

Review Group Report
Review Proposal Reference Number 0267
Review of UNC Governance Arrangements
Version 1.0

This Review Group Report is presented for the UNC Modification Panel's consideration. The Governance Workstream considers that considerations of change to the UNC governance arrangements should be taken forward as specific Modifications, and notes that a number of such Modifications have been raised.

1 Review Proposal

British Gas raised Review Proposal 0267 (available at www.gasgovernance.co.uk/0267). The agreed Terms of Reference for the Review are attached below as Appendix 1.

Ofgem was conducting an extensive review of industry code governance arrangements when the Review Proposal was raised. It was proposed that a UNC Review run in parallel with the Ofgem code governance review, in order to consider the outcomes of the code governance review, understand their impacts upon UNC business, and work out the best way of delivering the required UNC changes.

It was also proposed that at the same time, industry participants review existing processes that may otherwise remain unchanged by the Ofgem review, and either confirm that they will remain fit for purpose in the post-governance review world, or decide to make additional changes in order to optimise the UNC. It was proposed that this review considers, in particular, the implications for the Modification Rules of:

- **Embedding a 'critical friend' approach for code administrators.** Under these proposals, code administrators would be required to ensure that all arguments for and against a modification proposal are discussed and reflected in modification reports. The 'critical friend' would also provide support to small participants and consumer interests engaging in the codes process;
- **Obligations to assist small participants and consumer groups.** Ofgem propose a new duty upon code administrators to actively engage with small participants and consumer groups, facilitating their participation in the codes processes;
- **'Call in' and 'send back'.** Powers to enable Ofgem to 'call in' modification proposals which are not being effectively developed or assessed at a speed relative to their importance, and powers to 'send back' proposals where analysis is deficient;
- **Published reasons for panel recommendations.** The extent to which panels provide reasons for their recommendations differs considerably across codes. Ofgem proposes requiring the provision of transparent reasons;
- **Independent panel chairs.** In order to ensure that the panel chair is independent, Ofgem proposes to introduce a requirement that the UNC Panel Chair be appointed by the Authority. This is the current practice under the BSC;
- **Performance evaluation measures.** Ofgem proposes regular benchmarking in order to improve transparency on the relative performance of the code administrators and to increase accountability for costs and quality of service;
- **Code of practice for code administrators.** Ofgem proposes that a code of practice be established to facilitate convergence and transparency in code change processes and to help protect the interests of small market participants and consumers through various means including increased use of plain English in modification reports.

In addition, the proposed introduction of Significant Code Reviews and Self-Governance have implications for the Modification Rules. Ofgem's Initial Proposals specifically suggest in the context of self governance that "the industry should draw up proposals for panel and voting arrangements and submit them as part of a self-governance package to Ofgem for

approval". The Review was therefore asked to consider Modification Panel membership and voting rights with a view to ensuring that UNC Panel remains appropriately balanced, including:

1. providing for an Ofgem appointed chair, with a casting vote;
2. providing for voting consumer representatives;
3. considering whether the current Panel constitution remains appropriate or whether changes should be made e.g. the creation of more granular shipper/transporter/other constituencies;
4. considering whether the Shipper election rules represent best practice and should be defined within the Modification Rules; and
5. Implications of the proposed Administrators' Code of Practice.

2 Review Process

In accordance with the Modification Rules, at its meeting on 15 October 2009, the Modification Panel determined that this Review Proposal should be referred to the Governance Workstream. This Review Group Report was subsequently compiled by the Joint Office and approved by Workstream attendees. In addition to monthly Workstream meetings (following the Modification Panel), three specific meetings were held to discuss the issues arising from the Codes Governance Review.

3 Areas Reviewed

a) Overview

To capture the range of proposals emerging directly from, or related to, the Codes Governance Review, an issues matrix was developed and maintained. In addition, a change marked version of the Modification rules was published which sought to capture all the suggested changes. The Review concluded that it would be appropriate for UNC parties to raise Modifications to take forward the issues debated. The issues matrix and change marked Modification Rules were subsequently used to inform eight Modifications which have been raised by National Grid to implement the Codes Governance Review.

b) Issues considered

1. Embedding a 'critical friend' approach for code administrators. *This requirement has been captured in Proposal 0319. The Workstream believed that the Joint Office already acts as a critical friend and should be encouraged to continue to do so;*
2. Obligations to assist small participants and consumer groups. *This requirement has been captured in Proposal 0319. Workstream attendees emphasised that they would wish to see the JO assist all parties in a non-discriminatory manner;*
3. 'Call in' and 'send back'. *Powers to enable Ofgem to 'send back' Modifications have been included in Proposal 0319 – the option of calling in Modifications was not part of Ofgem's Final Proposals under the Codes Governance Review. Workstream attendees were concerned that Ofgem may use this power as an alternative to effective engagement in the Modification process. It was agreed that early Ofgem engagement was desirable and should mean that this power is rarely used;*
4. Published reasons for panel recommendations. *This requirement has been captured in Proposal 0319. It was noted that the Panel Minutes have been expanded in recent months to record more of the Panel debate and the stated reasons for supporting or imposing implementation of Modifications;*
5. Independent panel chairs, with a casting vote. *This requirement has been captured in Proposal 0320, and the Transporters will consider the need for consequential changes to the*

Joint Governance Arrangements Agreement. The Workstream noted that the voting provisions in the Modification Rules are written to prevent a deadlock being recorded, such that a casting vote would not have any practical effect. The value of changing the voting provisions was debated, in particular requiring votes to be cast both for and against an issue. Some saw this as a positive development, providing for clearer decisions and transparency as to whether those not voting in favour were positively opposed or neutral. Others suggested that the existing arrangements are sufficiently clear and have been proven to work effectively, and that the case for change has not been made. While there was no consensus on the way forward, Proposal 0320 seeks to introduce a requirement to record votes both in favour and against any issue;

6. Performance evaluation measures. *The Code Administration Code of Practice sets out a range of Kips and it was noted that the Joint Office would need to start collecting the information to be able to report performance. No changes to the Modification Rules were felt to be necessary to implement this;*

7. Code of practice for code administrators. *The Code of Practice requirements have been captured in Proposal 0319, with Proposal 0318 seeking to make the treatment of Alternative Proposals consistent with the Code of Practice. It was noted that the fundamental modification process would be unchanged, but that significant detailed change will be introduced – for example, changing terminology. The most significant change identified was to Alternative Proposals, which the Code of practice states should only be raised prior to or during the workgroup stage. The Workstream debated the merits of continuing to be able to raise an Alternative within five business days of a Modification being issued to Consultation, but there was no consensus on the appropriate arrangements. Proposal 0318 does not provide for Alternatives to be raised when a Proposal is issued to consultation, and it was envisaged that other parties might raise an Alternative to this if they felt other options should be considered;*

8. Providing for voting consumer representatives. *Proposal 0286 was raised following discussions as part of this Review, and Proposal 0286A has been implemented such that there is now a Voting Consumer Representative on the Modification Panel. Proposal 0320 has been raised to introduce a second consumer vote, and the ability for Ofgem to appoint a consumer representative to the Modification Panel. While a number of Workstream attendees were not convinced of the merits of the change, it was recognised that it is consistent with the conclusions of the Codes Governance Review;*

9. Considering whether the current Panel constitution remains appropriate or whether changes should be made e.g. the creation of more granular shipper/transporter/other constituencies. *While recognising the importance of retaining a Modification Panel which has the confidence of the industry, there was no clear consensus that change was either necessary or desirable. Some Workstream attendees felt that the existing arrangements had proven to be effective and hence should continue, while others felt there was no guarantee that the arrangements would continue to be satisfactory in future. In light of the disagreements, it was accepted that any change should be pursued through the raising of a Modification, and British Gas subsequently raised Proposal 0294 which seeks to amend Shipper representation on the Modification Panel;*

10. Considering whether the Shipper election rules represent best practice and should be defined within the Modification Rules. *Some Workstream attendees expressed concern that a Gas Forum run election process might be seen as excluding non-Gas Forum Members. It was suggested that bringing the election rules within the UNC would make them more transparent and accessible to all, and be consistent with other Codes. Others suggested that the existing arrangements clearly do not exclude non-Members, and have proven to be effective. The approach offers more flexibility than may be available if the rules were brought within the UNC, making them more responsive to circumstances and avoiding*

the use of resources needed to introduce the change. While there was no consensus on the best approach, British Gas included the change as part of Proposal 0294.

11. Significant Code Reviews. *The implications for the Modification Rules of the Significant Code Review process have been captured in Proposal 0324. A suggestion was raised that it would be appropriate for a higher threshold to be achieved for the Panel to recommend implementation of a Proposal which had arisen from a Significant code Review. EON has subsequently raised Modification 0312 to take this forward;*

12. Self Governance. *The implications for the Modification Rules of the Significant Code Review process have been captured in Proposal 0323;*

13. Bringing Charging Methodologies under UNC Governance. *The implications for the Modification Rules of bringing charging methodologies into the UNC have been captured in Proposals 0322 and 0325.*

4. Recommendation

The Modification Panel is invited to note that a number of Modification proposals has been raised to take forward the issues covered by this Review and the Workstream believes its work is now complete. The Panel is therefore invited to accept this Report and close the Review process.

Appendix 1: Terms of Reference

Background

Ofgem is currently conducting an extensive review of industry code governance arrangements. Although that review is still ongoing, it seems extremely likely that that review will conclude that changes need to be made to the way that modifications to the UNC are raised, managed and decided upon.

Ofgem may be able carry out some of its desired reforms through processes other than changes to the UNC (e.g. transporter and/or shipper licence changes), however it seems likely that changes will also be required to UNC governance rules either to support licence changes, or as stand alone developments to the UNC. It is therefore proposed that a UNC Review is established to run in parallel with the Ofgem code governance review, in order to consider the outcomes of the code governance review, understand their impacts upon UNC business, and work out the best way of delivering the required UNC changes.

It is also proposed that at the same time, industry participants review existing processes that may otherwise remain unchanged by the Ofgem review, and either confirm that they will remain fit for purpose in the post-governance review world, or decide to make additional changes in order to optimise the UNC.

This Review will therefore necessarily be both wide ranging in the scope of what is considered and, since the Ofgem review is ongoing, flexible in terms of its timescales.

Purpose

It is therefore proposed that this Review considers the implications of Ofgem's suggested way forward in the Initial Proposals for Code Administrators. In particular, the Review should consider the implications for the Modification Rules of:

1. **Embedding a 'critical friend' approach for code administrators.** Under these proposals, code administrators would be required to ensure that all arguments for and against a modification proposal are discussed and reflected in modification reports. The 'critical friend' would also provide support to small participants and consumer interests engaging in the codes process;
2. **Obligations to assist small participants and consumer groups.** Ofgem propose a new duty upon code administrators to actively engage with small participants and consumer groups, facilitating their participation in the codes processes;
3. **'Call in' and 'send back'.** Powers to enable Ofgem to 'call in' modification proposals which are not being effectively developed or assessed at a speed relative to their importance, and powers to 'send back' proposals where analysis is deficient;
4. **Published reasons for panel recommendations.** The extent to which panels provide reasons for their recommendations differs considerably across codes. Ofgem proposes requiring the provision of transparent reasons;
5. **Independent panel chairs.** In order to ensure that the panel chair is independent, Ofgem proposes to introduce a requirement that the UNC Panel Chair be appointed by the Authority. This is the current practice under the BSC;
6. **Performance evaluation measures.** Ofgem proposes regular benchmarking in order to improve transparency on the relative performance of the code administrators and to increase accountability for costs and quality of service;
7. **Code of practice for code administrators.** Ofgem proposes that a code of practice be established to facilitate convergence and transparency in code change processes and to help protect the interests of small market participants and consumers through various means including increased use of plain English in modification reports.

In addition, Ofgem's Initial Proposals for Major Policy reviews and Self-Governance have implications for the Modification Rules. This Review should therefore consider, Modification Panel membership and voting rights with a view to ensuring that UNC Panel remains appropriately balanced, including:

1. providing for an Ofgem appointed chair, with a casting vote;
2. providing for voting consumer representatives;
3. considering whether the current Panel constitution remains appropriate or whether changes should be made e.g. the creation of more granular shipper/transporter/other constituencies;
4. considering whether the Shipper election rules represent best practice and should be defined within the Modification Rules; and
5. Implications of the proposed Administrators' Code of Practice.

Scope and Deliverables

The Review shall focus on changes to the governance and efficient operation of the UNC and aim to report its conclusions and recommendations to the June 2010 Modification Panel.

The Review should aim to develop a matrix of the changes proposed by this Review and the Ofgem Code Governance Review, including changes required to the Modification Rules to implement the change. The matrix should be developed to allow the tracking of Modification Proposals required to implement the changes and their status.

Limits

The Review will focus on developing UNC Modification Proposals that efficiently address any issues or requirements identified as part of this Review or in response to recommendations required by the Ofgem Code Governance Review.

Composition of Group

This Review is open to all Transporters, Code Users, and consumer representatives and will be held in open session under the auspices of the Governance Workstream. In addition, participatory attendance by an Ofgem representative is positively encouraged in order that early guidance can be provided on areas for special consideration, and areas where discussions agree/disagree with Ofgem's governance reform proposals.

Timetable

It is proposed that this review group is established for a period of nine months, but with scope to suspend meetings, extend the end date, or conclude early, depending on the progress of the Ofgem governance review.

Although the frequency of meetings will be subject to review and potential change, the Review will be on the agenda of the monthly Governance Workstream. Additional meetings will be arranged to debate larger topics, such as Modification Panel composition.

Meetings will be administered by the Joint Office and conducted in accordance with the Chairman's Guidelines.