

Mr Mark Feather  
Director Industry Codes and Licensing  
Ofgem  
9 Millbank  
London SW1P 3GE

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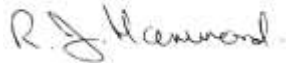
Dear Mark

**Review of Industry Code Governance – Code Administrators’ Working Group**

Thank you for the opportunity to provide comment on the Code Administrators’ Working Group report. Please find our response outlined below.

If you have any questions or would like further information about our response please contact Abigail Hall, Senior Policy Advocate, Regulated Industries Team by telephone on 0207 799 7934 or via email: [abigail.hall@consumerfocus.org.uk](mailto:abigail.hall@consumerfocus.org.uk)

Yours sincerely



**Robert Hammond**  
**Head of Regulated Industries**

## **Review of Industry Code Governance – Code Administrators’ Working Group**

### **Executive Summary**

- Consumer Focus welcomes the Code Administrators’ Working Group (CAWG) report and consultation.
- There is a real need for improvements to the industry code arrangements so that consumers can benefit from reforms quicker and that the process is more inclusive of all those involved in the market. The majority of the proposals in both the CAWG report and the recent Ofgem review of the role of code administrators and small participant and consumer initiatives will, if implemented improve industry code arrangements.
- Consumer Focus has been concerned about the difficulties facing small and new participants in the market generally. In our previous responses to both the Ofgem energy supply probe and the code governance review we acknowledged the importance of a competitive market and that barriers to entry do exist. We would like to see less complex and more easy to understand code governance arrangements as these would benefit all participants in the market.
- Generally we support, where possible, a uniform approach to code governance.
- Specifically we support:
  - a. The idea that proposers maintain ownership of modifications;
  - b. More consistent arrangements around the timing and number of permitted alternative modification proposals;
  - c. Adoption of the Balancing and Settlement Code (BSC) model for the production of legal text;
  - d. The development of a Code Administrators Code of Practice and that initially it be voluntary, becoming binding after several years; and
  - e. That Code Administrators adopt a critical friend approach while the active secretariat role is phased in over several years.

### **Consumer Focus Response to Key Issues in the CAWG Report**

1. In this response we will provide comments on the five key themes identified in the CAWG report – ownership of modifications, processes for dealing with alternative modifications, legal text, proposed Code of Practice and role of code administrators as critical friend.
2. We acknowledge that there is a degree of overlap between the issues the CAWG reviewed and those issues that Ofgem are reviewing as part of the wider Code

Governance Review. We agree that it is important to acknowledge that the CAWG report is dealing with issues that code administrators and participants can deal with via modification proposals or by adapting current practice or processes.

### Ownership of Modifications

3. We support the view expressed on page 11 of the report that *“the proposer should not have to relinquish effective ownership of their proposal provided effective arrangements are in place for alternatives to be developed through working group processes”*.
4. We agree that this will improve engagement by industry members and encourage better participation in the process.
5. We are concerned that the existing BSC process, where ownership of a modification moves from the proposer to the working group, can mean that the progress of a modification is influenced critically by who attends working group meetings and the voting process. The more collaborative approach adopted under the Uniform Network Code (UNC), as described in the report, is our preferred approach.
6. However, we have one concern that a small party may not have the resource and expertise to maintain effective ownership of a modification. The ability of the Code Administrator (CA) to be a critical friend would be important in this instance, and the CA should have a particular responsibility for helping smaller, less well resourced parties if they request it.
7. Also, it is important that the ownership of the working group report rests with the group and that the proposer cannot gloss over any negative implications of the modification proposal.

### Alternative Modifications

8. We support the principle outlined by Ofgem that there are *“more consistent arrangements around the timing and number of permitted alternative modification proposals should see the opportunity for further options to be considered, whilst ensuring that each is robust, fully assessed and subject to scrutiny.”*
9. The BSC rules regarding alternatives are somewhat restrictive, with only one alternative modification allowed. We would support the introduction of the model used by UNC or Connection and Use of System Code (CUSC), where a number of alternatives can be considered and carried forward, with a time limit for the proposal of alternatives.

10. The deficiencies of the BSC process in terms of limited alternatives were especially apparent during the last round of transmission losses modifications when consideration of a number of alternative modification proposals would have been useful.
11. However, there is a balance to be struck between being restrictive on alternatives and allowing a complete free-for-all. A time period and agreed process must be allowed for a thorough assessment of any alternative modifications.
12. If the proposer does maintain ownership of the modification then they should have the ability to withdraw their proposal. There have been instances at the BSC panel where a modification proceeded through the full BSC process even though the original proposer no longer supported the modification. If appropriate in this instance an alternative modification could be raised by a different proposer.

### **Legal Text**

13. We agree with the CAWG report that early consultation on legal text would benefit the modification process. Ideally the BSC approach should be adopted for all modifications where legal text is produced at the assessment stage and consulted upon. This is important to ensure a full understanding of the proposed changes and to ensure that policy is translated into a final legal form.
14. However for some CAs the issue of resourcing would need resolution. Elexon have the facilities for in-house legal advice and the funds to procure externally legal advice if required. If it is the CAs' responsibility to produce or procure the legal text then some CAs may need additional funding.

### **Code of Practice**

15. We are pleased that Ofgem intend to proceed with the development of a Code Administrators Code of Practice (CoP). We believe a CoP will ensure continued and improved best practice by CAs. The CoP will also encourage a consistent approach and a high quality of work, eliminate complexity and encourage participation of small parties and consumer representatives.
16. To ensure CAs accept and adhere to such a Code we believe that the CAs themselves should be the primarily involved in the development of a CoP under the auspices of Ofgem.
17. The existing CAWG terms of reference and membership should be reviewed and reconvened in order to develop the CoP. All CAs would need to be represented in the group and careful consideration should be given to other attendees. Interested parties such as industry members who have detailed experience in dealing with

- code panel and code administration, as well as consumer representatives (not just Consumer Focus representation) should also be represented.
18. Once developed the draft CoP could then be released for a consultation period to interested industry and consumer representatives.
  19. We believe also that in the first instance that adherence to the CoP by CAs should be voluntary.
  20. As many CAs state that they are already undertaking tasks that will be covered by the CoP then codifying best practice should not prove arduous, and hopefully will result in voluntary agreement with the CoP.
  21. However if, after an implementation phase of two to three years, all the CAs' have not voluntarily agreed to adhere to the CoP then it should become binding.
  22. At this time we do not support the CoP being underpinned or subsumed within licence conditions as every opportunity should be provided for CAs to voluntarily agree to adhere to the CoP.
  23. The CoP should be a high level principles type document in the first instance and we agree with the list of issues the CoP could cover, as outlined in the CAWG report, such as:
    - a. standardisation of documents and common names for processes;
    - b. alignment of procedural steps involved in the modification process;
    - c. where ever possible pro forma templates should be standardised; and
    - d. plain English should be used in all reports.
  24. The CoP should be an 'organic' or 'living' document and regular reviews should be undertaken. If necessary a more specific detailed CoP (moving beyond a principle document) could be developed.
  25. In terms of the plain English approach, some of the issues debated are highly complex and technical, but it should still be possible to set out summaries of the issues, the arguments and the recommendations in non-technical terms. In this context, we welcome the new format for BSC modification documents which has just been launched.

### **Critical Friend**

26. As stated in our response to the Code Governance Review we believe consideration should be given to the idea that the critical friend approach is adopted while the active secretariat role is phased in over several years. This would allow industry to adequately resource the active secretariat role and set up the required structures.
27. Consumer representatives and small participants need a level of support to be able to effectively engage in the Codes.

28. The CA should be formally required to take a more active role in processing modification proposals in order to improve the quality of analysis and of decisions. They could then challenge and question the panel modification proposals.
29. We believe both options would be an improvement on the current system, however both have staffing and resource implications. It is assumed that the critical friend approach would not require the level of resourcing as the secretariat role.
30. Consumer Focus supports the formalisation of the arrangements to ensure CAs at the very least take on the critical friend role. In addition the CA needs to take on the role of specifically providing information and advice to consumer representatives and small market participants, flagging up issues of special interest to consumers or code panel members.

## **Conclusions**

31. We believe that because changes to industry codes can change the way the market operates in terms of significant pass through costs to consumers, distortion of competition and/or restricting new entrants into the market, consumers' voices need to be heard in this process.
32. We believe that consumer representatives and others such as small participants and new entrants face hurdles engaging in the process to differing degrees, depending on the technical expertise and resources available to participate on a number of panels. If the proposals we support as outlined above are implemented, these hurdles, we believe, can be overcome.