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Dear Lesley,

Joint Office response to the Code Governance Review Phase 3 Initial Proposals

Thank you for the opportunity to comment on the Initial Proposals. Please find below the Joint Office (JO) views on the points you raise, on the basis that this letter contains the opinions of the JO only.

CHAPTER: Two – SCR process

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?

JO comments: The JO supports the principle of an SCR approach to major industry reviews and changes to ensure strategic goals are established and met. However, we have noted at times that some Panel members have raised concerns about the duration of the SCR process followed by the use of the standard modification process to implement the SCR conclusions. We agree that it may be appropriate for Ofgem to raise modifications in certain defined circumstances and would support a process that allows modifications to be developed in line with the production of the SCR conclusions where possible to reduce the potential time line of the SCR process.

It may be beneficial for Ofgem to set out its priorities in a forum such as the Change Overview Board to give a clear strategic steer to the industry. This would set out in chronological order the Policy developments Ofgem expects the industry to pursue, and include their view on affected parties and obligations. This would allow a sensible industry discussion about potential synergies and conflicts and consider the anticipated timeline.

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?

JO comments: The JO supports the establishment of strategic goals, coupled with clear guidance on the expected implementation timeline of any SCR conclusions, as this would aid the JO in guiding UNC Panel and Workgroups to achieve these aims.

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

JO comments: We have no comments on the Licence drafting in Appendix 3 as we consider this to be within the remit of Licenced parties.

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

JO comments: The JO notes that Ofgem is identified as a relevant party in the UNC Modifications Rules and subject to section 6.1.1(e) can raise modifications but only insofar as the modification is necessary to comply with or implement Regulations or legally binding decisions of the European Commission etc. As mentioned in Question 1 above, we believe therefore that the principle has been established and that it is appropriate for Ofgem to raise proposals in certain defined circumstances. It is our view that any process adopted should be aimed at reducing dual governance and the duplication of effort and this proposal may support this aim. It would also demonstrate that Ofgem were focused on implementing SCR conclusions and that their involvement in the process would not diminish once the SCR conclusions were published.

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

JO comments: As mentioned in the response to Q1. above, the JO considers a longer term strategic steer would appear to be a sensible and welcome development. The formal establishment of industry forum similar to the Change Overview Board (COB), which would allow open-access discussion to provide strategic oversight of changes affecting the industry. We believe the formal establishment of COB combined with a Change Horizon document approach (see <http://www.gasgovernance.co.uk/GCSCHT>), which sets out pictorially all known future developments, each of which has a brief definition document (also at this weblink) that captures scope, dependencies etc would allow the industry to prepare the ground for major industry initiatives.

CHAPTER: Three – Self Governance Process

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?

JO comments: The UNC Panel tends to have a risk-averse approach to self-governance and, unless it is very clearly a minor matter, defers to Ofgem for a final decision. It is our experience that Member's opinions on materiality are very much influenced by their industry standpoint. We believe that the proposals on self-governance are a positive move in that they reverse the onus within the current assessment, with the proposer needing to justify materiality rather than non-materiality and would lead to more modifications being assessed as suitable for self-governance.

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?

JO comments: It is not always clear to industry participants why modifications should or should not be considered for self-governance, as the impact of the modification is not easy to identify against the current criteria, and particularly what constitutes a 'material impact'. We agree establishing clear guidance to test the materiality of a modification, which is transparent, easy to understand and not too narrow in its definition would provide Panels with more confidence when considering self-governance.

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?

JO comments: We are concerned about the potential for individual Panels/Code Administrators to develop materiality assessment criteria; it would seem to us that such a piecemeal approach would add to wider concerns about inconsistency across the industry. Equally, we don't believe that this should sit within the CACoP, which sets out principles and not criteria.

We believe that clarity on the assessment of materiality should come from the party with the final say on such matters, namely Ofgem. Finally, delegating the development of this important qualification guidance to the industry also seems to be contrary to previous good examples, such as Ofgem's helpful 'Guidance on Modification Urgency Criteria' document,

and we would urge this work to be co-ordinated centrally, with input from Code Administrators.

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

JO comments: We are of the opinion that all Panel business could be considered as self-governance and Ofgem could then 'call-in' anything they believe they should determine. This approach puts the majority of control where it should be; with an independently-Chaired industry Panel but allows Ofgem some discretion on the more sensitive matters. This would also remove a governance step from the process in most situations, which is always to be welcomed.

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?

JO comments: We agree that CACoP should be used to establish consistent rules for code governance, including setting out the minimum level of support industry participants should expect from a code administrator. However, it should be noted that not all code administrators are subject matter experts and therefore the Critical Friend role should focus on the code change process.

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.

JO comments: In addition to the usual contact information provided on the JO website and in our email communications, we publish a "how we can help you" document which provides an overview the JOs role in UNC code governance and highlights communication routes parties may want to use to contact us to request information or support.

In addition, we provide guidance in the modification template to aid parties to complete the modification to the required standard. This includes our contact details should they want us to review the draft modification prior to its submission.

We believe that parties' first point of call in the event they are unclear on Code matters is Ofgem; it would seem sensible for Ofgem to provide a Code Administration reference section on their website, which might describe what a Critical Friend does and how to find out more information using links to the relevant websites.

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

JO comments: The JO supports the adoption of a Self-Governance process for CACoP where appropriate, such as correcting referencing errors or updating contact details. However, we believe that Ofgem should have oversight of the process where new or amendments to existing Principles are proposed to give the industry confidence that the right level of diligence has been used to agree the changes.

Question 4: How often should the CACoP be reviewed?

JO comments: We consider the current practice to review the CACoP annually to be sufficient, although this should be considered as a minimum review frequency. We would also support reviewing changes to the CACoP during an interim period should industry participants identify changes that should be progressed sooner.

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?

JO comments: We agree that all code administrators should have links to the latest version of CACoP published on the Ofgem website. However, we also believe that the CACoP is seen by many to be a matter for Code Administrators to comply with and there may be benefit to rebranding the CACoP to identify in its title that it is an industry code of practice.

Question 6: How could the quantitative metrics be improved?

JO comments: The metrics described in Principle 12 were fit for purpose at the time they were written. Today, we think that our customers and stakeholders would have a different view of what is important in a change process.

The industry is going through an unprecedented period of change with European Codes, Security of Supply SCR (inc. Demand Side Response), Gas Settlement Reform (inc. Nexus) Switching SCR and the Transmission Charging Review all driving high-priority work. We have not therefore had the opportunity to conduct a thorough review of the metrics in Principle 12, instead we have taken the tactical steps of publishing our KPI reports quarterly and to include trend, average and median analysis (where applicable) to support absolute performance measures. We hope that this allows our stakeholders to see in a timely fashion what is happening in the UNC modification process, and to compare it with other Codes should they wish.

Looking at the existing Principle 12 metrics, we would focus on real Code Administrator performance by:

- a) critically reviewing those displaying interesting information (but ultimately something that is a feature of the process) such as KPIs 2 and 3
- b) retaining the KPIs around successful progress through the process up to implementation into Code such as KPIs 5, 7, 8, and 9
- c) omitting measures of Ofgem performance (duplication) such as KPI10
- d) omitting implementation measures such as KPIs 11, 12 and 13

Although we believe there is a good piece of work needed to understand what stakeholders currently see as important, as a minimum we would expect key stages of the process to be clearly measured:

- e) Initiation (e.g. volume/type, deferrals)
- f) Assessment (e.g. elapsed time, delivery to schedule, referrals, legal text to standard)
- g) Consultation (e.g. duration, representations made)
- h) Decision (e.g. volume/type)
- i) Implementation to Code (e.g. error rate)

Building on our suggestion above, in d), that implementation measures should be removed from CACoP reporting (on the basis that implementation is outwith the scope of the Code Administrator and therefore not in our control, leading to unfair judgements of performance), we believe that delivery bodies should be responsible for proposing and producing metrics for which they are more-suitably equipped to deliver.

By separating metrics into process-aligned reporting, and ensuring they are then consistently applied, true benchmarking of relative performance can be achieved.

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?

JO comments: We can see merit in the establishment of one qualitative survey across all Codes from a respondents perspective and to aid comparisons in compliance, performance and approach. However, we are also concerned that as customer satisfaction is a key measure for the JO, and that we receive a significant amount of detailed feedback from respondents that help us to tailor our services where appropriate to meet their needs, that we don't lose this valuable source of information and feedback.

Should a single body be nominated to send out a survey, we would see Ofgem as best placed to undertake this role and not the CA hosting the annual CACoP review, as it would provide a

consistent location for parties to respond to.

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

JO comments: We believe that consideration should be given to a single industry-wide set of Modification Rules that enshrine the good practices in the CACoP. It would appear to be sensible to replace several sets of Rules and a CACoP with common rules so that industry know exactly what to expect regardless of Code. This would also make benchmarking more straightforward.

There should be a standard approach to the establishment of Workgroups and how they operate, participation and whether voting arrangements should be adopted or not. In our view there should be no restriction on attendance by defining membership except where this is set out in the modification rules for established code Panels. We feel this would encourage greater participation, as parties would not be committed to attend all the meetings of a workgroup to retain membership.

We agree that the style and general layout of templates should be clearly and easily identifiable between codes. However, there should be scope to allow Panel to include criteria in a template due to specific challenges faced by that code e.g. such as identifying impacts on major systems change that is currently in progress.

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

JO comments: The JOs believes that an industry-independent Panel Chair might better shape the direction of a meeting, providing useful insight and influence without being blinkered by usual industry views. We see the Chair's role as one of facilitation and direction, ensuring all parties are heard, there is a balanced debate and that genuine progress is made, the Panel Chair does not need to be a subject matter expert to excel in this role.

We remain concerned about whether the benefits of having independent Chairs can be clearly demonstrated in terms of better governance than the costs incurred in recruiting and remunerating suitably able people for Code Panels, including the additional complexity for Code Administrators in educating and working with independent Chairs. Now that several major Codes have experience of operating with independent Chairs for a period of time, we think this is worthy of being re-visited by Ofgem to ensure that the value expected in the original decision is being achieved in practice.

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

JO comments: We are strongly of a view that panel members should be required to act independently as representatives of the industry. However, we note that representation based constituency approach and not expressing the views of a single company can be effective, as this ensures all parties can have confidence that their views can be represented at panel while maintaining Panel membership at a manageable and meaningful level.

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

JO comments: We do not think it is appropriate for the JO to provide comments on the specific voting arrangements of a particular code.

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

JO comments: We are firmly of the opinion that this is the most appropriate way to conduct the assessment phase. The JO acts as independent Chair in all UNC workgroups and it is our experience that participants welcome the impartiality this brings. However, it should be noted that JO staff are not subject matter experts; we see the Chair's role as one of facilitation and direction, ensuring all parties are heard, there is a balanced debate and that genuine progress is made. It is often the case that industry participants request the JO to provide a chair for

non-UNC related meetings as they recognise the benefits.

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

JO comments: We would agree that including such an assessment would highlight consumer impacts in a modification. However, it should be noted that that, as the UNC is mainly a contract between Gas Shippers and Transporters, direct consumer impacts or benefits may not be easy to identify and abstract views may need to be provided.

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

JO comments: We have noted the proposed housekeeping changes and agree that they would increase consistency between the Codes. However, we also note that the UNC is unaffected by these proposed changes.

CHAPTER: Five – governance arrangements for 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?

JO comments: The JO supports the introduction of pre-modification assessments for all modification types including charging modification as proposed in UNC Modification 0566S - UNC Modification Stakeholder Engagement and Guidelines. This modification seeks to introduce new steps into the Modification Rules to promote pre-modification stakeholder engagement through the introduction of a UNC Modification Proposal Guidance Document.

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

JO comments: The JO as a Critical Friend actively encourages parties to bring forward draft modifications of all types for discussion prior to them being formally raised. ‘Pre-modification discussions’ is a standing agenda item on our monthly workgroup meetings, enabling any party to seek wise counsel from industry colleagues on what might only be an idea at that stage, through to an informal review of a draft proposal document. Where used, this has been highly effective in engaging others and fine tuning proposals with consequential benefits to the assessment phase.

Recognising that more use can be made of this, UNC Modification 0566S seeks to address one of the fundamental drivers of an inefficient modification process, that of underdeveloped proposals in the first place. We note that a workgroup’s role is primarily to assess the impacts of a given modification (CACoP – Principle 6: “workgroups will assist the Proposer in designing and assessing their solution, advising on any issues, but not changing the solution unless the proposer agrees”). It is hoped that, by engaging informed industry colleagues informally before ‘putting pen to paper’, a subsequent proposal will be more complete and capable of being implemented, enabling a workgroup’s focus on assessment leading to more-rapid progression through the process.

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?

JO comments: The UNC is open to any individual signatory at any time to raise any modification, which means there is no ability to control the number or nature of them. It is easy for any party to raise a modification (the hurdles to jump over are low), and whilst this has the advantage of not putting in place barriers to entry, it does make future planning very challenging. Our job as CA is to facilitate change to the UNC and, as such, we would have no undue concerns with supporting the development of a forward work plan. We think that there is a more fundamental question about the remit of the UNC Modification Panel, which is currently limited to governance of the modifications process; there are no obligations or

expectations for a more strategic role in driving change (as opposed to being reactive under governance arrangements).

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?

JO comments: As previously noted, the UNC Panel tends to have a risk-averse approach to Self Governance and, unless it is very clearly a minor matter, defers to Ofgem for a final decision. See our responses to the Self-Governance process in chapter 3 above.

We are of the opinion that all Panel business including minor charging modifications could be considered as Self Governance and Ofgem could then 'call-in' anything they believe they should determine or where an industry participant(s) can make a case that they are unduly impacted by the change through an appeal to Panel.

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?

JO comments: No comment as this question is not applicable to the JO or UNC.

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?

JO comments: No comment as this question is not applicable to the JO or UNC.

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

JO comments: The UNC currently has charging methodology forums for both Distribution and NTS (DNCFM and NTSCMF). Parties are welcome to bring forward charging or charging methodology based modifications to be developed at these forums, as for example with gas Shipper-raised Modifications 0539 - Removal of NTS Exit Commodity Charges for Distributed Gas and 0563S - Moving the NTS Optional Commodity Charge Formula into the UNC.

I hope I have addressed adequately the points you are interested in. Please do not hesitate to contact me on 07909 686661 if you would like to discuss anything in this letter.

Yours sincerely,

Les Jenkins (*via email*)

Chief Executive, Joint Office of Gas Transporters