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To BEIS and Ofgem

### **Consultation on reforming the energy industry codes**

Scottish and Southern Electricity Networks welcomes the opportunity to respond to the consultation by Ofgem and BEIS on reforming the energy industry codes.

Scottish and Southern Electricity Networks (“SSEN”) is a trading name of SSEPD. SHE Transmission, Southern Electric Power Distribution (SEPD) and Scottish Hydro Electric Power Distribution (SHEPD) are all subsidiaries of Scottish and Southern Energy Power Distribution Limited (SSEPD). Our electricity distribution and transmission networks carry electricity to over 3.7 million homes and businesses across the north of the Central Belt of Scotland and also Central Southern England. We are licensed code parties to a number of the energy industry codes.

In principle, we agree with the desired outcomes of the energy code framework envisaged in the consultation. In particular, we agree that there is a current lack in effective communication and translation of government strategy into the code framework. We believe this can be rectified through reaffirming Ofgem’s and BEIS’ roles in this regard and that improvements in accessibility to codes by a wider range of stakeholders should and can be delivered.

However, we consider that some of the ways in which the outcomes have been translated into proposed reforms and proposed changes to the institutional framework could undermine the existing regulatory framework, which currently ensures alignment of obligations, powers, and funding; and/or are not likely to represent effective or efficient changes.

SSEN considers that:

- Ofgem should remain ultimately accountable for the licence and code frameworks and for approving licence and code changes, and the role of the Strategic Body and code managers, who fulfil these roles, and how these roles, responsibilities and powers should align with Ofgem’s role and the existing legislative and regulatory framework (Electricity Act, licences and codes);
- the requirement to prioritise the safety, security, reliability and economic operation of networks (and other systems and services as relevant) should be maintained as an overarching priority within the terms of reference of any revised institutional framework, Strategic Body and code manager functions, and through any code evolutions;
- duty holders, including network licensees, must have formal involvement in the process of code change, be able to approve code change, and hold any code manager function to account where a change impacts upon the safety, security, reliability and economic operation of networks (and other systems and services as relevant);
- clarification is required as to how conflicts or different drivers between technical code requirements and commercial interests are considered and managed; and
- there is a requirement to preserve the current rights of appeal afforded to relevant parties following decisions made by Ofgem in respect of code changes.

Our response is not confidential, and we would be happy to discuss any of the feedback contained herein further with Ofgem and BEIS. Our responses to the specific questions in the consultation are set out below.

We would welcome further engagement with Ofgem and BEIS on any of these areas as the consultation process progresses.

Yours sincerely

Michael Ferguson  
Head of Regulation, Transmission

## Section 1 Background and scope of this review

**1. Do you agree with our four desired outcomes for the code governance landscape by the mid-2020s? Yes/No/Don't know. Please explain.**

**If you disagree, please explain what you consider the outcomes should be.**

The four desired outcomes are reasonable. However, we consider that some of the ways in which the outcomes have been translated into the proposed reforms and changes to the institutional framework set out in the consultation could undermine the existing regulatory framework, which currently ensures alignment of obligations, powers, and funding; and/or are not likely to represent effective or efficient changes. SSEN considers that clarification and / or further thought is required with regards to:

- the role of the Strategic Body and code managers, who fulfil these roles, and how these roles, responsibilities and powers align with Ofgem's role and the existing legislative and regulatory framework (Electricity Act, licences and codes),
- where requirements to prioritise the safety, security, reliability and economic operation of networks (and other systems and services as relevant) are captured, and how these are maintained as overarching priorities within any revised institutional framework and through any code evolutions, and
- how conflicts or different drivers between technical code requirements and commercial interests are considered and managed.
- the need to preserve the current rights of appeal afforded to relevant parties following decisions made by Ofgem in respect of code changes.

Where we reference the requirement to prioritise the safety, security and reliability of the electricity networks, and our associated duties in relation to this, we are referring specifically to the requirements set out in the Electricity Safety, Quality and Continuity Regulations (ESQCR), the network licences, and the Electricity Act.

**2. Do you agree with the problems we have identified (in chapter 1 – Background – and in later chapters), and that they present a persuasive case for reform of the current framework for energy codes? Yes/No/Don't know. Please explain.**

SSEN agrees to a certain extent with the problems identified in the consultation, but it is not clear that the problems identified in the consultation i) are fully evidenced, ii) exist across all codes, and iii) will be resolved by the measures proposed. We therefore ask that a comprehensive review of each of the codes and code activity areas is undertaken to identify specific problems that exist, the reasons for the specific problems, and how these may best be resolved.

With reference to the problems identified in the consultation:

- *Fragmentation and lack of coordination:* This is a longstanding issue. Effective strategic oversight and direction would be a positive development – currently it appears that there is a disconnect between government strategy and Ofgem/code administrator function that potentially blocks implementation of strategy. Current processes can act as blockers to change because modification processes are long. Consistency across the codes would benefit all consumers and would help assess areas of poor performance cross codes. Improvements in front-end accessibility may be a high impact early win. Changes to code modification processes which allow for faster modifications would be welcomed, subject to appropriate regulatory and technical governance.

The consultation portrays that the problems identified with the existing framework would be resolved by replicating and replacing the existing functions of Ofgem and industry (including code signatories and licensees) within new bodies. This suggests that these entities are behind the problems being experienced. We do not think this is correct or evidenced. We believe that the lack of direction, coordination and fragmentation can be addressed through a reappraisal and reaffirmation of roles, responsibilities and accountabilities of the existing parties, and the terms of reference and criteria for mod progression (which should focus on cost benefit, consumer benefit, maintaining network integrity). In particular, we believe that Ofgem's role within the authorisation process is necessary to maintain the strong link between the codes and impacts on licensees operating within price controls.

- *Lack of incentive for change:* There are currently many changes in flight across the code landscape at any one time, so it is not clear that there is lack of incentive for change. The nature of incentive differs across industry. For parties with commercial priorities, the incentives are often centred on commercial factors and may be limited to a fairly narrow perspective. Regulated entities have different priorities: while commercial pressures are present in the interest of driving at value for money for the consumer, the primary focus is to meet relevant licence objectives, including requirements to provide, operate and maintain safe and reliable systems and connections to and services from these systems and networks, and for coordination and cooperation. We agree that a more robust definition, communication and translation of strategic direction by BEIS and Ofgem into the code framework, potentially via a Strategic Body function but in any case, through a reappraisal of Ofgem's role in this regard, could drive more changes which are aligned with forward-looking strategic aims.
- *Complexity:* SSEN agrees that the codes are long, require detailed understanding, and modification processes are resource-intensive. Simplification and rationalisation could be positive developments, as the codes can be difficult to understand and interpret. However, eliminating complexity should not be a primary objective. Where it can be achieved it will represent a benefit, however, we must accept the initial premise that the complexity of codes is a necessary response to the complexity of the system.
- The main focus should be on setting clear direction and practicable arrangements for the requirements of today and into the future, including improving front-end accessibility; it is possible (and likely) that the codes and code landscape may remain complex. Making significant changes to codes will in itself introduce the danger of slowing down amendments in the short to medium term, considering the lengthy time it is likely to take to revise and implement the changes (as reflected upon in the consultation at *Table 1 – Evidence of challenges*).

We emphasise the need to take care in balancing government strategy, commercial interests and opportunities, with the technical requirements and physical constraints which must be prioritised and respected when maintaining and developing safe, secure, reliable and economic systems and networks. Further, as a transmission and distribution network owner and operator, as a consistent theme relevant throughout our views on the consultation, we emphasise that network licensees are distinct in the context of the wider energy industry as we have a duty to develop coordinated, economic and efficient networks in response to our licence obligations, rather than commercial advantage.

### **3. Do you have additional evidence on the performance of the current framework?**

As we note in our response to question 2, we do not consider that it is clear that the problems identified in the consultation i) are fully evidenced, ii) exist across all codes, and iii) will be resolved by the measures proposed. We therefore ask that a comprehensive review of each of the codes and code activity areas is undertaken to identify specific problems that exist, the reasons for the specific problems, and how these may best be resolved.

From SSEN's perspective we have experienced some issues in participating in the current code framework. We note that, for example, problems are encountered when translating / reading across from one code to another on the same issue. Recent examples (now resolved), include differences between what the CUSC says about securities and liabilities (Section 15), and the STC's less prescriptive references to these aspects. Differences in the level of detail reflected across codes addressing the same issue can lead to differences in interpretation and some confusion. The existence of different technical standards for transmission and distribution systems introduces complexity, including for the progression of whole system arrangements; but it is not clear at this stage whether these could be effectively combined.

### **4. Do you agree with our proposed scope reform? Yes/No/Don't know. Please explain. If not, which additional codes or systems do you think should be included/excluded?**

We consider that all key energy codes should be included in any major reform exercise. Any steps forward in this regard should include a detailed review of each code to identify the potential scale and scope of any reform and the benefits that these would bring, to identify any early / easy wins, and whether the cost / benefit appraisal of changes suggests reform should progress.

The codes noted within the consultation as under scope do not include SQSS or P2/7 - these are important standards administered by licensees which are interconnected with the commercial landscape for stakeholders (e.g. SQSS drives security of supply standards driving a direct effect on TNUoS charges and plays in a role in defining when constraint payments arise). We consider that commercial and technical codes and standards are consistently interrelated and a holistic approach to reform would be most effective, and as such technical standards should be added to the list; this follows on from our belief that there is a requirement to prioritise the safety, security and reliability of networks (and other systems and services as relevant) within any reforms, and to maintain this as an overarching priority within the institutional framework and code evolutions that are progressed.

We note that it is not clear what the benefits are of including industry (IT) systems within the scope of the code manager role and as a key focus of proposed reforms. These systems are key to enabling change, but they tend to be a function of service procurement, e.g. the recent upgrade to the DTS procured by Electralink has actually been delivered by a separate specialist provider; ownership is almost irrelevant. System change is hardest when it affects the interfaces with the IT systems of individual parties at a local level, not the core GB-wide systems provided by industry. To address this effectively, we suggest that code managers would need to interact with parties directly irrespective of the system provider. A change of ownership would not address this.

With reference to “a more fundamental restructuring of the institutional framework”, we consider that the existing regulatory framework already includes the roles and responsibilities envisaged in the Strategic Body function, through BEIS and Ofgem. We do not believe that any other party is required to fulfil this function, though reaffirmation, definition and empowering of some responsibilities may be required.

We believe that Ofgem should remain ultimately accountable for the licence and code frameworks and for approving licence and code changes.

We believe that under any future structure network licensees should retain both the ability to approve mods where these impact upon the systems they are licensed to own and operate, and the ability to appeal decisions made by the code management function and Ofgem, which should form part of the Strategic Body.

We reiterate our views noted in response to question 2, that making significant changes to codes and associated frameworks will in itself introduce the danger of slowing down in-flight and pending amendments in the short to medium term with potential detrimental effects and, most significantly, that care must be taken in any reforms that are progressed to prioritise the technical requirements, physical constraints, and safety and reliability of the systems which the codes are ultimately in place to preserve.

**5. Are there any codes or systems that we should only apply a limited set of reforms to? Yes/No/Don't know. Please explain.**

We consider that all key energy codes should be included in any major reform exercise. However, any steps forward in this regard should include a detailed review of each code to identify the potential scale and scope of any reform and the benefits that these would bring, to identify any early / easy wins, and whether the cost / benefit appraisal of changes suggests reform should progress.

With regards to systems, please see the relevant section in our response to question 4 above.



## Section 2 Vision & options

### 6. Do you agree that the four areas for reform are required? Please provide reasons for your position and evidence where possible.

SSEN agrees with the following themes of the proposed scope reform - strategic direction, the effective translation of strategic direction into the code framework, and code accessibility - in principle.

We are very concerned about the absence of any reference to the prioritisation of the safety, security, reliability and economic operation of the energy networks systems and services, and how these are maintained as overarching priorities in the codes and code modification processes, and in the role of the Strategic Body and code manager function. We are also concerned about changes to code signatory / licensee involvement in code modification processes in the interests of “independent decision-making”.

SSEN’s views on the four areas of reform are as follows:

- *Providing strategic direction:* We agree with the requirement for provision of strategic direction, to ensure that the code regime is forward-looking. We consider that clarity of direction will drive efficiency and purpose. We are of the strong view that this role should be fulfilled by BEIS and Ofgem, further to their existing statutory duties and in the context of the existing regulatory framework.

Ofgem should remain responsible for the codes, associated modifications and framework, and not another entity.

From our perspective it is more appropriate to consider this activity as a synthesis of direction - BEIS/government, Ofgem, customers and industry already provide direction to some extent, but missing is a role which collates and extrapolates this to a consistent and long-term plan. We suggest that this body should identify complementary overlaps, conflicts and gaps, and draw together both government policy and stakeholder views.

We suggest that the Strategic Body should not attempt to design specific solutions - this is the role of code bodies and industry parties themselves. A central approach to design is likely to be risk-averse, slow to innovate and open to continual challenge – we believe that in progressing this area, there is a need to avoid creating another “body of ideas”.

We consider that the terms of reference for the Strategic Body should include reference to the prioritisation of the safety, security, reliability and economic operation of the energy networks systems and services alongside the objectives set out in this consultation.



- *Empowered and accountable code management:* We are concerned about the proposed removal of the role of Ofgem in proposing and approving mods, and the rights of licensees, and specifically network licensees, to approve modifications.

We believe that Ofgem should retain ultimate responsibility and authority to ensure compliance and alignment in the code framework and are concerned about responsibilities being allocated to third party entities or separate authority.

We believe that network licensees as duty holders should retain the right to approve mods where the systems, networks and services for which they are responsible may be impacted (as with other relevant licensees who have comparable responsibilities to customers). This framework drives at the best outcomes for customers and coordinated activity of licensees. We think there are ways other than duplication of roles to ensure that strategic direction is applied and that effective code mods are progressed more efficiently – see our responses to questions in Section 4.

We believe that the terms of reference for the Strategic Body which refer to the prioritisation of the safety, security and reliability and economic operation of the energy networks, systems and services should be cascaded down as a perpetual objective for the code manager function, any code reforms progressed, and as a criteria in code modification processes.

We believe that there should be a formal and codified process for ensuring sufficient network licensee input into any future code amendments managed by this function which impact upon networks, as the duty holders with ultimate responsibility before Ofgem for the function of the relevant energy networks / systems.

As developers, operators, maintainers and owners of the networks / systems, with significant experience, licensees are often best placed to provide guidance, views and technical expertise - particularly with regards to technical arrangements but also on practical implementation and wider aspects. We consider that any future “code manager” function should have regular formal engagement with industry and licensees according to the specific code activity area / mod in question, to ensure that the integrity of underlying networks, systems and services is maintained. We consider that it would be folly to allocate the role of approving mods solely to entities like Genserv or Elexon, alongside a Strategic Body function.

Appeal processes must be preserved as part of any framework taken forward to enable licensees and other parties with material interests in specific mods to appeal decisions. There should be no dilution of current appeal rights under a future framework.

We consider that it would be difficult to attain a truly independent body to fulfil the code manager function, considering any expertise within the industry will have their own individual agendas, interests and drivers. The code manager role requires clear independence and must safeguard against influence from commercial interests. The

avoidance of conflicts of interest should be strictly managed – it may be appropriate to include in the terms of reference for any code manager that they must not have or take on any conflicting work, to avoid the temptation to influence change for commercial or strategic gain.

The requirements and responsibilities of this role lead us to conclude that this function should be fulfilled by a licenced body rather than purely as a tendered/consulting activity (though it may be beneficial to adopt a competitive approach in the recruitment of personnel and / or the selection of parties for the code manager panel), and that the role remains accountable, at least in part, to industry and licensees.

- *Independent decision-making:* We have reservations about the rationale for and proposal to move decision-making away from industry. It is not clear what is meant by “industry” – the consultation frames industry as one actor. Regulated entities such as network owner-operators have very different drivers to commercially focused parties, operating under licence to fulfil, and incentivised according to, the ongoing provision of safe and reliable systems, networks and services.

As such we believe that network licensees should maintain a formal degree of influence in code development where this impacts upon the electricity network code activity area, due to their licence-driven requirement to provide safe, secure networks, their technical knowledge, and absence of commercial bias. It is essential that: i) the criteria for decision-making by code managers and the Strategic Body includes requirements that prioritise the reliability, security, safety and economic operation of the networks, systems and services which the codes are in place to manage; ii) code managers are accountable to duty holders including network licensees where any code development has an impact on the reliability, security and safety of the network, and iii) network licensees have voting rights on modifications that have any impact on the reliability, security and safety of the network, and the right to veto or require revisions / mitigations for any modification which would have a negative impact. This approach may be adopted for each code activity area, where parties have duties to customers for which they are accountable to Ofgem, in relation to the specific network, system or service in question.

Further, we suggest that trust would be a more valuable attribute in future regulation of codes, rather than independence. Trust would reduce drivers of conflict and would allow parties to scale back resource-intensive lobbying.

- *Code simplification and consolidation:* We are supportive of this area for reform reiterating that this should not be a primary goal, but rather a method of implementing delivery of future codes / code modification. We consider that simplification and consolidation may be possible but will be a significant task and should be preceded by a comprehensive review on a code-by-code basis to identify what changes are possible and merit progression. We believe the more pertinent

issue, and one which may be a “quick win” is front-end accessibility by stakeholders to codes and standards, to make navigation and understanding of the codes easier for the user.

There is no detail included in the consultation on how any new compliance arrangements would work. While we can see the benefit of the code manager function identifying compliance issues, we do not agree that any new powers or changes to powers relating to enforcement are required – the role and powers of industry and Ofgem are adequate in this respect and do not require duplication.

We have provided more detail on our views on each of these areas in our responses to subsequent consultation questions.

**7. Do you agree with the two broad models outlined? Please provide reasons for your position and evidence where possible. – further detail can be found on each model in the chapters that follow.**

SSEN reiterates its view set out in response to question 4 that the existing regulatory framework already includes the roles and responsibilities envisaged in the Strategic Body function, through BEIS and Ofgem. We do not believe that any other party is required to fulfil this function, though reaffirmation, definition and empowering of some responsibilities may be required, and may be accompanied by justified structural changes. We believe that under any code management function duty holders such as network licensees should retain both the ability to approve mods where these impact upon the systems which they own and operate under licence, and the ability to appeal decisions made by the code management function, Ofgem and the Strategic Body (which we believe should be fulfilled by Ofgem and BEIS). We believe that Ofgem should retain oversight and responsibility for the code framework and all changes.

We agree that a Strategic Body function could provide clarity of direction across the codes; although arguably there is already some co-ordination across code administrator bodies (for example, the recent modification driven by Brexit which was co-ordinated across multiple codes - Code Modification reference CM072); we consider that BEIS and Ofgem currently fulfil and should continue to fulfil this function, under the current legislative and regulatory framework. We have concerns about independent decision-making incorporated within any model taken forward, as highlighted in our response to questions 2, 4 and 6, and we consider that there is also clarity required with regards to the amount of control and authority the code manager function has in the code amendment process.

Of the two models proposed, Model 1 would provide the best route for the target outcomes set out in the consultation: having separate strategic and code management functions would ensure clear lines of accountability for each body, and the type of expertise required for each function would be distinctly different. We consider that, while tensions will inevitably arise between strategic opportunities and practical implementation, with separate strategic and code management functions these tensions and associated decision-making and actions will

be transparent and should act to drive positive change. Under Model 2 the effectiveness of these functions would be diluted and possibly compromised if combined, it may be difficult to measure the performance of a body incorporating both strategic and code management roles, and there is a risk of creating a function which becomes too big to fail, undermining its purpose.

While we can see the benefit of the code manager function identifying compliance issues alongside industry, we do not agree that a new function should be created with the power to issue sanctions – this has no relevance to the core aims of code reform as set out in the consultation and is already fulfilled by Ofgem.

Finally, licensees must have the ability to appeal mods progressed and associated decisions made by the code manager and Strategic Body functions, specifically where these impact upon the networks, systems and services which they own and operate.

**8. Which model do you believe will best deliver on our desired outcomes? Please explain.**  
**NB: – further detail can be found on each model in the chapters that follow.**

It would be useful to see a detailed comparison between the existing model (and associated roles, responsibilities and arrangements) alongside the proposed models. Further to our response to question 8 and the concerns noted in our other responses, of the models proposed, Model 1 would best deliver on the desired outcomes set out in this consultation.

**9. Do you agree with the changes to the role of code signatories we are proposing?**

In considering this response, please see also our responses to questions 2, 4, 6 and 7.

Further to Tables 3 and 4, we understand that the consultation proposes that two core aspects are changed with respect to the role and responsibilities of code signatories:

1. Removing the accountability of the code manager to code signatories, and reassigning the accountability of the code manager to the Strategic Body, and
2. Removing code signatories' ability to approve mods.

It is of concern that it is proposed that code signatories will not hold code bodies / managers to account or approve code changes. We consider that there should be joint accountability, and joint approval of mods, to and by both the Strategic Body and duty holders such as licensees, further to our response to question 6, in order to retain the focus on the integrity of the systems, networks and services to which the codes relate, as well as ensure the progression of mods in line with government strategy and targets.

Code signatories must still be able to hold code bodies / managers to account, given that i) network licensees own and operate the systems, networks and services to which mods relate and are responsible for them to Ofgem under licence, ii) code managers' performance has a direct impact on the successful functioning of arrangements; and ii) they may be funded by

code parties. Maintaining this involvement will also build trust and facilitate the progression of mods.

As set out in our response to question 6, we propose this may be achieved by ensuring that: i) the criteria for decision-making by code managers and the Strategic Body includes requirements that protect the reliability, security, safety and economic operation of the networks, systems and services which the codes are in place to manage; ii) code managers are accountable to network licensees during the code mod process where any code development has an impact on the reliability, security, safety and economic operation of the network, and iii) network licensees have voting rights on modifications that have any such impact, and the right to veto or require revisions / mitigations for any modification which would have a negative impact. This approach may be adopted for each code activity area, where parties have licence obligations in relation to the specific network, system or service in question.

Our view on the specific criteria and rationale for this exception are derived from the requirements set out in the Electricity Safety, Quality and Continuity Regulations (ESQCR), the network licences, and the Electricity Act.

Finally, licensees must have the ability to appeal mods progressed and associated decisions made by the code manager and Strategic Body functions, where these impact upon the networks, systems and services which they own and operate.

### **Section 3 Providing strategic direction**

**10. Do you agree there is a missing strategic function for codes development in the energy sector and introducing a strategic function with the responsibilities outlined in chapter 3 is the best way to address the lack of strategic direction? Yes/No/Don't know. Please explain.**

**Who is best placed to fulfil the strategic function and why?**

SSEN considers that BEIS and Ofgem are already expected under the existing regulatory framework to fulfil, and to a certain extent are already fulfilling, the strategic function for code development. However, this current function does not appear to be actively driving a focus on strategic aims or translating these into a deliberate direction of travel across the code landscape. We think that both BEIS and Ofgem should form the Strategic Body (if such structural changes are deemed to be required), with strategy direction coming from government via BEIS, and associated reviewed / refreshed terms of reference and associated responsibilities and accountability for Ofgem as necessary to enable and empower it to focus on the translation of government strategy, innovation and consumer benefit targets into the code landscape over the short-, medium- and long-term.

Ofgem should retain responsibility for the codes, the code framework and associated modifications. The consultation proposes Ofgem as an option, supported by the fact that “it is Government policy that new arm’s-length bodies (ALBs) should only be set up as a last resort, when consideration of all other delivery mechanisms have been exhausted” (p.26). We do not consider that a new body is required: this would add complexity, and present conflicts and overlap with existing parties and associated roles and responsibilities.

We consider the instatement of BEIS and Ofgem in this role would ensure an ongoing joined-up approach taking into account economic regulation, licensed activities and obligations under which relevant systems and owned, operated and maintained, and access to third parties is provided, alongside government’s strategic aims. We consider that it does not make sense to separate economic regulation and technical standards from strategic direction and commercial interests. BEIS and Ofgem already have clear drivers to ensure positive outcomes for customers, enshrined in legislation and accountable to government.

Ofgem is already involved with steering the direction of code amendments as it exercises its SCR powers. By way of example we consider that Ofgem has performed well in this context on the Access SCR, effectively setting scope and ambition, if at times overly theoretical. If Model 1 was to be implemented, this would allow BEIS and Ofgem to sit independently from the code manager function.

We also consider that there is evidence that current code administration functions already provide coordination of code amendments, though this does not necessarily extend to a comprehensive and holistic incorporation of government policy.

We agree that this strategic function could be better defined, and that focused and robust accountability would lead to improved outcomes, and we agree in principle that a focused strategic function could be an effective way to ensure that code development is aligned with government strategy, wider market developments and innovation going forward. By way of example we refer to the development of the proposed Alternative Approach (AA) for Orkney. The AA would deliver more renewable output, contributing to GB targets, and proposes the spread of costs across GB society in return for benefits of reduced carbon in electricity generation; however, was not supported in the code modification process and partial resolution was subject to extensive delay.

We do not believe that NGEN should fulfil this function. We consider that this would present NGEN with conflicts of interest as both a code party and a buyer in the market for system operation (flexibility) and capacity options. NGEN has a legacy perspective of “big” generation, with low/no understanding of local networks and small-scale issues. This could also lead to a confused remit of both long-term strategy and day to day implementation.

With specific reference to the role and responsibilities of the Strategic Body, we see this as a function which gathers and synthesises existing and emerging policy and identifies and calls out gaps and conflict. We do not believe that this function should be allowed to overly



influence or limit the range of solutions proposed and / or taken forward under code modifications.

Finally, we note our concern that by developing a hierarchy which is led by strategic direction and a focus on government policy, there is susceptibility introduced to changing priorities with each new government, and resultant instability and inconsistent and inefficient behaviour imposed through the codes and code mod processes. We reiterate our view that in order to mitigate this, Ofgem should be instated alongside BEIS as a joint party within the Strategic Body, ensuring that licence obligations, safety and reliability of systems, and economic regulation remain priorities alongside government strategy.

**11. Do you agree with the objectives and responsibilities envisaged for the strategic function, and are there any additional objectives or responsibilities the strategic function should have?**

In general, we agree that strategic direction may be effectively implemented if a Strategic Body is created which is responsible for strategic oversight, translating this into a direction of travel, scope and criteria for code changes, and being held to account to this effect. We think that oversight and accountability for the code manager function, shared with industry, should also be an effective development. The goal of the Strategic Body function should be to ensure benefit to all consumers by applying clear guidance to code managers in their role of amending relevant codes, and to ensure code managers are providing an independent and satisfactory service to code parties.

We do have concerns that the objectives and responsibilities envisaged for the strategic function appear to displace Ofgem's, network licensees' and code signatories' roles in code development and modifications (comparing Tables 3 and 4). While the translation of strategic direction into code evolution is critical, it is not the only *raison d'être* of the codes. The codes exist primarily to maintain the safe, reliable, coordinated and economical system, networks and services which form the GB energy system. As such, we consider that:

- as set out in response to question 6, alongside the core strategic objectives we believe that the responsibilities of the Strategic Body must refer to the prioritisation of the safety, security, reliability and economic operation of the energy networks, systems and services in its terms of reference and decision-making processes, and this prioritisation should be cascaded down as a perpetual objective for the code manager function, any code reforms progressed, and as a criteria in code modification processes; and
- the ability to propose mods, approve mods and lead significant code change should be one which is retained by Ofgem, by placing Ofgem within the Strategic Body function.

The Strategic Body should consult with all relevant stakeholders in the development of its targets, activities and decisions.



Further, we note that it is correct to focus on protecting the interests of consumers, but this should be extended to drive at benefits to GB society as a whole.

Finally, it is not clear why and how oversight in relation to IT systems would be taken forward – we would welcome further justification and detail from BEIS and Ofgem on this aspect. See also our response to question 16.

**12. How may this new function potentially impact the roles and responsibilities of other parts of the framework? Do you foresee any unintended consequences?**

The consultation sets out that the Strategic Body function would displace:

- the role and responsibility of Ofgem in proposing and approving mods, and leading significant code change, and
- the role of code signatories of holding the code administrator / manager accountable, and of approving mods.

We do not agree with any solution which displaces Ofgem’s role neither do we support the proposal to remove accountability towards code signatories. Both these positions are set out in our responses to earlier questions.

**13. What are your views on how the strategic direction should be developed and implemented (including the option of establishing a strategy board to aid engagement)?**

We think that government should set the strategic direction, that this should then be translated into a strategic direction for code development by Ofgem, and this should subsequently be reviewed and consulted upon publicly (at a minimum with industry) to determine if it is practicable and fit for purpose.

We agree with the proposed approach to publish a plan on a regular basis which identifies how the energy code framework will take account of government vision for the energy system. All things considered, we think that the better approach is for strategy direction to be developed and implemented informally rather than formally – a more informal approach may allow a longer-term view to be taken, and for any disconnects in government policy to be “smoothed” (e.g. driven by political party regime change – see also our response to question 10), and may also provide greater opportunity for flexibility and innovation in implementation.

It is not clear what is envisaged with regards to the role of a “strategy board” – we consider that the role of the Strategy Body should be to support the synthesis and communication of policy and should not create a quasi-alternative to government policy.

The Strategic Body should consult with all relevant stakeholders in the development of its targets, activities and decisions.

**14. Do you think that the scope of the strategic function should be limited to taking account of the Government's vision for the energy sector and translating it into a plan for the industry codes framework, or are there other areas it should address? (for example, impact on vulnerable consumers)? Yes/No/Don't know. Please explain.**

The strategic function should aim to synthesise all relevant BEIS/government policy and strategy, and also identify where there may be gaps, conflicts or disconnects in BEIS/government approach, and to translate it into short-, medium- and long-term plans for code development. We consider that the strategic function probably should not look to further synthesise wider policy - this is the remit of politicians and their advisors.

There may also be a role for this function in facilitating whole system arrangements - identifying other sectors and arrangements that the energy industry touches upon, or is affected by, when developing strategic direction.

#### **Section 4 Empowered and accountable code management & independent decision making**

**15. Do you agree that in addition to the current responsibilities that code administrators have, that the code manager function should also have the following responsibilities: a. identifying, proposing and developing changes (analysis, legal drafting etc.), including understanding the impacts; b. making decisions on some changes, or making recommendations to the strategic body; and c. prioritising which changes are progressed.**

**Yes/No/Don't know. Please explain.**

The potential for conflicts of interest which muddy decision-making requires to be eliminated through selection of an independent party or multi-sector party panel to fulfil this role, and duty holders (such as network licensees) should retain formalised roles in the context of code development within the new framework. Our views are set out in more detail as follows:

- a. identifying, proposing and developing changes (analysis, legal drafting etc.), including understanding the impacts:* We think there are pros and cons to these aspects of the role. Clearly, this function would develop deep and non-partisan knowledge of the relevant code areas. However, this deep knowledge already exists within the industry, and any duplication in the formation of a new body would represent an inefficient and expensive step. We are wary of a new body potentially adopting a reticent approach to implementing changes proposed by industry if these are not solely focused on strategic aims. We also consider that there is a clear conflict between these aspects of the role, and with the responsibilities set out at 15.b and 15.c.

- b. *making decisions on some changes, or making recommendations to the strategic body:* This responsibility could create an efficient path to progress changes that are aligned with strategic direction. However, we consider that this aspect requires careful development of scope, and the parameters of the level of authority the code manager has should be clearly articulated and consulted upon. There is a risk of conflicts of interest driving decision-making and recommendations, which would require to be eliminated in the selection of an appropriate party to fulfil the role, and also through licence. As we note in our response to question 9, duty holders must be able to hold code bodies / managers to account, rather than these functions being accountable only to the Strategic Body. Specifically, duty holders including network licensees must retain the right to make decisions on mods which have an impact on the reliability, security, safety and economic operation of the systems which they own and operate under licence, to have powers of veto / mod amendment where there are impacts, and ultimately to appeal decisions with which they do not agree.
- c. *prioritising which changes are progressed:* We agree that the code manager function should assist with prioritising codes which are important to strategic goals. However, our views on this responsibility are the same as those set out at 15.b. – there is the potential for conflicts of interest to drive prioritisation of changes which are progressed, and duty holders must retain the ability to determine which changes are progressed.

In all its activities the code manager function should have a formal duty to engage and consult with all relevant stakeholders (possibly defined as those who would be impacted by a given proposal), to avoid duplication of work, diversion of time and discussion where not merited, and to promote cooperation.

A means by which code mod processes could be made more efficient could be the use of more effective terms of reference and criteria which allow the progression of only those changes which offer specific benefits, such as cost, value to consumer, meeting of strategic goals (alongside ensuring ongoing integrity of the network and other relevant systems); and possibly a “gate-keeping” role by the code manager which involves a screening of mod apps for relevance and alignment with the criteria before these are allowed to progress (the screening process being subject to audit and accountable to stakeholders).

**16. What is the best way to ensure coherent end-to-end changes to the codes and related systems? For example, is it through having end-to-end code and system managers?**

Firstly, we do not consider that there is sufficient evidence to show that system ownership per existing arrangements has created a barrier or represents a real impediment to the progress envisaged under the consultation. System provision should be a specification and procurement activity and including this aspect within the licensed responsibilities of the code manager function has the potential to have a limiting effect, as there would be no

tension or accountability around the efficacy of the systems. As we set out in our response to question 4, we believe that the accessibility issues arise at the interfaces with the IT systems of individual parties at a local level, not the core GB-wide systems provided by industry. To address this effectively, we suggest that code managers would need to interact with parties directly irrespective of the system provider, and that a change of ownership would not address this.

We consider that the more pertinent issue is front-end accessibility by stakeholders to codes and standards, to make navigation of the codes easier for the user, so that relevant aspects across codes are identified faster and, where possible, comprehensive explanatory information is provided (in line with the proposals highlighted in relation to digitalisation).

As we note elsewhere, we consider it unwise to hastily undo the existing drafting of the codes themselves, as this risks the loss of meaning and substance, and unintended consequences; and a thorough understanding of applicable parts of the codes are unavoidable for parties wishing to involve themselves in schemes to which the codes relate.

With reference to ensuring coherent end-to-end changes to the codes specifically, this goal is likely to be facilitated by the consolidated direction and view provided through the refreshed Strategic Body and code manager functions, and ongoing open consultation on direction of travel and progress. We consider that there is likely to be merit in having separate code managers for specific code activity areas, to ensure expertise is correctly allocated and to ensure sufficient resource is available to deal with the management of the codes, with all feeding into a single code view and under the direction of the Strategic Body.

**17. Should the approach differ on a case-by case basis (i.e. depending on the code or system in question)? Yes/No/Don't know. Please explain.**

As noted in our response to question 16, we consider that there is likely to be merit in having separate code managers for specific code activity areas, to ensure expertise is correctly allocated and to ensure sufficient resource is available to deal with the management of the codes; however we consider it crucial that there is a mechanism whereby all code managers are working to / feed into a single code view, and operate under the direction of the Strategic Body. This should ensure consistency in application of strategy across the codes, and efficiencies and learning in code change / modification processes where relevant. Consideration should be given to the performance and efficiency of existing specific arrangements, and change should be managed and focused on where this will give best returns, rather than a blind and blanket approach to reform.

**18. Do you agree that the code manager function should be accountable to the strategic body and that this should be via a licence or contract? Yes/No/Don't know. Please explain.**

Subject to the proviso that change should be managed and focused on where this will give best returns, we consider that the code manager function should be accountable to Ofgem (potentially in the form of the Strategic Body), with shared accountability to duty holders such as network licensees where a code modification has a potential impact on the reliability, security, safety or economic operation of the networks. We consider that a licensed approach would be preferable to a contractual one: this would allow a greater focus on outcomes and purpose and will allow for evolution over time, whereas a contract is likely, by its nature, to require a significant amount of definition from the start; i.e. a specification in excess of what can be reasonable foreseen in these circumstances. A licenced approach is consistent with wider energy industry arrangements and the weight of responsibility which is proposed to be placed on the relevant party. It will provide for the code manager to be held to account to Ofgem, and for clear recourse under the regulatory regime.

In addition, there needs to be sufficient expert knowledge within the Strategic Body to ensure the code managers are succeeding in prioritising the right amendments. Any shift away from accountability to licensed duty holders could lead to poor service to the main parties which code changes affect and, potentially, detriment to consumers as a result of neglect of technical and operational considerations. While accessibility for new / third parties is key, the needs of these parties should not outweigh the needs of existing parties, signatories, licensees or the integrity of the systems that the codes are in place, in part, to preserve.

Independence and absence of conflicts of interest (current and for the duration of the role) should be pre-requisites for consideration for the role in order to ensure independence.

**Please note questions 19- 26 only apply in respect of Model 1 (code manager function and a strategic body).**

**19. Are there more effective ways that a code manager function's accountability to the strategic body could be enshrined other than in a licence or contract? Please explain.**

At this stage we have not identified additional or more effective ways that this could be achieved but emphasise that the mechanism that is taken forward requires to have "teeth" – consequences for meeting or failing to meet obligations. We note that there is likely to be efficiency in utilising the expertise of existing licensees in this function, as they are likely to already be required to fulfil obligations relevant to the code manager function under current licences.

**20. Do you agree that we should not consider further a model whereby code managers are accountable to industry? Yes/No/Don't know. Please explain.**

We do not agree with this position. Further to the points we have made elsewhere in our responses, we consider that the code management function should maintain accountability to licensed duty holders where the reliability, security, safety and economic operation of the networks may be impacted upon, these parties should retain the right to approve relevant modifications, and that visibility and transparency in decision-making around code development and progression in this regards is ensured. This approach should be consistent across the management of all codes. Related, the requirement to prioritise the safety, security, reliability and economic operation of networks (and other systems and services as relevant) should be captured within the terms of reference for the code manager function and maintained as overarching priorities within their decision-making framework.

We consider that incremental improvements to current arrangements can deliver the outcomes envisaged by the consultation, with less disruption and maintaining a linkage to industry experience, expertise, and licensed roles in owning, operating and managing access to and services from the energy system, with the common primary focus on value to consumers. In taking forward fundamental code reform in a period of significant energy market change, we should identify and target actions which deliver the greatest benefit - avoiding unnecessary change is welcome. As we note in response to question 19, any shift away from accountability to industry could lead to poor service to the main parties who these code changes affect and, potentially, detriment to consumers as a result of neglect of technical and operational considerations. While accessibility for new / third parties is key, the needs of these parties should not outweigh the needs of existing parties or indeed the integrity of the systems that the codes are in place, in part, to preserve.

Ongoing accountability to relevant stakeholders should be formalised in the code manager role and may be achieved through engagement with a panel which includes representation from parties whose roles are relevant to the code activity area which is being managed.

**21. Do you have views on whether the code manager function should be appointed following a competitive tender process or other competition? Yes/No/Don't know. Please explain.**

We consider that, subject to our views set out in response to question 18, that the code manager function may be tendered or recruited via another kind of competitive process to ensure cost efficiency as well as sufficient expert knowledge, experience and historical performance in connection with the specific code / code area in question. As noted in response to question 18, commercial and strategic independence and absence of conflicts of interest (current and for the duration of the role) should be pre-requisites for consideration for the role in order to ensure independence.

**22. Do you think the code manager function should be established by the strategic body creating a body or bodies? Yes/No/Don't know. Please explain. If the code managers were established in this way, would we need to consider any alternative approaches to funding or accountability? Yes/No/Don't know. Please explain.**

We propose that a degree of separation between the entities is preferable, as this would provide clarity of function, and would also facilitate benchmarking of performance. In any case, key considerations in the creation of the bodies and functions are that the framework within which both the code manager and Strategic Body operate is set out clearly, including reporting structures and mechanisms. It is not yet clear what funding mechanism would be appropriate – a decision on this should follow a decision on the code manager / Strategic Body structure and relationship to industry and other stakeholders. We note our view that Ofgem should remain responsible for the codes, the code framework and the code manager function.

**23. In terms of establishing/choosing the code manager function, do you agree that we should not consider further: a. requiring an existing licensee to become the code manager; and/or b. requiring a licensee (or group of licensees) to create the code manager?**

**Yes/No/Don't know. Please explain.**

We consider that it would be undesirable and potentially inappropriate for an *individual* licensee to fulfil or create the role of a code manager due to the risk of distorted judgement (myopic perspective, perception of bias). We would not have the same concern about a group of, for example, network licensees becoming or creating the code manager but, again, this depends on the licensees' purpose and focus: the same concerns could arise if their motivations are more commercially focussed e.g. generators, suppliers rather than network licensees.



**24. What would be the most effective way to ensure the code manager function offers value for money (for example, through price controls or budget scrutiny)? More broadly, what is the right incentive framework to place on the code manager function? Please explain.**

We think this aspect would merit further consideration as the consultation and programme for reform progresses, as the code manager and Strategic Body structure, role, responsibilities and accountabilities are defined, and what authority the Strategic Body has; however our initial views are that the focus should be on outputs achieved rather than the cost to function, and that there should be incentives based around longer term planning, dealing with uncertainty, and efficient procurement (of services and systems, as required). We would particularly want to incentivise stakeholder engagement and maintaining whole system safety and security. Incentives should also focus on delivery of code changes that align with strategic direction, balanced with meeting the criteria on preservation of the reliability, security and safety of networks, systems and services.

**25. Are there any factors that: a. would stop parties (including code administrators) from becoming a code manager b. should prevent parties from becoming a code manager (e.g. do you agree that licensees should not be able to exercise control of the code managers).**

A key requirement in ensuring the effectiveness of the code manager function, regardless of who fulfils the function, is that its role and responsibilities are clearly defined, its decision-making processes are transparent, and that it is held accountable to (but not controlled by) relevant stakeholders and to Ofgem.

With regards to a., commercial conflicts of interest should be identified at an early stage. Commercial and strategic independence, and absence of conflicts of interest (current and for the duration of the role) should be pre-requisites for consideration for the role in order to ensure independence.

With reference to b., we do not agree that there is a rationale to prevent licensees from holding code managers accountable and it is not clear what evidence this proposal is based upon. As noted in our responses to previous questions, not all industry parties operate to the same commercial drivers, and not all parties are duty holders with licence obligations to maintain the systems upon which the energy industry is based. Network licensees in particular have a fundamental role in maintaining technically sound, safe and secure systems, with quite separate motivations from standard commercial motivations. We believe it makes sense for duty holders including network licensees, currently responsible for the management of codes (such as the Distribution and Grid Codes), to hold the code manager role accountable and that the code manager role should require prioritise the integrity of the networks (and other systems and service as required) in all aspects of its decision-making processes. Operating under licence safeguards against mis-use of power.

**26. How should the code manager function be funded (for example through licence fees or by parties to the code(s))?**

This may be via licence fees, licensee price control or by payments from parties to the relevant code, but arguably this makes less sense the further away from licensees and / or code parties that the code management function sits. Costs should be collected via all parties who directly utilise or benefit from the code management service (third party commercial entities, code parties, licensees) to ensure efficiency and effectiveness; it may be appropriate that the function is funded on a GB-wide basis. In any case, the funding mechanism and costs should be clear and transparent; this may be achieved through benchmarking costs against other similar functions and publishing relevant information on costs.

**Section 5 Code simplification & consolidation**

**27. Are there any quick wins that could be realised in terms of code consolidation and simplification?**

In the context of the aims of the proposed reforms, and the scope and scale of the code framework, we would caution against an excessive focus on quick wins. There is a risk of unintended consequences if measures are implemented before a comprehensive review of specific codes, and code activity areas, is undertaken.

We agree that digitalisation, and particularly a “front end” service which gives access quickly to relevant sections of code for a specific subject area, is likely to be a helpful tool to support understanding and engagement, and would help improve accessibility for all users, and may be relatively straightforward to achieve. An area of responsibility for the code manager could be “hand-holding” of stakeholders new to the codes, to assist them in navigation to and explanation of relevant content. This could be a ‘quick win’ that does not rest on code consolidation and simplification but rather ease of access.

A degree of code alignment could happen in the relatively short term, e.g. mapping codes thematically to identify common areas; or perhaps scoring the degree to which parts of a code are used with the potential to remove sections. While complex legal texts make up a significant part of the codes and can complicate understanding for new entrants, they have a functional purpose and any redrafting would need to be done with great care (at the expense of time and money). A less prescriptive and simplified code may make it easier for industry to carry out tasks, but this would only be in general. Where there are safety and security of supply considerations in the codes, these must be sufficiently robust and clear - in certain areas such as these, the less prescriptive approach may not be suitable. It may be

possible to combine codes in the same code activity area, e.g. the CUSC and STC. It is possible that technical transmission and distribution electricity network codes may be joined - this may be one of the easiest aspects of code consolidation and may allow whole system benefits to be realised more quickly. However, governance changes such as the creation of new bodies, which may require legislation, is likely to take more time.

We consider that all of these changes should be subject to comprehensive review and further consultation to ensure the right long-term outcome.

**28. How many codes would best deliver on the outcomes we are seeking under these reforms?**

While one code is an interesting aspiration, we do not think this is achievable in any reasonable timescale, and it is difficult to foresee what this would look like and how it would fulfil the same practical function as the array of codes currently in operation.

Many of the codes interact to a certain extent, but a degree of separation is logical and desirable, to ensure that they remain accessible, manageable and that they fulfil their functional purposes. As such we suggest that there are codes for each type of activity. This would ensure that expertise is used most efficiently, would preserve the functional purpose of the codes, and would not overly complicate and make it difficult to locate specific areas of the relevant code.

While we agree in principle to code simplification to help new players access the market, we anticipate that any material change – which we consider even moderate consolidation represents - would take a number of years to be implemented. We are wary that this may mean no code amendments would be progressed during this period and thus slow down any proposed developments envisaged by this consultation – we would welcome any assurances that BEIS / Ofgem can provide in this regard.

**29. Which option (one code manager versus multiple) would best deliver on the outcomes we are seeking under these reforms?**

We consider that there should be multiple code managers, one for each code activity area, with a specific duty to cooperate with each other, the Strategic Body and duty holders to meet the desired outcomes stated in the consultation. This approach:

- maintains a continuation of expertise in specific aspects of codes, and also allows for innovation in code management approaches;
- enables comparative benchmarking to ensure efficiency in the absence of other mechanisms;
- ensures coordination via a) strategic direction and b) duty to coordinate

- allows for clearer communication to / by Strategic Body - i.e. wider expert / implementation base

It may be prudent to have one overall code manager lead into whom the code activity area-specific code managers report, who can perform a coordinating function and disseminate targets on / monitor compliance with strategic aims.

**30. Which of our consolidation options would best deliver the outcomes we are seeking to achieve? Please provide evidence for your examples.**

As outlined in our response to question 29, we consider that Option C strikes the best balance between realistically achieving the outcomes identified in the consultation, and ongoing effective functionality of codes. We consider that these options recognise the benefits of consolidation by activity, ensure expertise is maintained and used efficiently, permit variation where this is necessary or practicable, and provide for a less complicated / more accessible code landscape. We would welcome the opportunity to give this area further consideration via consultation at a later stage.

**31. Do you agree that the codes should be digitalised? Yes/No/Don't know. Please explain.**

The level of accessibility envisaged in the consultation driven by digitalisation is clearly desirable and we support its aim. We agree that digitalisation, and particularly a "front end" service which gives access quickly to relevant and associated sections of code for a specific subject area is likely to be a helpful tool to support understanding and engagement and would help improve accessibility for all users.

However, this level of accessibility is no supplement for a solid understanding of the codes themselves, in achieving their successful implementation or development. We do not agree that digitalisation should be mandated, however it may be considered further on a code area-specific basis.

## **Section 6 Monitoring and compliance**

**32. What role should industry have in monitoring code compliance or making decisions on measures needed to address any identified non-compliance?**

Code compliance is mandatory under the licence obligations of licensees – SSEN believes that this, along with existing compliance and enforcement arrangements – including incurring appropriate financial and reputational penalties – is sufficient. For small / new companies who are accessing codes for the first time, and who may not have the experience of the level of compliance involved, it may be appropriate to monitor their progression. Any

penalties applied for non-compliance should be commensurate and reasonable, and levied fairly and evenly.

As the code manager has the expertise in the particular code they manage, they would be well-placed for compliance monitoring. However, this is a very different role to that focused on progression of strategic goals, customer benefit and innovation envisaged under the core aims of code reform set out in this consultation. While compliance monitoring may be a part of the code manager's role, the impacts of non-compliance are shared across industry, and industry is likely to be best able to articulate and understand specific aspects of compliance – we therefore consider that compliance monitoring is a role shared with industry, and that industry and Ofgem remain responsible for allocating deterrents or mitigations. Ofgem should remain ultimately responsible for enforcement in relation to the codes, as the party which has oversight and responsibility for the codes and code framework.

**33. Which of the two models we propose would better facilitate effective monitoring and compliance arrangements? Please explain.**

We consider that Model 1 better facilitates these aims, as it allows for clarification of the difference, and separation, between strategic priorities and practical implementation. Under Model 1, code parties can comply and consent to a code without confusing compliance with vision.

**34. With Model 2 - integrated rule-making body - should the IRMB have responsibility for imposing measures (where a party is non-compliant with the code) or should this be for another organisation? Please explain.**

**Please note this question only applies in respect of Model 2 (integrated rule-making body).**

If Model 2 was progressed, which we do not recommend, the IRMB should not have responsibility for imposing measures. If this was the case, there would be the potential for this body to act as both judge and jury, with the risk that it chose to act only on areas of interest further to strategic aims. This could have the distorting effects of a) not requiring the strategic vision to be sufficiently clear, and b) potentially discouraging stakeholders from engagement with the IRMB in terms of strategy, for fear of revealing an unknown non-compliance.