friend'. We believe that the success of these efforts is a matter for comment by the relevant code administrators, panels and users.

Question 3: Do you support the Code Administration Code of Practice being implemented under all industry codes, to aid convergence and transparency in code governance processes?

We support the twelve principles set out in the CACoP and the original aim of the Code Governance Review to facilitate convergence and transparency in code modification processes.

We therefore in principle support the extension of the CGR and CACoP to other codes on a mandatory basis. However, we note that the existing change processes under some of these other codes have many distinct differences from the 'standard' process set out in the CACoP. Amending these existing

¹ The wording of this question was "In respect of Principle 1, which describes the role of Code Administrators as 'critical friends', if you are a code user, how would you evaluate the implementation of this principle in 2011?".



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processes could involve significant work for the relevant code administrators, panels and users. We are unsure of the priority of such work given the current overall workload of the industry and the number of other important initiatives being undertaken (e.g. Smart Metering Programme, European Network Codes development, Energy Market Reform measures, work on the Green Deal, the continued development of the distribution charging arrangements).

Ultimately, we see this as a question to be answered by the relevant code stakeholders. However, we consider that the answer may be dependent on the extent to which the 'standard' modification process, timetable and templates contained in the CACoP are binding or viewed as guidance only. As noted in our [response](#) to Ofgem's previous consultation, our view is that:

- These sections of the CACoP should remain as guidance to allow code administrators the flexibility to continuously innovate in the way they discharge their obligations under the CACoP and their respective industry codes; and
- The CACoP should mandate the principles to be followed by code administrators and code modification processes, but the detail of these processes should remain in the codes themselves.

If this remains the case, and the other codes are already complying with the twelve CACoP principles voluntarily, then this will minimise the effort involved in making compliance mandatory.

Question 4: Are the self governance criteria introduced by the CGR appropriate and has the implementation of self governance been effectively achieved in BSC, CUSC and UNC?

We note that the existing Self-Governance Criteria are subjective (particularly the test of 'materiality'), and we note the views expressed by BSC Panel and Workgroup members that this creates some uncertainty/ambiguity as to how to interpret them.

That said, the BSC has successfully progressed four Self-Governance Modification Proposals since the Self-Governance arrangements were introduced on 31 December 2010 (P269, P273, P275 and P279). This equates to 22% of the eighteen Modification Proposals raised in total since the implementation of the Code Governance Review. None of these changes were the traditional 'housekeeping' changes which might have initially been expected to be the prime candidates for Self-Governance. We note that P269, the first BSC Modification Proposal to be progressed as Self-Governance, underwent a four-month Workgroup assessment.

We welcome views from BSC Parties and other stakeholders on their experience of the Self-Governance process to date.

One observation we would offer is that there is the potential to make the existing BSC Self-Governance



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process (as introduced by Modification Proposal P262) more efficient. Currently, the BSC requires the Self-Governance appeal window to start from the day of the Panel's decision, even though it does not require the Self-Governance Modification Report containing the Panel's rationale to be sent to Parties until up to 3 Working Days later. This results in ELEXON having to issue two separate communications to Parties in the space of a few days. While not an issue currently, if significantly more changes are to be progressed through the Self-Governance route (see Question 5 below), then we believe there is scope to make this process more efficient by simply requiring the Self-Governance Modification Report to be published 3 Working Days after the Panel meeting and starting the appeal window from that date.

We also note that we and the BSC Panel have interpreted the existing requirement to produce a Self-Governance Statement to Ofgem as requiring a formal letter. Again, if a greater proportion of modifications are to be progressed as Self-Governance then this may not be the most efficient process for informing Ofgem of the Panel's intention to progress a change via this route. Given that Ofgem attends all BSC Panel meetings, we would welcome your view on whether the Panel Headline Report could appropriately serve as the Self-Governance Statement (which we understand the CUSC has adopted as its working practice).

Question 5: Do you consider that introducing or increasing self governance in the codes would be beneficial?

We assume that this question refers to the codes for which compliance with the CACoP is not currently mandated, and to whom it is proposed to extend the conclusions of the Code Governance Review. We note that some of these codes (such as the DCUSA and MRA) already have an element of Self-Governance in their existing change processes while others (such as the Grid Code) do not. We consider that the appropriateness of introducing, amending or extending Self-Governance under these codes is a matter for comment by the relevant code administrators, panels and users.

If the scope of this question also includes the codes for which CACoP compliance is already mandatory, then we are neutral on whether more BSC Modification Proposals should go through the Self-Governance route and welcome the views of BSC Parties and Ofgem in this area. If Ofgem believes that greater use should be made of the Self-Governance process under the BSC, then it would be useful for you to indicate either:

- Which Modification Proposals you believe could appropriately have gone through this process since 31 December 2010; or
- What you believe to be a desirable proportion of modifications to undergo Self-Governance (noting that, to date, 22% of BSC Modification Proposals raised since 31 December 2010 have



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been determined as Self-Governance).

Question 6: Has the SCR process met with your expectations thus far, in terms of frequency of SCRs, timings and process?

The frequency and timings of Significant Code Reviews have in practice been consistent with the expectations set by Ofgem in its original Code Governance Review. In terms of process, Ofgem has only just announced its intention to commence an SCR on cash-out and so it is too early for us to usefully comment in this area.

Question 7: Do you consider that Ofgem's guidance in respect of SCRs has been sufficiently clear and detailed?

In principle, we believe that providing as much guidance as possible promotes regulatory certainty for affected parties and stakeholders.

For more information on our response, please contact:

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