

UNC 0656 Workgroup Minutes Changes to Modification Panel arrangements

Monday 04 June 2018

at Radcliffe House, Blenheim Court, Warwick Road, Solihull B91 2AA

Attendees

Penny Garner (Chair)	(PG)	Joint Office
Kully Jones (Secretary)	(KJ)	Joint Office
Chris Warner	(CW)	Cadent
Dan Fittock*	(DF)	Corona Energy
Darren Lond	(DL)	National Grid NTS
Joanna Ferguson	(JF)	Northern Gas
Kirsty Dudley*	(KD)	EON
Mark Bellman	(MB)	Scottish Power
Mark Jones*	(MJ)	SSE
Megan Coventry*	(MC)	SSE
Richard Pomroy*	(RP)	Wales & West Utilities
Sally Hardman	(SH)	SGN
Steve Mulinganie*	(SM)	Gazprom
Ray Elliott	(RE)	Ofgem

Apologies

Debra Hawkin	(DH)	TPA Solutions
Hilary Chapman	(HC)	SGN

Copies of all papers are available at: <https://www.gasgovernance.co.uk/0656/040618>

The Workgroup Report is due to be presented at the UNC Modification Panel by 19 July 2018.

1.0 Outline of Modification

Steve Mulinganie (SM) introduced the modification and explained that the purpose of Modification 0656 is to make two changes to the Panel arrangements.

Firstly, concerning Panel Members and how they represent a constituency so that a conflict of issue situation does not arise. The proposal seeks to ensure that a Panel Member representing a particular constituency should not be employed by or work for or act for a party who is part of another constituency. The timing of Modification 0656 is to help eliminate any ambiguity before the UNC election process. He explained that the solution allows for some flexibility with relevant controls and a test for conflict of interest which is not subjective. There is a process for challenge and also a route for escalation.

The Workgroup considered each of the three business rules set out in the solution section of Modification 0656 in relation to 'conflict of interest'.

In response to a question from Chris Warner (CW), a brief discussion on the Modification Rules took place to review Section 3 covering composition of the modification Panel. Penny Garner (PG) clarified that the membership reflects constituency rather than the commercial position. It was also noted that the Modification Rules do not specify how the election process is managed. Joint Office currently run the election process which seeks nominations from the single point of contacts within the Shipper organisations.

Business Rule 1 – This rule requires the Panel Member to provide a declaration that there is no conflict of interest. This could either be part of the initial nomination form or requested by Joint Office following appointment and before attendance at the first Panel meeting. There was broad agreement for a declaration form.

Whilst being straightforward, CW indicated that he would like to seek views from his legal team.

Business Rule 2 – This rule places a requirement for the Panel Chair via the Code Administrator to be notified of any changes in a Panel Member's arrangements "forthwith". A brief discussion took place on whether the timing of the notification should be immediately or within a set time period. It was suggested that clarification was needed for Panel Members on career breaks, long-term sick or maternity leave. SM agreed to include an "avoidance of doubt" statement to aid interpretation of this rule.

Action 0601: Steve Mulinganie (SM) to include an "avoidance of doubt" statement in Business Rule 2.

Business Rule 3 – This rule requires any potential conflicts of interest to be raised with the Panel Chair via the Code Administrator for investigation. Joanna Ferguson (JF) asked if this requirement represented a change to the current contract for the Panel chair. The following comments were raised during discussion of this rule:

- Should the investigation be conducted by the Panel chair or the Joint Office as the code administrator.
- PG raised a number of points for consideration:
 - The issue of the costs of the investigation which would be borne by Transporters
 - How to deal with a circumstance the conflicted party doesn't agree to participate in any investigation?
 - Should the single point of contact be notified?
 - Panel Members do not have professional indemnity insurance.
- There was general agreement that the issue should be addressed to the Panel Chair in the first instance, but the investigation could be sub-contracted to a third-party. PG stated that the Joint Office do not have the ability to contract directly with third parties. Any costs would have to be agreed by JAGC and the contract issued via a Transporter. Joint Office on behalf of the Panel Chair could conduct the initial investigation. A three-stage investigation process was mooted, which could consist of Joint Office undertaking a triage stage highlighting the nature of the conflict of interest (when/where/how). Stage 2 would be for the Panel Chair to agree the next steps and the final stage would be a formal investigation (if needed). It was agreed that the independent third-party undertaking the investigation could include the Joint Office.

Action 0602: Steve Mulinganie (SM) to clarify that the third party undertaking the investigation could include the Joint Office.

- Implications of Panel decisions that take place before a conflict of interest is notified or identified or during an investigation. It was suggested that it would be complicated to revisit decisions already taken by Panel. It was agreed that SM should consider including some text in relation to the implications of voting decisions.

Action 0603: Steve Mulinganie (SM) to consider the inclusion of some text on the implications of voting decisions taken during an investigation or at the time of the conflict of interest.

- Tenure – PG raised a question about whether the election period should be changed? It is currently an annual process.
- There was general agreement that if there is a breach the conflicted person should be allowed to attend Panel meetings but not be allowed to vote whilst under investigation.
- Mark Bellman (MB) suggested that there are 2 types of conflict of interest – ‘constituency’ based and ‘one-off’ issue-based conflicts. The later could be a pecuniary interest. It was agreed that where a Panel Member declares such an interest and abstains from the vote, the alternate is able to vote on the matter on behalf of the constituency. SM confirmed that the conflict of issue being addressed by Modification 0656 is constituency based and he would, therefore, amend the title to reflect this.

Action 0604: Steve Mulinganie (SM) to amend the heading “Conflict of Interest Business Rules” in the solutions section to “Constituency-based Conflict of Interest Business Rules”

The second area to be addressed by Modification 0665 is in relation to Panel Members arrangements in the use of alternates. It is proposed that a Panel Member may appoint an alternate who would have the same powers as the Panel Member including the right to appoint another alternate. The following comments/issues were raised in discussion:

- PG stated that Joint Office were keen to offer more training to Panel Members to ensure a good quality of debate at meetings and good engagement by Members.
- Workgroup members asked if it is simply a voting issue or also about whether the alternate is able to discharge the function of the Panel Member. Will the alternate have the same morale obligation to the constituency and would the constituency be fully represented? It was recognised that the Alternate would be replicating the Panel Members function and representing the person being covered but there is the potential for the role to be burdensome and involve a lot of work for the alternate. KD suggested that there are parallels with the Retail Energy Code which could be explored.
- JF mentioned that Eddie Proffitt who is a consumer representative on the Panel has previously highlighted the issue of multiple alternates which he refers to as the “daisy-chain” of alternates. His concern is about the diminished knowledge of the alternate and he has questioned the ability of the alternate to contribute fully to the debate particularly in short notice situations.
- SM raised a concern that there is a risk that a constituency is not represented if an alternate is not allowed. However, he was equally concerned about situations where alternates are appointed to fill long-term absences (‘standing alternates’) and questioned if in these situations an election should have been held?
- Workgroup explored non-attendance at Panel meetings and explored parallels with iGT UNC. It was suggested that a simple rule on attendance could be included. Failure to attend 3 consecutive meetings would lead to a re-election. SM suggested that it was not reasonable to specify face to face attendance at all meetings.

Workgroup reviewed the wording of the *Alternates Business Rule* set out in the solution section. There was agreement that a Panel Member may delegate to an alternate who would have the same powers as the Panel Member.

There was some discussion, however, about whether the alternate has the right to appoint another alternate? SM raised the scenario where a Panel Member is not available to re-appoint an alternate.

2.0 Initial Discussion

2.1. Issues and Questions from Panel

None raised.

2.2. Initial Representations

None received.

2.3. Terms of Reference

The standard UNC Workgroup Terms of Reference will apply and is available at <https://www.gasgovernance.co.uk/mods>

3.0 Development and Completion of Workgroup Report

The Workgroup reviewed and updated sections 6-10 of the Workgroup Report.

Review of the relevant objective section led to a change of the impact for relevant objective c) Efficient discharge of the licensee's obligations from none to positive.

Action 0605: Transporters to provide text to explain how this modification better facilitates relevant objective (c).

Action 0606: Steve Mulinganie (SM) to include an expectation for Panel Members to complete a declaration form in Business rule 1 - Conflict of Interest.

4.0 Next Steps

PG confirmed that the next steps are to:

- Provide an updated Modification 0656
- Update the relevant objectives section in the Workgroup Report in liaison with transporters
- Consider the draft legal text to be provided by Cadent.

In order to complete the Workgroup report for the July Panel meeting a further meeting is needed to allow an opportunity to review the amended modification and draft legal text.

5.0 Any Other Business

None.

6.0 Diary Planning

Further details of planned meetings are available at: <https://www.gasgovernance.co.uk/events-calendar/month>

Workgroup meeting(s) will take place as follows:

Time / Date	Venue	Workgroup Programme
12:00 Monday 02 July 2018	Via teleconference	Detail planned agenda items. <ul style="list-style-type: none">• Consideration of Amended Modification• Consideration of Legal Text• Development and Completion of Workgroup Report.

Action Table (as at 04 June 2018)

Action Ref	Meeting Date	Minute Ref	Action	Owner	Status Update
0601	04/06/18	1.0	Steve Mulinganie (SM) to include an "avoidance of doubt" statement in Business Rule 2.	Steve Mulinganie (SM)	Pending
0602	04/06/18	1.0	Steve Mulinganie (SM) to clarify that the third party undertaking the investigation could include the Joint Office.	Steve Mulinganie (SM)	Pending
0603	04/06/18	1.0	Steve Mulinganie (SM) to consider the inclusion of some text on the implications of voting decisions taken during an investigation or at the time of the conflict of interest.	Steve Mulinganie (SM)	Pending
0604	04/06/18	1.0	Steve Mulinganie (SM) to amend the heading "Conflict of Interest Business Rules" in the solutions section to "Constituency-based Conflict of Interest Business Rules"	Steve Mulinganie (SM)	Pending
0605	04/06/18	3.0	Transporters to provide text to explain how this modification better facilitates relevant objective (c).	Transporters	Pending
0606	04/06/18	3.0	Steve Mulinganie (SM) to include an expectation for Panel Members to complete a declaration form in Business rule 1 - Conflict of Interest.	Steve Mulinganie (SM)	Pending