Via email: industrycodes@ofgem.gov.uk

Marion Quinn
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15th November 2015

Dear Marion,

CODE GOVERNANCE REVIEW (PHASE 3) – INITIAL PROPOSALS

We welcome the opportunity to respond to the consultation on the Code Governance Review (Phase 3) – Initial Proposals (CGR3).

We understand that Ofgem's CGR3 work is focused on incremental change and we have responded accordingly. Nonetheless, our stakeholders are struggling with a very complex change landscape with competing priorities, not least being those related to Nexus, settlement, Theft Risk Assessment Services (TRAS), Faster Switching and now centralised registration. All against a backdrop of smart metering roll out and environmental policy change.

For these reasons, Gemserv has developed a Thought Leadership paper on how code governance could be transformed. A copy was submitted to Ofgem on 10th December 2015 - we believe this will help inform your work going forward.
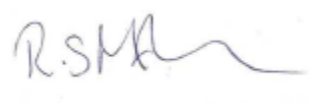
With respect to CGR3, Gemserv is supportive of the proposed reforms, and if carried through appropriately, the incremental measures should make material improvement to code governance practices. However, some of the proposals require further clarification and detail in order to understand the specific nature of the reforms being proposed - we comment accordingly within our response where this applies.

CGR3 is inextricably linked to wider reform measures, and consequently in responding to the consultation, we highlight three key aspects:

- The need for a more strategic approach to code governance;
- Reforming the Code Administration Code of Practice (CACoP) as the foundation for improvements; and
- It is the quality of chairmanship that is of greater importance.

We hope the solutions we have set out in our response to your questions helps inform your thinking. Gemserv looks forward to engaging with you further at the ongoing code governance workshops.

Yours sincerely,

Rebecca Mottram
Transformation Consultant

1.   RESPONSES TO CONSULTATION QUESTIONS

Only those questions that are relevant have been responded to:

CHAPTER: TWO (SIGNIFICANT CODE REVIEW)

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?

Gemserv understands the challenges in co-ordinating major industry change across multiple codes and agreements and welcomes a more integrated approach. We therefore support Ofgem taking a leading role in the development of modification proposals, albeit in collaboration with stakeholders and relevant code administrators.

Strengthening Ofgem's leadership role in the SCR process should bring efficiencies and will prevent momentum being lost when the SCR transitions to the modification proposal phase. This includes where necessary, developing the code change and legal text. However, given the controlling role that Ofgem would then have, it will be imperative (more than is the case now) to ensure there is an effective consultative practice in place and that there are robust procedures to ensure there is good dialogue, sound technical reviews and an appeal mechanism that facilitates challenge. Otherwise, the risk is that industry participants will step away from the process and that solutions will then be drafted in a manner that has unintended consequences, potentially impacting consumers.

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?

In principle, Gemserv agrees that Ofgem could provide a steer on timetabling of code changes under the SCR process. Timetabling should be part of a more strategic approach to change planning. Indeed, we argue that this should be coordinated under the auspices of a Strategic Body, which we have explained in our response to Ofgem's Open Letter on Code Governance, summarised as follows:

We advocate a set of key strategic outputs controlled and overseen by a Strategic Body. The Code Administration Code of Practice (CACoP) and the existing Cross Code Working Group would be the foundation – i.e. building on what we have, rather than establishing another group and/or code.

It would require reforming the CACoP such that it provides a wider and more strategic perspective. The CACoP would become a significantly improved governance document covering all the outputs (including those areas it already undertakes). It would also set out the strategic scope and objectives for the Strategic Body (an enhanced Principle 13), and provide the change framework for managing the CACoP and its outputs, including the delivery of:

- A Consolidated Code Forward Work Plan together with a summary overview Joint Industry Plan;
- A Standard Code Model (SCM); and
- Annual Cross Code Satisfaction Survey (CCSS).

We expand on the detail of the above outputs, the composition of the Strategic Body and how to take it forward in our Thought Leadership paper.

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

As highlighted in our response to Chapter 2, Question 1, Gemserv supports Ofgem raising modification proposals in collaboration with stakeholders and relevant code administrators under the SCR process. Ofgem already has the ability to direct European modification proposals and therefore, Ofgem should be able to raise modification proposals for other significant changes. Strengthening the leadership in the SCR process will ensure better coordination and efficient practice. However, there is a question of conflict of interest that needs consideration – i.e. is it right for Ofgem to raise a modification proposal, consult on it, and then approve it? Will there be an effective appeal process?

Gemserv therefore seeks clarification on the proposed arrangements and how they will work in practice. For example, the process sets out how Ofgem will engage with the industry, but what is less clear is to what extent respondents will have confidence that their views and perspectives are properly engaged in the consultative process. This approach presents risks around Ofgem approving its own modification proposals, without taking into account industry aspects that could have significant unintended consequences. As it stands today, the industry draws these out during the discovery and consultation process, and they take ownership, both of which could be lost.

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

Gemserv agrees with the revised approach to the SCR process as it provides for a more integrated end-to-end process between Ofgem and the industry when managing large, complex code changes. We note the objective of the revised approach is to improve the efficiency of the SCR process, however we highlight that SCRs have a constraining effect on the progression of other industry-led change. It is therefore important that SCRs are well managed and not overused.

In the past 12 months, the Master Registration Agreement (MRA) experienced almost 100 changes being successfully raised and progressed under its change process. These changes have been fundamental to ensuring industry business operations and processes are not only fit for purpose, but are aligned to policy and regulatory outcomes (e.g. smart metering, Green Deal, prepayment policy, code governance review). With the length of the SCRs varying from 32 to 44 months since 2010, even with the proposed improvements, it is likely to be a significant period of time to prevent the raising and development of modification proposals, particularly when considering the level of change that is necessary, simply to keep pace with energy market needs.

It would therefore be helpful when considering the progression timescales for SCRs, to also allow for consideration of other areas of change that might be impacted. For example, the timing of the SCR might also be contingent upon other changes already underway and which might otherwise fail (or have to be redesigned) as a consequence of the SCR being triggered. This would help limit the impact on other market reform initiatives and code changes.

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?

As highlighted in our response to the May 2015 Open Letter, Gemserv supports the formalisation of a wider self-governance process as it has provided significant benefits to the iGT UNC. However, whilst the iGT UNC saw an increase in self-governance modifications being progressed following its introduction in CGR (Phase 2), under the MRA, it introduced a level of complexity through the extension of conditions surrounding materiality criteria. From February 2016, MRA Agreed Procedures (MAPs) will also be subject to Authority determination (should they meet the materiality criteria), which will undoubtedly result in a reduction in the number of self-governance changes.

Gemserv therefore welcomes any reform that encourages self-governance as the default process rather than having to justify why Authority consent is not needed.

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?

Gemserv supports the development of any guidance on materiality criteria that would help industry in its assessment of whether a modification should be self-governed. A common approach to the materiality criteria should be developed to sit under the CACoP, whereby self-governance is recognised as the default process. Further guidance could then be developed at a code level to provide examples that draw on experiences to date, to support parties' understanding in relation to each specific code.

This approach would also support code administrators in their role as Critical Friend and consequently, should be consistently applied across all codes.

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?

A common approach to materiality criteria should be developed to sit under the CACoP. Code panels and code administrators could then develop code specific guidance to support the CACoP. This approach supports the views shared at the Gemserv Supplier Code Governance Forum where participants saw merit in the CACoP being strengthened to allow greater harmonisation of detailed code processes and providing a more robust set of best practice governance arrangements across all codes. We expand on this further in our response to Chapter 4, Question 8.

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?

Yes, updating the guidance within the CACoP (as per our response to Chapter 4, Question 8) would encourage consistency between code administrators, particularly around the services provided under the Critical Friend role.

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.

Gemserv supports any proposal that encourages greater consistency and transparency across industry code governance and the services code administrators offer code parties. Introducing a specific page on each code's website that details the activities the code administrator provides under the Critical Friend role, along with contact details, will improve engagement and ensure that code parties are aware of the services code administrators offer.

As highlighted in our response to Chapter 4, Question 1, the CACoP should set out guidance on the definition of the Critical Friend role, but then it is for code panels and code administrators to develop code level guidance on the specific services provided in support of this role. The SEC already offers code parties tailored guidance on the role of SECAS as a Critical Friend[1] on the SEC website. This approach could constitute best practice that is encouraged across all other industry codes. The services the SEC provides include:

- Party engagement seminars and workshops (e.g. Spotlight on the SEC Seminars);
- Guidance materials, covering areas including the Modification Process, on the website;
- Supporting parties to draft and develop modifications;
- Providing constructive feedback on any party's draft modifications;
- A Helpdesk function where queries or questions will be responded to quickly;
- Producing easy to follow modification documents;
- Ensuring all views on modifications are discussed and challenged, including assumptions and assertions;
- Encouraging participation in the Modification Process;
- Supporting parties with limited resource to engage in the Modification Process;
- Using modification specific distribution lists to ensure interested parties are kept informed about code changes; and
- Creating specific modification website pages where all the information and documentation relating to each modification can be found.

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

From our experience as a code administrator and party to the CACoP, consideration is needed on the effectiveness and speed of which changes are progressed under the CACoP. At present, the CACoP is reviewed once a year, with any proposed changes (material or not) packaged together and implemented through a big

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[1] SECAS as a Critical Friend, April 2015. Available at: https://www.smartenergycodecompany.co.uk/docs/default-source/sec-documents/guidance/secas-as-a-critical-friend.pdf?sfvrsn=4

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bang approach. We believe the same principles should apply to the CACoP as codes i.e. incremental changes should be raised as and when appropriate, and progressed through a self-governance process unless it meets a materiality criteria in which case, it goes to the Authority for consent. The materiality criteria for the CACoP may differ from that of codes, with different thresholds requiring Authority consent. To ensure any implications on code parties are considered, the changes can be consulted on with the industry via a centrally hosted consultation issued by one of the code administrators - the approach currently used for annual review of the CACoP.

There is a broader strategic question about the role of the CACoP as further explained in Chapter 4, Question 8.

Question 4: How often should the CACoP be reviewed?

In our view, it is not the timing of when the CACoP should be reviewed that is important, rather the quality of the review as and when required. The ISO 9001 (Quality Management System) continuous improvement philosophy should be embraced under the CACoP, and managed through a user-led change framework.

Gemserv recommends Ofgem should consider developing a process that allows the CACoP users (industry participants, panels, code administrators and consumer bodies) to prompt and engage in change as and when they believe appropriate. As explained in our response to Chapter 2, Question 2, a Strategic Body could be responsible for overseeing this process. This approach would ensure the CACoP it is kept up to date and remains useful to all of its users.

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?

The MRA, SEC and iGT UNC already have dedicated pages on their website that host the CACoP. This approach should be encouraged across all industry codes to ensure greater consistency and transparency.

Question 6: How could the quantitative metrics be improved?

Under our strategic approach for code governance, we believe the CACoP should be reformed. As a result of the revised CACoP, different metrics will no doubt be required in order to provide the most detailed, relevant and appropriate information. However, our current view is that many of the Principle 12 performance metrics can be irrelevant or less relevant depending on the nature of the code and whether code modifications play a fundamental role for that code. For example, the SEC Modification Process is not enacted until early 2016 making benchmarking impractical.

Furthermore, we need to be clear about what is being measured. Is it the performance of the code (i.e. includes panel, working performance etc.), the performance of the code administrator that services the code or is it the level of participation by parties in the code modification process? The metrics seem to be a mix of both.

We therefore recommend a review of the metrics to set out those that are pertinent to codes themselves (i.e. overall general performance) versus those that are directly accountable to the code administrator.

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?

Our view is that a single qualitative survey, across all codes, should be taken forward. Under existing arrangements in the MRA and SEC, an annual independent qualitative Customer Satisfactions Survey (CSS) is carried out with the associated costs shared between code parties. In addition, the SEC also carries out an annual quantitative survey. We support the need for better transparency on the relative performance of code administrators' responsibilities, but note this approach will have consequential charging implications under the MRA and SEC (as well as possible code changes to the SEC).

We recommend the single body is either procured through a competitive tender or responsibility being rotated between the codes administrators each year, similar to the approach taken for the CACoP annual review. Going forward, this function could in the future be undertaken by the Strategic Body we have advocated, to oversee strategic planning of industry change. The Strategic Body could be responsible for ensuring the survey is independent, has low impact on industry participants, and is relevant to the services that are expected, e.g. how well a code supports key elements of Critical Friend, the timeliness of updates, the efficiency with which it handles code changes etc. This could, in time, replace the individual code CSS that currently take place, potentially saving money and effort from market participants.

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

Gemserv agrees with the approach to implement a more standardised modification process and templates as this aligns with Gemserv's vision for all codes to follow five key principles: consistency (e.g. terms and structures that are common, standardised templates and practices), simplicity (e.g. language that is easy to understand), accessibility (e.g. support, guidance, navigation), transparency (e.g. publically available information), and co-ordination (e.g. cross code management practices).

As highlighted in our response to the May 2015 Open Letter, we believe these principles should be developed and housed under a Standard Code Model (SCM), i.e. a blueprint for the standards that all codes should follow.

In one sense, the CACoP already provides a building block, however its focus needs to go further than just change management practices. The CACoP should be strengthened to provide an outline for all the standards that codes should adopt, in terms of structure, language, practices and procedures. Standardising the modification process and templates, and setting these out within the CACoP, could be the first step in delivering a consistent, simpler, accessible, transparent, and coordinated industry code governance regime.

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

Gemserv seeks further clarity on the definition of 'panel' and scope of this proposal, as it can be interpreted in different ways across codes. For example, under the MRA there is no code panel as such, but an MRA Executive Committee (MEC), Board, and an MRA Development Board (MDB). We also need to be clear on whether sub-committees such as the MDB and the SEC Change Board that are currently chaired by Gemserv as the code administrator, are within scope of this proposal. If this is the case, this would not only require contract negotiations in terms of procurement and cost of an independent chair, but also code changes.

Whilst Gemserv recognises the industry benefits of an independent panel chair, we also believe the chairmanship under existing practices, such as the MEC, brings equal benefits and at a much smaller cost to the industry. MEC is chaired by industry elected representatives at regular appointment, and has been successful in delivering cost efficiencies, engaging with industry, and implementing industry change.

It is therefore important to clarify and analyse the benefits associated with independent chairs vs chairmanship offered under existing arrangements, which is something Gemserv considered in its Thought Leadership paper *The Role and Value of Independent Chairs*[2]. We explained that that there are strong arguments for ensuring the chair possesses the right skills and attributes required for quality chairmanship, rather than focusing purely on independence. Good chairmanship might be of greater value towards achieving the common long-term aims of the panel.

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

Whilst we acknowledge the challenge in determining whether a person is not representing the interest of their company, we support Ofgem's proposal for panel members to be impartial, providing this does not interfere with individuals representing the views and positions of their constituents.

However, it is unclear whether Ofgem's proposal around independence covers only panel members in their discrete role, or whether this extends to change boards. Using the SEC as an example, if the independence proposals apply to the SEC Change Board, the make-up and membership could require change. It should be noted that the SEC Change Board membership, when originally established, was designed to capture views of the different SEC Party categories in an equal manner. Gemserv therefore requests clarification on the definition of 'panel' and the scope of this proposal i.e. are sub-committees such as the SEC Change Board in scope?

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

Gemserv supports Ofgem's proposal for code administrators to provide a chair for workgroups. This approach already works well under existing arrangements in the iGT UNC, MRA and SEC and offers a number to benefits to industry, such as ensuring costs are kept to a minimum (i.e. no additional costs attached with procuring and installing an independent chair). Code administrators also offer impartial views and perspectives of changes that are independent and objective. They also have extensive code knowledge to ensure solutions (and any alternative solutions) are framed well and are processed effectively and efficiently.

We recommend this proposal is implemented across all the codes to ensure a consistent approach is adopted.

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

Gemserv supports increased transparency and accessibility across codes, therefore ensuring the consumer impact is easily visible is an important, positive amendment. We also recommend that Ofgem provides relevant guidance on how consumer impacts of changes will be accessed by industry participants.

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[2] Gemserv, November 2012. The Role and Value of Independent Chairs. Available at: http://www.gemserv.com/wp-content/uploads/The-Role-and-Value-of-Independent-Chairs.pdf

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 believe that the pre-modification process is invaluable to the design of the final modification and the critical assessments it must be subject to. This approach works well under the MRA with the opportunity to raise Solution Pre-Assessments and Issues, prior to a formal change proposal being raised. We recommend that all modification practices should have a presumption of a pre-modification stage(s) to ensure that there is a robust design and supporting evidence in place.

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

As explained in our response to the above question, we see significant benefits in the pre-modification process and therefore, this approach should be encouraged across all modification types and codes, where practical.

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?

We support Ofgem's proposals for panels to develop individual code forward workplans, as many codes (e.g. SEC) already do so. Individual code work plans could be consolidated by a Strategic Body to form a Consolidated Code Forward Work Plan as a key summary document across all code change activity, informed via inputs from Ofgem and the wider market.

The approach aids industry transparency, provides consolidated and informed market perspectives from which smaller and medium sized organisations will benefit.

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?

As highlighted in our response to Chapter 3, Questions 1 and 2, Gemserv supports any proposal that encourages self-governance as the default process. For consistency, this approach should also be applied for all types of modifications, including charging modifications.

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?

Due to the complexities associated with charging methodologies it is important that they are managed under the right forum by specialist experts. In our view, engagement seems to work well under the present model where a wide range of stakeholders contribute, so it is unclear what benefits this change would bring.

At present, the Distribution Charging Methodology Forum (DCMF) exists to fulfil a Distributor responsibility to ensure they regularly review their charging methodologies. Bringing this under DCUSA governance may necessitate a change in DCUSA funding to ring fence the costs of these activities, to be charged back only to

Distributor parties. Whilst the charging methodology forums may sit outside of the DCUSA governance, the change process is still consistent regardless of the origin of the change, be a party or the DCMF.

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?

Gemserv questions the benefits of this proposal. The distribution charging model is excessively complex and is difficult for many parties to understand. As a result, the contributors to charging methodology workgroups appears to be a very small number of individuals from a small number of parties. There is a finite limit to the amount of time that can be utilised in progressing charging methodology changes.