

Energy Code Governance Reform

Citizens Advice response
to Ofgem's call for input



**citizens
advice**

Sam Hughes
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About

Citizens Advice is the statutory consumer advocate for energy. Our statutory position requires energy industry codes to reserve a domestic consumer representative position on panels. We therefore have direct experience of the operation of codes across the code landscape of both electricity and gas. Our views in response to this call for input reflect our direct experience and how we believe code reform can best deliver positive consumer outcomes and benefits.

Executive Summary

Citizens Advice welcomes the aims of code reform. We support making codes simpler, more efficient, easier to engage with and more adaptable to important market changes which deliver benefits to all end consumers.

We believe that Ofgem should approach the design principles differently to ensure that long term benefits are considered to outweigh short-term practical issues. We would also recommend that a more flexible approach is taken so that options are not disregarded at this early stage. We think more analysis needs to be undertaken, particularly to understand the benefits of thematic consolidation in electricity, and if and where partial dual fuel consolidation would deliver consumer benefits.

We think Ofgem will need to consider, and be flexible to, any potential implications of the Review of Electricity Market Arrangements (REMA) on consolidation options. Particularly under options like locational pricing where network charging signals could need to be moved into the wholesale market.

The proposals for code manager licences should include a specific policy workstream on how they will be required to operate and make decisions in the interests of end consumers. We also believe that as the statutory consumer advocate, our existing statutory powers should apply to code managers. We recommend that licences place new obligations and responsibilities on code managers that formalise enhanced engagement and accountability with the statutory advocate.

We believe that Stakeholder Advisory Forums could work well to advise, inform and support code managers if membership is suitably wide. We view their role as looking similar to that of existing code panels with the exclusion of voting powers. We see them giving views on materiality of code changes and on how well a code change meets code objectives.

We believe working groups ought to operate as they currently do and recommend that they do not unnecessarily restrict membership or attendance in order to meet the aims of widening participation.

We believe a lot more work needs to be done to develop appeal rights as a result of disbanding code panels and to ensure the shift of powers are rebalanced. We recommend the appeals regime should enable a wide variety of stakeholders to appeal decisions made by both code managers and Ofgem, recognising structural resource and information asymmetries in the market.

Q1: Do you agree with the design principles proposed to frame our assessment of code consolidation options? If 'no', please explain why.

We broadly agree with the four design principles outlined by Ofgem which have been amended from the assessment criteria used by Cornwall Insight:

1. Making it easier for market participants to engage with and understand the codes
2. Enabling the codes to be agile and adaptable to future market arrangements
3. Facilitating the delivery of strategic change and being compatible with new code governance arrangements
4. Supporting the ongoing operation of central systems

However, we consider that the third design principle should be split into its two main components, 'facilitating strategic change' and 'compatibility with new code governance arrangements'. This would align more with the Cornwall Insight paper as we do not think they are entirely interrelated. Doing so would enable a better assessment of code consolidation options.

We also consider that the 'feasibility', 'code manager' and 'systems' criteria used by Cornwall Insight are predominantly short-term practicality concerns. We think they should be weighted lower while 'adaptability' and 'usability' are where the longer term consumer benefits would be realised and should be weighted higher.

Q2: What are your views on the high-level options for code consolidation we have described ('no consolidation', 'vertical' & 'horizontal')? We welcome input on the possible benefits/disbenefits of each option.

We welcome that 'no consolidation' is considered here. It is right to explore the extent to which the introduction of empowered code managers can bring about consumer benefits without consolidating codes or with only minimal code consolidation.

We believe that significant benefits could occur through this change, primarily as a result of removing the influence of commercial interest from code change processes and making processes faster. We also believe there are significant potential benefits as a result of empowered and effective code managers with appropriate expertise being proactive and forward looking in the management of the code.

We agree with Ofgem that the options to consider further fall under the categories of 'no consolidation', 'vertical' and 'horizontal'.

We consider these to be the options which would incrementally provide likely improvements in the ability for industry to engage with the codes, and would resolve existing issues in a proportionate manner.

We agree that the 'framework agreement' and single code options should be discounted. We agree that it is likely that both would be unmanageably large and the benefits are likely to be somewhat more speculative than other options. We also believe there is a risk with these more consolidated code structures that, on a practical level, it could be necessary to replicate existing code structures to some extent, undermining the assumed benefits.

Q3: Do you agree with our initial preference to explore vertical code consolidation options and, if so, do you have any observations on the potential models set out in Cornwall Insight's April 2022 report? We welcome specific views on the following:

- **Whether the UNC and IGTUNC should be consolidated;**
- **If/how to consolidate the electricity codes;**
- **Whether the REC and SEC should remain separate; and/or**
- **Whether the consolidation of any codes should be prioritised, and if so, why.**

Based on the current information and assessments we disagree with Ofgem's preference to only explore vertical code consolidation. We agree that vertical consolidation should be explored, but we do not agree with discounting horizontal consolidation, in particular, option 2B at this stage.

We believe 3 options merit further consideration and detailed exploration - Options 1A, 1B and 2B. 1B is our current preferred option.

We also consider that there are some low/no regrets options regardless of vertical or horizontal consolidation. Consolidating IGT UNC and UNC would be one of the simplest code consolidation exercises, in relative terms, due to the similarities in the codes and the already close working relationships. We also consider that it would bring about cost and processing efficiencies.

We also believe that the creation of a single electricity charging code is likely to be the area of code that has the potential to deliver the greatest consumer benefits as well as being feasible. Charging methodologies across transmission and distribution voltages should be coherent to ensure the electricity network operates and develops in the most efficient way possible. We think this is a key way to deliver significant cost benefits to consumers.

Option 1A - minimal reform, networks code variant

Although we do not consider this to be the best option for vertical consolidation we nevertheless consider that it should be explored in further detail.

We agree that consolidating IGT UNC and UNC would be one of the simplest code consolidation exercises as mentioned above.

We believe that although this is not the optimal way to consolidate electricity transmission and distribution codes, consolidating according to voltage level is an option which could feasibly be implemented.

We agree in this option with not consolidating the REC and SEC but think the main reason why this option is worse than 1B is due to the number of technical codes (STC and SQSS) which remain unconsolidated.

Option 1B - minimal reform, technical code variant

This is our preferred option for consolidation at this stage. Like 1A we believe the creation of a single UNC is one of the least regrets consolidation options.

The main advantage of 1B compared to 1A is its potential to consolidate thematically. In our view, the technical codes for electricity transmission and distribution have many commonalities. By contrast, in 1A we consider that charging codes and technical codes within voltage levels have less in common and would not bring about any significant benefits.

We therefore think that 1B should be considered further but with the alteration suggested that a single electricity networking charging code is created whether this involves consolidating CUSC and DCUSA fully or just the relevant charging areas. We believe that there are already commonalities in the charging codes between voltage levels. We also consider that it should be a desirable outcome, aligning with net zero ambitions, that charging methodologies are coherent throughout all voltages. This should ensure the electricity network operates efficiently and decisions taken by parties such as connectees are reflective of an efficiently operated system.

Consolidating in this way would help to improve charging methodologies to remove and prevent unhelpful distortions for example in connection locations where currently there can be stepchange differences in charges between connecting at distribution or transmission.

A consolidated charging code for electricity would also certainly assist with issues associated with 132kV lines being considered as transmission in Scotland but distribution in England and Wales.

At this stage we do not envisage any significant potential benefits associated with merging REC and SEC but think that it is an element of 1B that should be considered further. While the participants of REC and SEC are similar, there may not be adequate benefits arising from merging these codes to justify the challenges involved in doing so at this stage. Similarly, at this stage it appears appropriate that BSC remains standalone under a vertical option due to its lack of interaction with other codes.

Lastly, we consider 1B an attractive option as it could be a suitable interim solution, if necessary, while further assessment can be undertaken of the potential benefits of full or partial dual fuel consolidation. This is particularly the case given some of the potential outcomes of the Review of Electricity Market Arrangements (REMA) as we explain below.

Option 2B - partial horizontal alignment

Although this is not currently our preferred option we believe that this option merits further consideration. It is materially similar to Option 1B as it effectively leaves REC, SEC and BSC separate while consolidating the remaining electricity codes thematically into charging and engineering/technical codes. However, this option includes the consolidation of all of IGT UNC and UNC into the wholesale, charging, engineering/technical, comms and retail codes.

The reason this is not our preferred option, but we believe there is merit in further consideration, is because we think there needs to be much more exploration of the relative benefits of consolidating electricity and gas codes either wholly or partially. We note that Cornwall Insight's paper believes that purely vertical code structure *"does not appear to provide consistent benefits over a horizontal or framework arrangement and reduces scope for dual-fuel efficiencies"*.

Principally we agree that there are clearly increasing interactions between the operation of the electricity and gas markets. However, what is less clear is what issues are currently caused or foreseen by these being governed by separate codes and what significant benefit would arise from solving these issues by

consolidation. Careful consideration is also needed to ensure these benefits outweigh the costs.

Option 2B, as currently presented, involves all of IGT and UNC being split across a wholesale, charging, engineering, comms and retail code. However, we think that consolidating only certain elements of UNC, such as wholesale code, while leaving the remaining areas as a standalone UNC, could be an attractive option.

Interactions in wholesale markets and therefore codes between fuels may be more clear and consolidation may therefore have the potential to deliver consumer benefits. However, this is not necessarily guaranteed and needs more detailed exploration which we are concerned would not happen if partial horizontal alignment is dismissed at this stage.

In the area of engineering/technical code, we think it is unlikely that there is any alignment that would result in significant benefits.

For charging codes it is unclear whether there is adequate interaction to justify consolidation across fuels. However, Ofgem should explore the extent to which current market participants or network users are making choices between gas and using electricity. This should help to identify whether consolidation would be a useful way to address the need for coherent charging signals across fuels.

As we stated earlier, we consider that some of the design principles used by Ofgem and the assessment criteria used by Cornwall Insight in their report should have different weightings. We consider that the 'feasibility', 'code manager' and 'systems' criteria are predominantly short-term practicality concerns, whereas 'adaptability' and 'usability' are where the longer term consumer benefits would be realised. Therefore these two areas should be weighted higher. Were that the case, then we consider that the score given by Cornwall Insight would be higher than 13, particularly in a scenario of only partial dual fuel consolidation due to the increased feasibility for example by just consolidating wholesale codes in a dual fuel manner. In this instance option 2B may score more similarly with the vertical consolidation options.

Review of Electricity Market Arrangements (REMA) implications

The potential outcomes of the Review of Electricity Market Arrangements (REMA) may have implications in the way electricity wholesale markets and codes relate to the charging codes, particularly if network charging signals need to be moved into the wholesale market as a result of locational pricing.

We therefore recommend that any decisions made by Ofgem should leave optionality for further code reform to reflect the options considered by REMA.

Prioritisation

Under Options 1B and 2B, we believe it is likely that more material consumer benefits would be delivered as a result of consolidating the charging codes, compared to the technical codes. Charging codes can have a more direct impact on the costs ultimately faced by end consumers as they aim to provide signals to industry parties to operate, develop and connect to the network efficiently. By comparison, we would anticipate the consolidation of technical codes to have more indirect consumer benefits which may be less material. If it is necessary to make a choice we would recommend a consolidated electricity or dual fuel charging code is prioritised over technical codes.

Where only vertical consolidation is taking place, we believe that it could be possible for the consolidation to take place in parallel, provided there is adequate resourcing by Ofgem and industry, particularly due to this being a potentially simpler process in the gas codes. However, in comparing the consumer benefits we would again support the prioritisation of consolidating charging codes over gas codes as again, we consider that the consumer benefits arising from this are likely to be greater in charging.

Q4: Do you agree with our preferred implementation approach (Option 2)?

- **If so, do you have any additional observations on what we should consider when further developing this approach, including which code provisions should be considered within the scope of governance arrangements?**
- **If not, please provide details.**

We believe that option 3: *Consolidation with rationalisation of the code arrangements* would bring about the greatest consumer benefits because this would make the consolidated codes easier to engage with which is a key cornerstone of the code reform aims. As it has been achieved in the creation of REC we also believe it has been demonstrated to be practically possible.

However, we consider that option 2: *Common contractual framework and governance arrangements* strikes the right balance in delivering code consolidation faster and the associated benefits with this. However, we recommend that under option 2, a clear timetable is established for new code managers, once appointed, to undertake the rationalisation and simplification process. This would ensure that the consumer benefits associated with this are delivered as soon as is practically possible across consolidated codes.

While we agree that it is possible for governance arrangements to vary by each code, as stated by Ofgem, we believe that Ofgem should start from the position that code governance ought to be common across all codes, unless presented with a clear needs case for any code to deviate from this. We consider that this aligns better with the principles and aims of code reform and do not consider that varied processes bring any material benefits.

We agree that under option 1: *Common contractual framework only* having different code governance arrangements within a single code or under a code manager licence is not desirable, would be overly complex, and we believe, would replicate existing structural issues which code consolidation aims to address. As we state above, we also consider that it should principally be undesirable to have varying code governance across the landscape of codes too.

Code Manager Licensing

Q5: Are any of the contents we have identified for the licence conditions unnecessary, or, would be more effectively covered outside of the licence (eg in the codes)?

We agree with the areas proposed to be covered by licence conditions and consider that it is preferable to have these conditions within the licence rather than the code. Any areas covered by the code could potentially be altered by the code managers themselves, if considered under the equivalent of self governance criteria. We believe the code licencing regime is likely to be more in consumers interests because of the monitoring, compliance processes and enforcement that we would expect to come with it to ensure that code managers act effectively and efficiently.

Q6: Are there any additional areas that should be subject to licence rules?

Yes, we consider two areas of licence rules which have not been explicitly included in the call for input:

Consumer duty

In addition to any code modification objectives which are carried over or created, we believe it is essential that code manager licences require code managers to fulfil their responsibilities and licences, in a way that is in the interests of end consumers. This is particularly important given the enhanced powers that code managers will hold in proposing and developing code modifications and decision making powers on non-material changes. This is also important given that code managers could have for-profit ownership models which need to be balanced with the interests of end consumers who will ultimately fund them. A principles-based licence condition to this effect would likely be suitable but we would recommend exploring the potential for prescriptive obligations here too.

We believe that across all codes there are improvements that could be made to better understand the costs and benefits to end consumers of code changes earlier in the process. This would provide code managers and Ofgem with better information and evidence to assess changes. Putting an explicit duty on code managers to this effect would better align the decision making powers and responsibilities with those that Ofgem has.

We would also note that we highlighted the need for consumer duties, interests and protections to form part of code manager licences in response to the earlier Code Reform consultation¹. We therefore encourage further early development of this by Ofgem over the coming months.

Efficiency of central services

It is not currently the preferred policy of code reform to licence central system delivery bodies². The UK Government response to the consultation on Energy Code Reform stated Ofgem would instead receive *“the power to issue directions to in-scope central system delivery bodies to ensure that they do what is required by a code or what is reasonably necessary to facilitate the ongoing efficient operation of the codes”*.

It is not explicit to what extent these powers will permit Ofgem to make directions or intervene in the budget setting process of central system delivery bodies. At this stage we therefore recommend that Ofgem considers whether any licence conditions would be required, in addition to Ofgem’s role, to ensure the efficient delivery of central services. For example, this could include a requirement for a code manager to raise any concerns with Ofgem that it has regarding the performance, efficiency or cost of the central service delivery body in developing and implementing solutions.

We believe this is an important component of code reform. Currently scrutiny of the costs of code changes is inconsistent between codes, with some codes not routinely considering the costs at all. We are also aware that the budgets of Xoserve are being appealed year on year due to concerns about transparency of

¹ Citizens Advice [response to the BEIS and Ofgem joint consultation on the Design and Delivery of the Energy Code Reform](#), September 2021

² [Government response to the consultation on Energy Code Reform](#)

costs with industry parties not achieving a satisfactory resolution. We believe that ahead of code manager licencing either Ofgem should set out how its powers will be able to deliver improvements, or explore the role code manager licencing could play in addressing this to ensure costs faced by industry and ultimately all end consumers are fair.

Q7: Do you agree with our indicative prioritisation for policy development, and do you identify any specific dependencies that you think we should factor into our policy considerations?

We agree with the areas prioritised for policy development with the additional further comments on these areas:

Funding and incentives - We believe that code consolidation and code reform should not structurally prohibit any ownership models, in particular not-for-profit organisations.

In particular, Ofgem should consider how, in the instance of a code manager breaching its licence conditions, enforcement action could be meaningfully implemented. One mechanism we would recommend is that incentives associated with performance or with meeting the conditions and obligations of the licence are tied to executive pay packages and rewards. This was recommended by the National Infrastructure Commission³ in October 2019 and we support this being used to ensure code managers are held to account while also ensuring a wide range of ownership models are possible.

We also agree that requirements should be set on how budgets will be established and how approval or scrutiny would take place. It is essential that the costs associated with code managers remain appropriate in order to prevent the erosion of consumer benefits delivered elsewhere in the code reform package.

³ National Infrastructure Commission, [Strategic investment and public confidence](#), October 2019

Deliverables and reporting - As part of considering the obligations towards BEIS and Ofgem, this policy area should also consider the role of Citizens Advice as the statutory consumer advocate in energy. We provide more detail on our views regarding the stakeholder advisory forum below, but in removing the panel and the statutory consumer advocate's panel vote, we believe that appropriate replacement powers and obligations are required.

For example, the information request powers held by Citizens Advice in other areas of the energy sector should be extended to also apply to the new code managers. We also believe further obligations should require enhanced engagement by code managers with the statutory advocate as part of a wider code licence obligation to act in consumers interests as we discuss in response to Question 6.

For example, this could require code managers to be responsible for holding briefings on code matters, dealing with formal requests for information, and providing information to the statutory consumer advocate to demonstrate the end consumer impacts of changes where required. Routine reporting by code managers on the decisions they make and the positive impact delivered for end consumers could also be an option.

Q8: Are there any issues that we should take into account when considering moving the current 'code owner' licence provisions to the new code manager licence (such as unintended consequences)?

As mentioned in response to Question 7, the risk of an unintended consequence arising from some ownership models being prohibited is one that should be considered in this process.

Stakeholder Advisory Forum

Q9: What do you think the stakeholder advisory forums' key roles and/or functions should be, and what areas (other than code change) should the forum(s) potentially have a role in?

We broadly agree with Ofgem's description of how industry stakeholders should have a role in the new code manager landscape. We agree that it will remain essential that stakeholders have a role in advising, informing and supporting code managers to ensure their expertise helps to inform the decision making process.

At this stage we do not have a view on how many SAFs will be required, given uncertainty regarding code consolidation. We do, however, expect that SAFs will need to exist on a permanent basis within each code, reflecting the current presence of panels.

Code Governance

We believe that the role of the SAF could look largely similar for both material (authority direction) and less material (self governance) changes.

We would anticipate that code managers will conduct critical friend processes for code changes not proposed by the code managers themselves, as well having the power to develop their own in-house.

The SAF should then play a role in assessing whether the change proposal is material or not. We do not consider that it is necessary for votes to be held in SAFs. However we expect that it should be a code manager's responsibility in administering these groups to capture the views of participants, noting where there is a clear consensus or mixed views, and to act with due regard to the views expressed.

We believe this process should take place whether it is a code manager-proposed change (internal) or one proposed by an industry party for example (external). In both instances the code manager should formally hold responsibility for deciding the governance route. The view given by the SAF, would be an early opportunity to give visibility to the views and any concerns of

SAF members and for the code manager to seek to resolve disputes early on regarding materiality. It should also be an opportunity for Ofgem to identify whether they anticipate that a code change is material and make directions to the code manager where necessary.

We anticipate that it would then be necessary for code changes to follow a process that is similar to the current ones with further development and scrutiny taking place in workgroups that are separate from the SAF.

Our experience is that working groups can be a useful forum in which development and detailed scrutiny can take place by those who are interested or impacted by the change. It is particularly a forum where potential alternative solutions can be considered and proposed. This can help with identifying the optimal solution rather than the first solution considered. Under code reform these workgroups could exist either thematically on a permanent basis or be created and closed down specific to each code change.

The initial proposal for code reform set out that working groups could involve “*a more focused group of experts*”⁴. We believe that its key for effective working groups that participation is more open to interested parties to avoid the unnecessary exclusion of some participants.

Code managers will be reliant on good development practices and scrutiny of code changes in these workgroups to arrive at optimal solutions and good decision making. We believe this would therefore act as a useful incentive to ensure they are conducted well in order to meet their licence conditions.

Code managers should then consult openly on the code changes after this working group development.

As more information and evidence should be available following consultation, the SAF should then convene again for the code manager to report on any material issues that arise from the consultation and views sought on materiality, whether the change is suitably developed, and its performance against code objectives with the code manager also expressing a view.

The code manager should again report on this final stage of discussion alongside the publication of its own decision where it is non-material (self-governance). For

⁴ [Design and Delivery of the Energy Code Reform: consultation](#), September 2021, page 44/45

material changes the report should be submitted alongside all information and evidence to the authority alongside a code manager recommendation.

Currently panel votes only directly and materially impact the approval of a code change if the change is self governance, as votes on authority direction changes in no way bind Ofgem's decision making process. Ofgem is required to assess each code change on its own individual merits, simply giving regard to the views expressed by panel votes.

We therefore consider that the process we have expressed brings about benefits as a result of removing commercial interest from votes, while not significantly altering authority direction processes. While for non-material changes a panel vote would no longer take place, given the nature of self governance changes, at this stage we do not consider this to carry significant risks provided there is adequate opportunity for the SAF to provide feedback and give a view on materiality. We also consider the risk to be lower if code licencing is adequately stringent and appropriate consumer duties are included.

For any equivalent to fast-track self governance code changes where the change is often immaterial and about text clarification we believe this could be subject to discussion at SAFs firstly to give notification that a change is being made to the industry and also to invite views about whether the change is as immaterial as proposed. However, we do think that a sensible efficiency could be made where this process does not include SAFs as long as industry are notified of these changes through routine notification processes and there are opportunities to revisit the change where necessary.

Appeals

We consider the more significant change that arises from disbanding panels and replacing them with SAFs, as we describe above, is the implication on appeal rights.

With a shift of power from code panels to code managers, we believe that appeal rights will need changes. The appeals regime should enable a wide variety of stakeholders to appeal decisions made by both code managers and Ofgem. This should include code parties and those with legitimate interest, including the statutory consumer advocate.

To make appeals accessible, steps will need to be taken to acknowledge both the resource and information asymmetry. This should ensure processes are not overly burdensome as to prevent smaller parties from appealing. However, this should also be balanced with checks to ensure that appeals processes can not be overused or abused.

We have concerns about the implications of the preferred appeal body for authority decisions. While we agree that the CMA is the most appropriate body to appeal decisions taken by Ofgem, the reality of CMA processes and structures means that there are barriers for smaller and newer market entrants and would not be consistent with the Government's position that *"any appeals framework should allow effective opportunities for different interests and views to be represented, whilst being accessible and as simple, rational, flexible, and independent as possible"*⁵.

We recommend that the decisions made about code appeals processes consider work currently undertaken by BEIS and HMT looking at economic regulation including appeals processes.

Performance Assurance

We support the use of code manager licence conditions regarding their performance. We also believe that the SAF members, who are likely to be directly charged for the costs associated with code managers, are likely to have a strong interest in their performance and are therefore well placed to provide views to Ofgem in its ongoing assessment and monitoring of performance. However, we are unsure of the relative benefits of the SAF formally providing a view compared to Ofgem engaging directly with SAF members but think this needs further consideration by Ofgem.

⁵ [UK Government response to the consultation on Energy Code Reform](#), page 30

Q10: What options/issues should be considered in terms of constituting the stakeholder advisory forum(s), in terms of membership and securing appropriate representation?

SAFs should be composed of members who reflect the wide ranging views of industry, consumers and others. The forum should ensure that a seat is reserved for the statutory consumer advocate and a limited number of parties with legitimate interests and expertise, for example academics.

It should also include adequate representation from industry including small or new parties, large incumbent parties, those involved in the domestic market, non-domestic market, industrial and commercial market, generators and energy users. Given the desire to make codes easier to engage with we believe SAF membership should be considered open by default provided appropriate interest or expertise of attendees.

For independent members (i.e. those not directly representing an industry party or group), it is important to avoid potential conflicts of interest by ensuring these members are not commercially engaged in the sector.

As we do not foresee formal votes being held, it is unlikely that membership would need to be based on elections. However, SAFs should be conducted in a way that ensures a balance of views are heard and that collective views cannot be skewed by the number of attendees from any particular industry constituency or size of party. While quoracy is clearly one option to deliver balance, we think it may be necessary for code manager licences to require a recognition of resource and information asymmetries among SAF members with obligations to actively seek to rebalance this. For example by providing additional support to smaller parties or by requiring the views of different large industry constituencies to be expressed by a representative.

Practical steps like this should ensure code managers hear a good representation of views and are in the best possible position to make decisions and recommendations that are in the interests of all end consumers.

Q11: Are there any lessons learnt (either good or bad) from the current code arrangements that should be considered?

Although no detail has been provided yet as part of the code reform process regarding how sub-committees of codes will be affected, we would note that quoracy is already an observed issue within some sub-committees⁶. The UNC code panel has heard how industry participants' regulatory teams have become smaller and that this has impacted the ability to engage with some aspects of code governance. We are concerned that short-term fixes such as lowering quoracy does not address the root issues which we would hope code reform can help address. While it is a clear aim that code reform makes codes easier to engage with, it should be noted that doing so may not alter the business decisions of industry parties and therefore their ability or willingness to engage with codes and so this is not necessarily guaranteed.

Prioritisation processes under current code arrangements are mixed with some undertaking this process and others do not. For example CUSC prioritises code modifications meaning some will be progressed as a high priority while low priorities may not progress for a period of time. We agree that this can be a practically necessary step to take, however there can be risks, particularly during periods with high numbers of modifications, meaning some low priority modifications may not be progressed for multiple years. Although improvements have since been made and we understand the rationale for having this process, we do think it is an element of code governance that should be considered under the new code licences.

We wish to highlight some very recent examples which we believe indicate issues with current code governance. We believe these are examples of where code reform ought to address the governance issues they highlight.

CMP361 - This modification sought to change BSUoS to an ex-ante volumetric charge and the specific arrangements that would allow the ESO to manage the setting and forecasting of these charges, while managing risks and cash flows.

⁶ See [UNC0815S - DSC Committee Quoracy](#)

The modification was proposed in February 2021 with Ofgem's decision taking place in December 2022. The development of the modification resulted in the proposal to create a BSUoS Fund to assist with the ESO in managing risk.

Minded-to decisions from Ofgem in September 2022 with associated analysis, however, did not account for the inclusion of a BSUoS Fund and so did not assess whether it would erode the consumer benefits associated with the core aims of CMP361 and the findings of the Second BSUoS Taskforce.

Ofgem's consultations enabled interested parties to highlight this issue and Ofgem later altered its minded-to position to reflect this. However, despite what we believe was a clear direction to industry to bring forward a further modification that would provide Ofgem with more options around risk level, governance processes rejected a modification that aimed to do this. This has resulted in a sub-optimal modification being implemented due to the need to meet notification requirements for fixed BSUoS tariffs.

The reason we wish to highlight this example is to demonstrate:

1. The importance of code modifications being accompanied with adequate analysis that is complete;
2. The implications of processes which are delayed which can put changes that can benefit consumers either at risk or sub-optimal solutions being implemented out of necessity;
3. The implications of code governance processes which are not flexible enough to account for Ofgem direction.

UNC0805 - This modification sought to implement NTS Exit Capacity Auctions. Discussions throughout the workgroup process and panel process highlighted concerns regarding the discriminatory nature of the code modification due to its explicit exclusion of industry parties, in this case Gas Distribution Networks (GDNs).

Ofgem rejected the change on the basis that the discriminatory nature would have led National Grid to be in breach of its licence conditions to the extent that the merits of the code modification could not be assessed.

Under future processes and code manager responsibilities we hope it would be revealed much earlier in the process where modifications, by their nature, are problematic to this degree. We would also hope that code managers could develop suitable alternatives so that the time and resources of industry are focussed more constructively on options which are more likely to be considered by Ofgem for implementation.

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