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By email only to: indusrtycodes@ofgem.go.uk

Dear Marion

Response to: Code Governance Review (Phase 3): Initial Proposals

Thank you for the opportunity to respond to this consultation. Our responses are contained in an Appendix to this letter.

On the whole we welcome the content of Ofgem's initial proposals' document. We do think that some care is required in treating codes on the same basis. This is because different codes have different governance arrangements. The role of some code administrators is restricted to administering procedural process whereas for other codes administrators are take on a much greater responsibility for the assessment, development and analysis of change proposals.

If code administrators are to undertake a greater role then it is essential that they have access to the appropriate resources and skills to do the work required of them.

Operating as an IGT and IDNO across a number of codes we would be happy to meet with Ofgem to share our experiences of working within the arrangements of the various codes that impact on us.

Yours sincerely

Mike Harding
Head of Regulation

Appendix   Response to Questions

CHAPTER: Two

Question 1: Do you agree that Ofgem should have the ability to lead an end-to-end SCR process, including the development of code change and legal text?

Yes. We agree that Ofgem should have the right to lead an end-to-end SCR process. We also believe that there are occasions where the change process will benefit from Ofgem developing code changes and legal text. This is because that parties to the code may not always raise change proposals in a timely or in a manner that fully addresses the objectives of the SCR. Also such an arrangement would allow change proposals as a proxy for parties who are not signatories to the relevant code. Notwithstanding the above, we think that Ofgem should exercise such right sparingly and only where other parties fail to bring appropriate modifications forward.

Where Ofgem elects to draft a code modification, we think it is essential that Ofgem be required to and effective engagement with relevant parties and to fully set out the rationale for its actions. Any code requirements to demonstrate that a modification better meets relevant objectives should be no less for Ofgem than for any other party raising code modifications.

We believe that Ofgem in its comments in paragraph 2.21 of their consultation document recognises these concerns and they will engage appropriately with interested parties. Also we note that parties will have the right to appeal a decision to the CMA if they believe it (or the process at reaching the decision) to be flawed.

Question 2: Do you agree it is appropriate to clarify that Ofgem may set timetables for the code change process under an SCR, when the existing, industry-led code development route is used?

Yes. We agree it is appropriate to clarify the right that Ofgem has to set timetables.

However, if Ofgem chooses to exercise its right to set a timetable for a code change process, it should only do so following full engagement with relevant parties. Any timetable should be based on a realistic assessment of the work and changes that parties may need to make to systems and processes. To set a timetable which shoehorns/ allocates deadlines for system/ process changes without full and proper consideration of the nature of the changes required creates a significant risk that target dates will not be achieved.

We also believe that such timetables should set out the timeline for key milestones or deliverables so that adherence to the timetable can be monitored and assured from initiation of the SCR.

Question 3: Do you have any comments on the licence drafting set out in Appendix 3?

No.

Question 4: Should Ofgem be able to directly raise a modification proposal under the standard process (option 2A)?

We recognise there may be some circumstances where there is a benefit from Ofgem having a mechanism to raise modification proposals.

However, under Option 2A Ofgem would ultimately be required to make a decision on its own change proposal. We presume that Ofgem would not raise a change proposal that it would not later approve and that in raising the modification Ofgem it will have already made

a judgement on whether the modification better meets the objectives. Therefore we question whether the perception of Ofgem's impartiality would be compromised.

Question 5: Do you have any other proposals for changes to the SCR process?

Recently, we have seen a number of significant industry changes where it was only very late on in the process that it became clear that delivery would (significantly) fail to meet defined target dates. We recognise that changes required under an SCR or other industry change process may be very complex with a high degree of uncertainty of what the "solution" will comprise. As a consequence some flexibility in delivery may be required. However, with greater complexity and uncertainty it is essential that are in place:

- transparent processes that set out tangible project/ programme milestones; and,
- reporting mechanisms that monitor and publish progress in a transparent and unambiguous manner.

To achieve this, robust project/programme management is required along with appropriate assurance mechanisms to audit progress. We believe that there may be a need for independence of programme management (i.e. By Ofgem, or an agent operating for and on behalf of Ofgem) to give parties better confidence that progress is being monitored against defined plans.

CHAPTER: Three

Question 1: Do you agree that requiring a positive identification of why Authority consent is needed (rather than why it is not) could result in additional modifications being developed under self-governance?

We agree. Currently the default (easy) action is to refer matters to the Authority for consent. Changing the requirement to one where the relevant panel needs to justify its referral to the Authority using a materiality threshold is likely to result in more self-governance.

However, it is important that parties have confidence that self-governance arrangements lead to robust decisions. The self-governance process needs to assure that the analysis undertaken and the consultation process with interested stakeholders is at least equal to that which would be undertaken if Ofgem were required to give consent. Such onus places a greater emphasis on code administrators to assure the quality of submissions. In making decisions consideration should be given on what the voting threshold should be for self-governance on a modification (unanimous, simple majority, other?).

It would be a false gain and an inefficient operation if self-governance decisions were regularly to become subject of the appeals process.

Question 2: Do you agree that guidance on the materiality criteria may assist industry in its assessment of whether a modification should be self-governance or require Authority consent?

We think such guidance is essential. This should not only be based on financial criteria, but also on the wider considerations such as the impacts on service levels, competition and other stakeholders (including protecting the interests of consumers).

Question 3: Do you agree that any potential guidance is something that panels and code administrators should develop, based on experience to date of using self-governance?

We agree that such guidance could be set out in the CACoP. We believe that this should only be at the principles level and that essential proposed principles should be fully consulted on. Also, we think a materiality assessment has a significant contextual component and may mean different things in different codes.

Whilst we are supportive of the principles behind the CACOP, we have some concerns around the accountability of the CACoP to users of the relevant parties to codes covered by the CACoP. Code Administrators must be seen to represent the views of parties to the codes they administer. To this end transparency is required from each of the code administrtaors in respect of the positions they take in developing the CACoP.

Question 4: Do you have any other proposals that may improve the self-governance processes under the codes?

This follows on from our response to Question 1 (in Chapter 3).

Parties to the relevant codes need confidence that self-governance will result in robust decisions and solutions. To gain such confidence parties need assurance that governance arrangements will be managed and coordinated effectively and no less robust than it would be if it was a change subject to Ofgem approval. This means that consultations and analysis needs to be complete and thorough for parties to undertake assessment. Where this is not the case then the relevant code Panels will need to refer the proposal back to the relevant working group for further development.

To facilitate this code administrators may need to become more than administrators and either become experts in the subject material, or have access to experts. Unfortunately, the membership of working groups does not always comprise of experts.

CHAPTER: Four

Question 1: Do you agree that updating the guidance in CACoP and ensuring best practice across all codes would enhance the role of the Critical Friend?

Yes. However, whilst the CACoP offers a useful vehicle for setting out the principles of the role of critical friend, the way those principles are applied should be determined for each code by code administrators. This is because the detailed requirements may differ across different codes. Also, such an approach allows:

- for code administrators to innovate the role of critical friend in a way that best fits the specific code
- benchmarking of the approaches used.

Also, the role of code administrator varies significantly between different codes. This may may range from the code administrators' role being a "procedural" one where its function is administer the governance and change process (e.g. DCUSA) to one where administrators are more integrated in the change process (such as in Elexon administering the BSC).

Question 2: Please provide your suggestions as to how the Critical Friend role could be better advertised and what information each code administrator should include on its website.

We agree that the critical friend role should be promoted on the relevant codes website along with a description of what activities the critical friend under that code will assist with. Additionally, the role could be promoted on the Ofgem website. Also we think the role could be advertised in a newsletter published monthly by code administrators. The newsletter would in addition set out a summary of the status of current "live" change proposals and details of parties could participate in work groups.

Question 3: Could a self-governance process be introduced for the CACoP?

We think it is inappropriate that the CACoP should have the right to impose requirements on other Codes without reference to the parties of those codes. Before we could support self-governance for the CACoP we need comfort that the CACoP was accountable to users of the respective codes covered by the CACoP.

Question 4: How often should the CACoP be reviewed?

Annually

Question 5: Do you agree that greater visibility of the CACoP can be achieved by having clear links available on all code websites to a dedicated CACoP page?

Yes. This could also be provided in newsletters. See our response to Question 2 above.

Question 6: How could the quantitative metrics be improved?

We are not particularly conscious of what the current set of metrics are. Perhaps this gives a message in respect their publicity and of their perceived relevance.

Whilst metrics can be used to indicate the performance of a code and the governance arrangements under the code, such measures do not always offer a reliable metric for the performance of a code administrator. For example, performance in progressing code modifications will be influenced in large part by the complexity of changes and the level of engagement of work group members. Code administrators for different codes perform different roles underpinned by different governance arrangements. Therefore, metric that are appropriate for one code may not be appropriate for another.

Before setting metrics there needs to clarity about what information is required in measuring an area of performance; and how that information could be used to improve performance. Metrics should not be established for metrics sake.

Qualitative metrics are best undertaken by independent surveys. We have seen both one to one telephone conferences and small teleconference forums for this. We believe these offer merits over simple questionnaires. Also code administrators should be included in such surveys. They will often see flaws that parties to the codes do not

Metrics should be specific to the different activities undertaken by the relevant code; e.g:
- Following completion of the change proposal:
    - Members of working groups could be asked to provide feedback on the process.
    - Parties who have been part of the consultation process could be asked for views
- Time to progress change proposals in different categories.
- Number of changes raised and % succeeding

Performance criteria could be published in an annual newsletter.

Question 7: Should a single body send out one qualitative survey across all codes? If so, who would be best placed to undertake this role?

We think such surveys should be independent and should be commissioned independently by each code administrator or coordinated through the CACoP. However, such surveys need to recognise that codes are subject to different governance arrangements. Therefore whilst some questions may be generic to al codes, other questions may be specific to a particular code.

Question 8: Do you agree that the modification process and template should be standardised across all codes?

No. This is because the governance process and the role of administrators differs across codes.

Question 9: Is it appropriate that all panel chairs be completely independent of industry?

The requirement for independent panel chairs (or members) will bring additional costs to the administration of the codes which will ultimately be borne by consumers. Therefore in bringing such requirements into being it needs to be demonstrated that the benefits outweigh the costs, and that their introduction is the most appropriate solution to the perceived problem. Some of the potential issues identified by Ofgem could be down to governance and process issues and not down to panel composition

Question 10: Is it appropriate that all panel members are required to be impartial, i.e. not to represent the interests of their company?

Yes. However, whilst such requirement can be codified, it is much harder to administer in practice. Parties will endeavour to act independently but they will also be aware of who pays their wages.

Question 11: Should DCUSA voting be undertaken by panel, rather than all parties?

Only for areas that have low materiality threshold; e.g. housekeeping changes. We do not support the proposals for modifications that have a higher level of materiality. We do not think the Panel changes to the role of the secretariat (such that the secretariat has the appropriate expertise to develop effective change reports that inform panel members at the appropriate level. Modifications that have a high level of materiality should still require approval from The Authority.

Question 12: Should code administrators provide a chair for workgroups?

Yes. Frequently meeting time is wasted on agreeing who the chair is – the usual position is one of reluctance for parties to put their names forward. This often leads to poor chairs being selected. In such circumstances code administrators, almost by default, end up chairing meetings.

A further point is that a working group member elected as chair can be compromised in presenting a particular view point. We see the use of independent chairs for workgroups being an essential factor to the impartial development of proposals.

Question 13: Would including a consumer impacts section on each change proposal form help to ensure consumer interests are discussed and published?

Yes. Although such assessment needs to be consistent with the relevant code's objectives

Question 14: Do you agree with the housekeeping changes we have proposed?

No comment.

CHAPTER: Five

Question 1: Should all 'material' charging modifications proceed through pre-modification processes and demonstrate some initial evidence against the relevant charging objectives prior to being formally raised?

Our experience is that pre-modification processes (such as the DCMF and DCMF MIG for electricity distribution) do not work effectively. Our experience is that frequently issues are raised place in a log, then priorities shuffled around on the log from time to time, but with no real progress being made. As a consequence issues often whither on the vine – irrespective of their merits. We acknowledge that that resource constraints may have a part to play in the lack of progress.

However, we also believe that there is often insufficient appropriate expertise and knowledge on such groups to undertake detailed impartial assessment. As a consequence we believe the pre modification processes often add limited or no value and can significantly delay progress   We would be happy to meet with the Authority to share our experiences.

Question 2: Could the current pre-modifications processes for charging code changes be applied more effectively in line with CACoP Principles 5 and 6?

For electricity charging methodologies the pre- modification groups sit outside the governance of the relevant code (DCUSA). Therefore, under current governance arrangements we do not think the CACoP has any vires in respect of the charging methodology forums

We would support the principle that such forums move under DCUSA governance.

We do not think that this in itself would result in a more effective administration of the pre modification process. Developing modifications would benefit from development of the Critical Friend role. However, the Critical Friend would need to have the appropriate expertise, or access to such expertise, in order to perform this role. Currently this does not exist across all codes (and in particularly in respect of DCUSA).

Charging methodologies and their descriptions are frequently complex. We therefore think that there may be benefit for relevant codes to have an obligation to facilitate workshops explaining the principles of such codes.

However, where change proposals are well developed we are not sure what value forcing them through a pre-modification process has

Question 3: Should panels develop forward workplans for charging modifications in line with agreed priority area(s) to provide a more robust approach to managing modifications?

Whilst we see some sense in this. We are concerned about how priorities are agreed. If a party either a "party" to the code or another interested party suffers financial loss as a consequence of the Panel not giving the modification the priority they believe it warrants, then what is their course of redress? – is it against the code panel or is it against the individual code parties. We are already concerned that the DCUSA code modification process imposes a delay of up to 2 years for modifications that are approved.

Question 4: Do you agree that charging modifications which are 'not material' (in line with self-governance criteria) should be progressed through the self-governance route?

We have some support for this. However we need confidence that relevant panels have the appropriate competence and expertise to determine whether a modification is material or otherwise

Question 5: Do you agree that bringing all current charging methodologies forums under DCUSA governance could help to improve stakeholder engagement and increase the consistency of processes for charging modifications?

We agree that:

- This would improve the perception that such forums operate impartially.
- Improve the access to relevant information on change areas

The consultation fails to comment on why moving pre-modification process under DCUSA governance would help stakeholder engagement and increase the consistency of processes for charging modifications. We think there is potential for this to be the case. However, there is also potential to make things worse.

Question 6: Do you agree that having a panel sponsor would help the DCUSA Panel better understand the origins of charging modifications and the DCUSA Panel would be more accountable for, and engaged with, efficiently progressing them?

We have no strong views on this. However, this is an additional burden on panel members, who as well as undertaking their panel duties, have a day job for which they get paid. If the role of panel members becomes particularly onerous parties may be unwilling to release staff to undertake such roles. Also, we are not convinced that panel members will not have the relevant knowledge base to undertake the role. If such pre-modification activities are carried out under DCUSA governance then we would like to understand why the secretariat can not act as the reporter to the panel

Also, we would be concerned if this additional layer of bureaucracy would add further delays to the process.

We believe the allocation of resources to undertake assessment and analysis early on in the process would have the biggest impact to improving the efficiency and effectiveness of progressing charging modifications

Question 7: Please set out any other proposals you may have for improving the governance for charging methodologies under open governance arrangements.

1.   As we have indicated above we believe the biggest area that hampers the development of charging methodologies is the lack of resource with the appropriate skills and expertise to progress modifications. This is true of DNOs as well as non DNO parties.

Their still remains an information asymmetry in respect of charging methodologies. We believe that this lack of information often results in a lack of progress in developing solutions to identified flaws. We contend that bringing charging methodologies under DCUSA governance means that the role and nature of DCUSA governance needs to change. The secretariat needs to move from being a purely procedural body to one that actively engages in the analysis and assessment of change proposals.

2.   Under the governance arrangements change proposals either fail or succeed. This means that parties are incentivised to break down concerns into narrow specific change proposals. In this way whilst one change proposal could be rejected, others

could be approved. We believe there is merit in developing a framework where change proposals can be approved in part or on a "subject to" basis. We believe this would approve the efficiency of DCUSA operation

We note that change proposals in covering a similar subject area are often considered by the same work group and progressed in parallel. This is a sensible approach under current governance arrangements. However we think this could be improved

3. Under licence conditions DNOs are required to review their charging methodologies at least annually. We believe that this review process could be formalised under DCUSA and reports produced of such review. This would feed into any work plan. We are unaware that any formal effective review of the CDCM has been undertaken since it first came into being.

4. Consideration should be given as to whether the panel should be entitled to raise change proposals where it becomes aware of flaws or where representations are made by non DCUSA parties