



Making a positive difference  
for energy consumers

Mr Alex Plant  
UNC Panel Chair

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Date: 3 May 2016

Dear Alex,

### **Implementation of Code Governance Review Phase 3 Final Proposals**

We are writing to you about the process for implementing the changes we have identified under the third phase of our Code Governance Review (CGR3). We consider that these changes will make important incremental improvements while the wider code governance reforms proposed by the Competition and Markets Authority (CMA) are developed and implemented: indeed we believe the CGR3 changes will help code administrators and the wider industry prepare for the more fundamental changes proposed by the CMA.

We are therefore writing to all panel chairs and code administrators<sup>1</sup>, to understand your plans for timely implementation of our CGR3 Final Proposals, and to seek your views on how code bodies will work together to implement those changes that will require joint agreement and/or cross code working.

### **Background**

#### *CGR3*

In our May 2015 letter on our further review of code governance<sup>1</sup>, we noted that we have previously reviewed the industry code governance arrangements and introduced reforms to improve them. However, in the context of the anticipated scale of change required in the coming years, we set out that we continue to have concerns that the arrangements may not be operating in the best interests of consumers. We considered it timely to review the reforms we have implemented and potentially introduce further reform to the arrangements.

We consulted on our Initial Proposals in October 2015<sup>2</sup>, and in November 2015 I wrote to all panel chairs to request a representative from their code administrator to participate in a workshop which we then held in December, and also to provide further support in developing our proposals in this area. We welcome panel support for this, and welcome the work code administrators have been doing following our December workshop to develop change in some of the code administration areas we considered under CGR3.

We published our Final Proposals<sup>3</sup> in March 2016. Our Final Proposals took into account the responses that we received to our Initial Proposals consultation and the input from code administrators at our December workshop. These proposals build on initiatives implemented under the first two phases of our CGR and look, among other things, to make

<sup>1</sup> <https://www.ofgem.gov.uk/sites/default/files/docs/2015/05/cgr-open-letter.pdf>

<sup>2</sup> <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-phase-3-initial-proposals>

<sup>3</sup> <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-phase-3-final-proposals>

additional improvements to facilitate the activities that the code administrators currently undertake. These also take into account a number of existing industry initiatives on-going in this area, which we welcome, and are looking to build on.

### *CMA's Market Investigation Reference*

In June 2014, we referred the retail energy market to the CMA for investigation.<sup>4</sup> On 17 March 2016 the CMA published its provisional decision on remedies.<sup>5</sup> The CMA identified the code governance arrangements as having an Adverse Effect on Competition (AEC) and has proposed remedies in its provisional decision. It will publish its final decision in June 2016. The aim of the CMA's proposed remedies is to recalibrate the role of Ofgem and code governance bodies whilst maintaining industry involvement for the purpose of driving forward code changes that affect competition and consumers' interests.

Many of the reforms proposed by the CMA and those from our CGR3 Final Proposals build on reforms we have already introduced, and seek to improve code governance to enable the consideration of the long-term development of codes within the broader regulatory framework. We recognise that some of the reforms proposed by the CMA will require a period of time to implement.<sup>6</sup> However, a number of the CMA's proposals together with those of our Final Proposals can be implemented in the shorter term. We consider that implementing our CGR3 reforms will help prepare code administrators and the industry for the more fundamental changes proposed by the CMA.

### **CGR3 implementation**

In implementing both sets of proposals, code panels and code administrators will need to play a key part. Our CGR3 Final Proposals have set out the high level framework against which the code bodies will need to deliver. The next steps are for the code panels and administrators to develop options, proposals and recommendations and coordinate, as appropriately, with each other to do so. We would welcome being kept informed of progress and being involved in discussions as necessary. We consider that code panels and administrators taking the lead in this manner is compatible with the expectation that future changes under the CMA remedies are looking for code administrators to become code managers.

We have set out in the annex to this letter a summary of the key requirements of the code bodies in taking forward implementation of our CGR3 proposals. In particular, we have set out the areas where (subject to licence change where relevant) there is a requirement for modifications to codes to be taken forward,<sup>7</sup> areas where code administrators should look to develop the processes that they currently undertake, and where code administrators need to work together to implement proposals.

We consider that a number of these proposals can, and should, be acted upon immediately. For example, as you will be aware, a number of the changes set out in our Final Proposals document have been developed jointly by the code administrators following our December workshop. We very much welcome code administrators' work on this, and our expectation is that these changes can be implemented across all codes in a minimal timeframe. For example, we consider that all new Modification Proposals should now be using the new standard templates.<sup>8</sup> However, we recognise that some of these proposals will take time to implement, for example where code changes are required. We also recognise that further

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<sup>4</sup> [https://www.ofgem.gov.uk/sites/default/files/docs/2014/06/state\\_of\\_the\\_market\\_-\\_decision\\_document\\_in\\_ofgem\\_template.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2014/06/state_of_the_market_-_decision_document_in_ofgem_template.pdf)

<sup>5</sup> <https://www.gov.uk/cma-cases/energy-market-investigation>

<sup>6</sup> For example, a number of the CMA's proposed reforms, including licensing code administration and delivery of code change, recommend government bring forward new legislation.

<sup>7</sup> We would note that, as set out in our Final Proposals, some of our proposals do not require a change in respect of some codes.

<sup>8</sup> We recognise this may require changes to processes/documents sitting underneath the main code documents, but anticipate these can and should be progressed in a timely manner in accordance with relevant code processes.

consideration and joint working across the code bodies is needed to implement some of our Final Proposals.

### **Next Steps**

We would therefore request that you provide us with your plan to implement our CGR3 Final Proposals in respect of your code. We would expect the plan for your code to include an outline of how you expect to implement these proposals, particularly where there is a need for code administrators to work together, and a timetable for implementation. Please can you provide these plans to us by Friday 3 June 2016.

We are grateful for the input that you have made to this process to date and look forward to working with you to implement these proposals in order to meet the longer term aims of code governance reform. We consider the implementation of these proposals to be a beneficial step in the direction of the more fundamental reform that the CMA has proposed.

Please do not hesitate to contact me should you wish to discuss this matter further.

Yours sincerely

Lesley Nugent  
**Head of Industry Codes and Licensing**

## **Annex – summary of key requirements to be implemented following CGR3**

### **Individual code modifications**

- Modifications to codes to implement SCR proposals
- Modifications to codes such that Industry assesses whether a modification **is** material, and therefore requires the consent of the Authority, in deciding whether to use the self-governance route

### **Code administrators to develop and/or implement proposals to individual codes or processes**

- All codes to make better use of the self-governance provisions
- Code administrators to publish and follow Critical Friend 'Top 5'
- All codes to have a dedicated CACoP web page
- All new Modification Proposals to follow the new standard modification templates (including a consumer impacts section)
- All cross-code Modification Proposals to follow the new joint process
- The development of Forward Work plans by code administrators and ensure that they are consistent across all codes
- The development of Project Management and Assurance provisions by code administrators
- All parties to ensure that clear reasons are given in modification reports
- The Code Administrator to act as Workgroup Chair (unless there is a conflict of interest)
- All relevant Code Administrators to ensure better use of the pre-modification process for charging methodologies
- DCUSA and SPAA Panels to review Panel Voting
- All relevant papers to be made available on the DCUSA website
- DCUSA Panel to explore the role of panel sponsors

### **Code administrators to work together to develop proposals**

- The development of guidance in respect of materiality for self-governance
- Code administrators to implement the use of the Lead Code Administrator
- Code administrators to capture CACoP minor changes on an ongoing basis
- Code administrators to develop and implement a cross-code Modifications Register
- Development of a process to ensure consistency in code Forward Work plans where appropriate.