



Ofgem Consultation – Code Governance Review (phase 3)

Response from E.ON

General Comments

We have always been an active participant in industry debate regarding the development of industry codes. We are keen to play a constructive role in ensuring that industry governance functions well in the interests of our customers. As a consequence we engage with industry forums and participate and volunteer in industry workgroups and Panels.

We are concerned around the timing of this review by Ofgem considering that this issue is under review by the Competition and Markets Authority (CMA) as part of its review of the energy market. There is a risk that industry and Ofgem undertakes nugatory activity which would not be efficient and draws resources away from other areas of regulatory work. We believe that it would be better to wait until next year and the outcome of the CMA review before pursuing the reforms proposed within this consultation.

Significant Code Reviews – In general we are in favour of the proposals to reform and improve the Significant Code Review (SCR) process. There have only been a limited number of SCR's and it is useful to learn from the experiences to date and introduce enhancements.

We recognise the dilemma of improving the efficiency of the process by increasing Ofgem's involvement and the corresponding impact upon appropriate good governance with drafting and decision making residing with the same entity.

On balance however we believe that there are still sufficient safeguards built into the SCR process and more broadly via the appeals mechanism to the CMA to support the proposals.

We note that one of the key criticisms of the current SCR process has been the length of time in which they have progressed. We believe that this shouldn't necessarily be the sole measure as to whether the process has been successful. The issues considered by SCR's are by their nature complex with potentially material affects upon industry participants and consumers. It is therefore right that they are considered thoroughly and the impacts fully analysed and understood.

We assume that the proposals to reform of the SCR process will not be implemented in time for the forthcoming SCR regarding reform of the customer registration processes. Although this is understandable we would expect the assessment undertaken as part of this review to be used by the Ofgem team when they are implementing changes.

Self-governance – We have always been supportive of a self-governance process for industry code changes which do not have a material impact upon the market or consumers. It ensures that minor change can be implemented in a quick and efficient manner and Ofgem resource is not unnecessarily distracted.



We do not believe that it was ever right or sensible to set an arbitrary number or percentage of code modifications that would follow the self-governance route. Code modifications are driven by the need for the industry to change and evolve. Circumstances may therefore dictate the number and type of code modifications that need to be progressed.

The past few years, since the implementation of CGR's 1 and 2, have been marked by a high number of significant industry change programs (e.g. smart metering, faster switching, P272, TRAS, Project Nexus etc.) and therefore it is perhaps not surprising that the percentage of overall modifications that have used the self-governance route has been less than originally anticipated.

Code Administration – The Code Administrator Code of Practice (CACoP) are a good set of principles that we believe set an expectation of the services that we should receive from Code Administrators.

The key perceived failing of the CACoP is in our opinion a consequence of their not being sufficiently robust and direct enforcement of the principles on some Code Administrators. In some codes (e.g. the MRA, DCUSA, SMICoP and the SPAA) there is a clear commercial arrangement between the Code Administrator and the Code Panel.

This allows for the principles outlined in the CACoP to be translated into contractual service requirements, supported by suitable commercial incentives, for the Code Administrators to deliver.

This provides a clear route for the implementation and enforcement of CACoP as well as providing for the natural advantages of a competitively procured service.

We believe that there is unlikely to be an actual improvement in services from all Code Administrators until similar such commercial arrangements are implemented into all industry codes.

Charging – We agree that the DCUSA charging methodology governance arrangements are confusing and too complex. We would support the rationalisation and improvement of these by the enhancement of the current DCUSA arrangements.

We also believe that there is a fundamental issue with underlying complexity of the DUoS charging methodologies which have become so complex as to be difficult to understand by most employees of the distribution networks and Ofgem. In such an environment it is unsurprising that Suppliers are reluctant to get involved in the governance process.

This underlying situation is clearly not in the interests of consumers and therefore as part of the review we would also like to see the charging models significantly simplified.



Responses to consultation questions:

CHAPTER: Two – Significant Code Reviews

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. Evidence from Project Nexus shows the need for leadership from Ofgem in significant industry programs and in particular in leading the SCR process which may involve co-ordinating many different industry codes and stakeholders.

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 although it is likely, as with many existing Modifications, that the initial indicative timetables may need to be amended as they progress through their development process.

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

No, although it would be helpful to understand a little more about the logic used in the development of the changes to the licence. As an example it seems that the amendments also provide powers for Ofgem to raise modification changes to implement EU regulations. It wasn't clear whether this was a deliberate inclusion or a consequence of the proposed amendments.

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

Yes, we appreciate that this is perhaps not an ideal situation but it should enhance the SCR process and not place specific Licensees in difficult positions which is the case with the current arrangements.

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

No, the changes proposed by Ofgem seem sufficient to address the shortcomings seen to date with the process.

CHAPTER: Three – Self Governance

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?

No, although we understand the logic of the proposal, having been involved in the debate regarding most self-governance modifications we do not believe that it would have materially affected the decision making process.



In most modifications there is careful thought given as to whether it should follow a self-governance path or not. A consideration as to why the authority should be involved in the decision making is something therefore that we believe is already undertaken.

Better guidance on materiality and what should or should not be referred to Ofgem for decisions would ensure that this decision making process happens more quickly and with greater accuracy and consistency.

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?

Yes, this would assist parties to the industry codes in understanding what should be considered for the self-governance route and what should not.

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?

Yes, although with significantly more support from Ofgem than has been in the case to date. The MRA has been looking at some time, via a specific workgroup, at how to define materiality from a governance perspective. This has not proved a straight forward task. Work on developing a common approach for all industry codes, led by Ofgem would therefore be useful in ensuring a consistent approach.

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

No, in our view the self-governance process for industry modifications has generally worked well. We would caution against setting targets for the number of modifications that will follow any specific route as it is likely that this will be dictated more by the prevailing circumstances and types of change than by an arbitrary target percentage.

CHAPTER: Four – Code Administration

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?

No, in our view the CACoP is a good set of guidance principles but simply amending or adding to them will not ensure compliance with them by Code Administrators. Enforcement of the principles lies with how the Code Administrators are controlled and how well this process works.

In our opinion clear contractual arrangements work best in ensuring that Code Administrators deliver a good service to industry. Contracts which set out exactly what is expected, incentivises them to provide good services and have a degree of competitive tendering are best at delivering the underlying principles described in the CACoP.



Ensuring that all industry codes move to this arrangement would be a good outcome of the CGR3 process and ensure that the best practice for the role of critical friend was delivered to all codes.

We note that within the consultation Ofgem believe that there are already sufficient obligations on specific licensees to ensure compliance with the CACoP. This is manifestly not the case otherwise the issue would not have been highlighted as a concern by Ofgem and instead suitable action would have been taken.

It is also clear that in the model where a Code Administrator is contracted to a code the panel or administrative committee that oversee the contract there is a clear route for all parties to the code to suggest amendments to service that is provided. In the circumstances where a specific licenced entity (or group) are required to do this then there is no route of engagement for the other parties to the code to be involved in their management of the services provided.

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.

An outline on the Code website of specifically what services the Code Administrator will provide to the parties of the relevant code would be useful together with any specific service levels. For those Code Administrators that deliver services via a commercial contract the details of this contract should be made visible to all relevant parties.

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

It is not clear to us whether this question suggests that Code Administrators can raise changes to the principles in the CACoP or whether this would be something that would be open to parties to industry codes.

Question 4: How often should the CACoP be reviewed?

An annual review of the effectiveness of the CACoP seems appropriate.

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?

Parties to codes have so far not been engaged with regards to the CACoP by either Ofgem or the Code Administrators and are therefore not particularly aware of its merits and potential benefits.

Consideration of how this should be addressed by Ofgem should form one of the outputs of this CGR3 review.

Question 6: How could the quantitative metrics be improved?

These could be made more like the Net Promotor Score (NPS) style of metrics that is used to rate customer satisfaction with products and services.



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?

Yes, the current process where each individual code sends out its own customer satisfaction survey has become tedious and risks alienating the parties to industry codes.

Each industry Code Administrator presents a set of annual results where it benchmarks itself against the others and they each show that they are superior to all others.

Clearly this indicates a flawed process which is wasteful of industry resource. A preferable process would be for an independent body under CACoP to undertake the assessment and to provide some meaningful feedback on the differing performance of the Code Administrators.

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

Yes, a common approach to change for all industry codes would be useful for all participants. It would encourage and make engagement with industry codes easier and address many of the concerns raised about the current arrangements.

This was something that we called for in CGR1 and CGR2 however it has not been implemented by the Code Administrators. This links to our previous point around the accountability and control of Code Administrators being weak where there is not a contractual arrangement in place. It also stems from a lack of clarity and guidance from Ofgem as to what the single process and template should be.

Leaving it to the different Code Administrators to implement a common approach has resulted in the situation where they all agree that their own process and templates are the best and that all the others should change to be like them with only very limited progress from the perspective of an industry party.

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

No, the Code Administrator can provide a suitable chair for the meeting and they are not independent of the industry.

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

No, it is important to make a distinction with regards to what is actually being referred to here. Some industry codes have specific Panels/Committees/Boards who are allocated the task of making the 'Panel Recommendation' regarding a change to the industry code (e.g. SEC, MRA, DCUSA and SPAA). It is in this context that we believe the question is being asked.

The relevance of a 'panel recommendation' in the change process is that it allows subsequent decisions by Ofgem on change to be appealed to the CMA. Being an integral part of the change



process that has commercial implications for code parties ensures that there is significant interest in this part of the process.

What should be important to Ofgem when considering a change is an understanding of what the impacts of it will be on industry parties. This can be derived from their responses to the consultations that are undertaken during the code change assessment process and included in the final modification report. This may however not give a clear view. A 'panel recommendation' which is linked to parties clearly acting in the interests of their company makes this more transparent and is therefore more helpful.

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

No, what should be important for this aspect of the governance arrangement is that as many parties as possible are encouraged and allowed to be involved in the process.

What should be relevant for Ofgem is gaining an understanding from the various industry parties to a code as to what their views are on the proposed change are.

Engaging with and responding to industry code modification consultation processes can be an administrative burden and many may choose not to be involved. Making the actual change process easy to be involved with ensures as greater involvement of all parties, large and small as is possible.

Therefore it is our view that the DCUSA arrangements should not be amended and instead other codes should look to it and open their 'panel recommendation' decision process up to greater involvement and engagement from all parties.

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

Yes, if this role is not undertaken by the Code Administrators then the burden falls to code parties. This may lead to some not wanting to suggest change or be involved in the process if they believe that the work involved will be significant.

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

Yes, not having this as a relevant objective is a failing of the current process.

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

Yes these seem sensible amendments to make.

CHAPTER: Five – Charging Methodologies

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?



We are unsure whether this would address the concerns raised within the consultation that it attempting to address. This seems to be a specific issue with regards to DUoS charging and DCUSA.

We are not convinced that it is the DCUSA change process that is solely at fault for Supplier parties not engaging with the process. The DUoS charging methodologies are simply too complex for many parties to invest the time and effort in understanding. This has led to a situation where most parties simply choose not to engage with the process.

This cannot be a sound arrangement for the industry or for consumers. Although we are not opposed to the proposal within the consultation for changes to progress through a pre-modification process we believe the ultimate issue in addressing engagement will only be tackled by a simplification of the electricity distribution charging methodology.

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

Yes it might be beneficial.

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?

Experience from the changes raised to date seems to suggest that this might be a difficult task to achieve although this should not stop it being an aspiration as an outcome from CGR3.

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?

Yes, much of the change we progresses through the DCUSA would seem to fall into this category.

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?

Yes, the current situation is confusing and doesn't help parties engage with the process of managing the charging methodologies.

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?

It is not clear whether the issues to date with DCUSA are the fault the workgroups in not gaining sufficient engagement from Suppliers, the secretariat in not driving, developing and supporting the changes sufficiently or the existing Panel in being too remote from the detail regarding the charging methodology changes.



We are not convinced that having a DCUSA Panel member responsible for a change would address these underlying issues as it the first two issues that are more important.

Ultimately it should also be remembered that the role of the Panel should only be ensuring that due process is followed and not in championing or leading on specific issues.