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**16th November 2018**

Dear Rachel,

**Switching Programme: Regulation and Governance - way forward  
and statutory consultation on licence modifications**

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We welcome the opportunity to respond to this consultation on the way forward for switching programme regulation and governance. We support Ofgem's updated thinking on how the Retail Energy Code (REC) will be governed - particularly the addition of a strong Performance Assurance Board. We think this is essential to ensure the new arrangements deliver good consumer outcomes.

We also welcome the further clarity on Ofgem's aims for a consolidated REC, that goes beyond the changes required to deliver the switching programme. We think this will simplify the regulatory landscape, and bring important areas that impact consumers under the improved governance of the REC. We therefore strongly support the proposal for a second, parallel Significant Code Review (SCR) to run alongside the existing switching programme SCR.

As the statutory consumer advocate, we attend a number of codes, and in some of these we are also able to raise changes and vote. We welcome Ofgem's plans for a consumer-focused REC, with a strong role for consumer representatives and more scope for the involvement of other affected stakeholders. We also welcome Ofgem's collaborative approach to developing the changes needed to establish the REC, and will engage with the detailed work in the affected codes that we attend.

During the consultation period the Secretary of State announced a joint BEIS/Ofgem review into industry codes and code governance. We believe that the development of

the REC has already identified various improvements to code governance, aspects of which could form the basis for the work of the broader review of codes. We look forward to engaging with this review and understanding how it will proceed alongside the ongoing development of the REC.

Yours sincerely,

Alex Belsham-Harris

Senior Policy Researcher

**Question 4.1: We would welcome views on whether Ofgem should have an ongoing role in ratifying RECCo Board appointments after the appointment of the first board.**

We would expect that as Ofgem appoints the nominations committee - and presumably sets its Terms of Reference - this will be the main mechanism by which Ofgem ensures appropriately qualified Board Members are recruited.

However, we think it also makes sense for Ofgem to have a role in ratification of appointments, for both the initial board, and on an ongoing basis. Any decisions to override the nominations committee should be made transparently, and be based on concerns that the committee had not had proper regard to its Terms of Reference, or evidence that the nominee's appointment would not help achieve the Code objectives.

**Question 4.2: We would also welcome views on whether the REC parties should have a role in ratifying the first and/or subsequent boards.**

In order for the REC to run effectively, parties (and other affected stakeholders) need to have confidence in the RECCo Board. Giving parties a role in its appointment is one component of achieving this. This could be achieved through party representation on the nominations committee, or by allowing parties and stakeholders to comment on the recommendation of the committee. These comments should be in regard to the nomination process and/or the nominee's ability to achieve the Code objectives. Ofgem could take these comments into account when deciding whether to ratify the appointment.

We would not support parties being given the ability to overrule the nominations committee as part of the ratification process.

**Question 4.3: Do you agree that the REC should place less reliance on face to face industry meetings for modification development and instead empower the REC Manager to develop and analyse proposals, procuring expert support as and where required?**

We support Ofgem's view that a broad range of stakeholders should be able to raise modification proposals, including consumer representatives and other representatives designated by the Authority. We think this is vital to deliver on the ambition for a consumer-centric Code, that enables innovation. Given Ofgem's proposals for consolidation in REC v3.0, we agree that this is likely to include metering organisations. There may also be an important role for third party service providers. These companies often serve multiple new entrant suppliers with billing, switching and CRM systems that may be affected by REC changes. However, the suppliers may individually be less well resourced to engage with the REC, even with the new governance framework. It may be more efficient for these companies to be able to raise and comment on changes themselves.

We support an empowered Manager function to drive change and achievement of the Code objectives in an efficient and timely manner. However, we also think it is important that parties have a role, and for all Manager decisions to be made transparently and against clear guidelines/objectives. In some areas, we think there may be arguments for the Board to have a role in either ratifying, or providing an appeals mechanism for, Manager decisions.

In particular we think the Manager's decisions when prioritising modifications could require Board ratification, or an appeals mechanism, in order to give confidence to parties and other stakeholders. In a consolidated REC, which oversees metering codes of practice, theft prevention arrangements and Green Deal, as well its 'core' business related to switching arrangements, there could be a risk (or the perception of a risk) that non-core aspects are more likely to be deprioritised. Furthermore, there may be cases where the affected stakeholders are not Code parties (eg meter operators). It may be necessary to provide a clear route for these stakeholders to challenge Manager decision-making, where they disagree.

We agree that a well resourced REC Manager should be able to develop change proposals more quickly and effectively, and may be better placed to collect and assess company-specific data.

We also agree that workgroups should continue to play a role, and in some cases their input may be critical. Without these the Manager may lack expert input, particularly at an early stage. We support the proposal that workgroups could develop the Terms of

Reference (ToR) for changes, and feed into draft reports. This is particularly necessary to enable parties to identify and flag where changes could impact their own systems and processes, and to comment on reports to ensure the changes are well designed and practicable. We think that for this purpose it is also important for workgroups to be able to confirm that the ToR have been met and to be able to make a recommendation to the Panel. This recommendation should also enable dissenting members of the group to record their comments.

We think that in order for parties to be willing to dedicate time to workgroups, they will need to be appropriately empowered to ensure that their expertise is taken into account and can have real impacts on the development of changes. Given the scope of the REC we would also expect that non-REC parties who are affected by changes should be able to contribute to workgroups.

We think that meetings should also continue to play a role for workgroups, as discussion can be more effective at identifying issues and solutions than just relying on consultation with individuals separately. We expect that the Manager could ensure efficient running of meetings, by preparing good quality materials in advance, and setting clear aims. There should be less reliance on face-to-face meetings, with improved use of technology to facilitate these discussions.

We also think there may be circumstances in which it is appropriate for REC parties to participate in cross-code workgroups. This would be in addition to the Manager's role in cross-code collaboration, as set out in Ofgem's consultation earlier this year.

**Question 4.4: Do you consider that a recommendation to the Authority should be made by the RECCo Change Panel, with reference to the REC relevant objectives, or based on a vote of REC parties?**

We think that a recommendation to the Authority, with reference to REC objectives, is the best approach. This ensures that the reasons for Panel views are clearly recorded, rather than just the outcome of the vote. There should be space within the recommendation for dissenting views to be recorded.

In our experience of other Codes it can sometimes be difficult to make a recommendation based on objectives - even where the changes are demonstrably beneficial or necessary - due to a lack of detail, or limited scope in the objectives. Therefore, the REC objectives must be clear and enable a full range of desirable outcomes. As we set out in our response to Ofgem's consultation earlier this year, we think that it should be clear (whether in an objective or additional detail below these)

that the REC will need to adapt to external legal or regulatory change, and to facilitate cross-code collaboration.<sup>1</sup>

For this approach to work well on an enduring basis, the code objectives will also need to be reviewed and amended over time.

**Question 4.5: Do you, in principle, support the approach to performance assurance outlined?**

We strongly support the creation of a Performance Assurance Board (PAB) as part of the REC. The REC will oversee critical processes to ensure that consumers have positive switching experiences. To deliver these outcomes successfully and maintain consumer confidence in switching there must be robust oversight of performance, with steps taken to enforce Code requirements where necessary.

Compliance and enforcement have been neglected areas of the MRA and SPAA, notwithstanding the recent proposals from the Erroneous Transfer Working Group (ETWG). We are currently participating in the working group to set up an Erroneous Transfer Performance Assurance Board and ensure that the ambitions of the ETWG are delivered in a way which aligns with the likely future performance assurance framework in the REC.

We support an empowered PAB that has strong sanctions available, and is appropriately resourced to properly monitor the performance of parties and service providers. This should include excellent internal data, and reference to external data sources too, such as reported performance against the proposed switching Guaranteed Standards and complaints data from third parties such as Citizens Advice.

We also think the PAB should publish some aspects of supplier performance. This will promote transparency, enable peer review, and act as a form of reputational regulation. We note that the BSC already takes this approach in its Performance Assurance Reporting and Monitoring System.<sup>2</sup>

We agree that in order for performance assurance to be effective a clear risk register and methodology are needed. We support the proposal for the REC Manager to collaborate on the initial development of these.

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<sup>1</sup><https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/energy-policy-research-and-consultation-responses/energy-consultation-responses/response-to-proposed-modifications-to-regulation-and-governance-for-the-switching-programme/>

<sup>2</sup><https://www.elexon.co.uk/reference/performance-assurance/performance-assurance-techniques/parms/>

We also support the ongoing maintenance of the register and methodology by the PAB, but, depending on the PAB membership, we think there may need to be some further safeguards in place for this process. We're concerned that in codes where parties oversee performance assurance there can be a tendency to avoid application of sanctions and a failure to remedy issues in a prompt manner. If the PAB is dominated by parties, then we might expect that steps should be taken to mitigate this risk, in addition to the general Board oversight of the PAB proposed by Ofgem.

First, the PAB methodology should be prescriptive enough that it is bound to apply appropriate sanctions at each stage, with deviation from these only in exceptional circumstances, and with the agreement of the RECCo Board. This will also ensure REC parties are able to understand the decisions of the PAB, and retain confidence in it.

Second, there should also be safeguards in place to ensure that the PAB does not unnecessarily water down the methodology over time. Changes to the methodology could also require the agreement of the RECCo Board, or enable the Manager to appeal areas of concern to the RECCo Board.

We support the proposed powers for the PAB to be able to raise modifications to tackle systemic issues it identifies.

**Question 5.1: Would you support the development of a REC digitalisation strategy?**

Yes. We think that digitalisation - alongside the already planned digitisation - of the REC will make it more accessible to parties and stakeholders. We agree that it could also make performance assurance more efficient.

**Questions 5.2 - 5.6**

Not answered.

**Question 5.7: Do you agree with our proposals that:**

- **PAB, as part of its role in mitigating risk to consumers and the market, should provide information to the REC Manager on the specific risks that it wants to be mitigated and assured against through Entry Assessment and Re-Qualification;**
- **The Code Manager should have clear obligations to support the Applicant and coordinate with other code managers; and**
- **Suppliers that undertake a material change to their systems, processes or people should undertake Re-Qualification?**

Yes. It is important that there is adequate risk management both at entry, and following changes that could require re-qualification. We think the current licensing and code arrangements have not been effective at ensuring energy suppliers are well prepared to follow industry systems and provide minimum levels of service. We therefore support proposals for appropriate, risk-based requirements for parties to meet during entry/re-qualification, with a good support framework for these parties as they go through this process. Ofgem should ensure that these changes are aligned with proposals in its forthcoming licensing review, which could impact the wider framework for market entry.

**Question 5.8: Do you think that PAB and the REC Manager should work with service providers to identify and mitigate risks associated with material changes to their systems, processes or people?**

Yes.

**Questions 5.9 - 5.11**

Not answered.

**Question 5.12: We welcome views on whether we should retain or amend the remit of the proposed Switch Meter Reading Exception Schedule beyond domestic consumers and electricity NHH consumers.**

We think that microbusiness consumers should be equally protected, regardless of fuel or settlement type. We would therefore generally support harmonisation of these rules wherever possible, unless there is a strong argument against doing so.

While we recognise that the I&C Code of Practice has agreed to replicate these provisions, this code is voluntary, and so will leave some consumers arbitrarily facing different protections and/or processes.

The Code of Practice will also not be subject to the improved governance and performance assurance arrangements that Ofgem is seeking to put in place for the REC. Splitting the requirements across the two documents could therefore allow the protections to diverge over time, with potentially weaker, more poorly enforced standards under the Code of Practice.

**Question 5.13: Do you agree that we should move any requirements to obtain and process meter reads for settlement purposes into the BSC and UNC?**

We agree with this proposal. We think that it will be helpful for Ofgem to clearly delineate which areas each code is responsible for as much as possible, although we

recognise that there will inevitably be areas that interface where codes may need to work together. Work to progress these changes with the BSC and UNC should start early to ensure they can be progressed efficiently.

**Question 5.14: We welcome views on whether the Switching Meter Reading Exception Schedule should make specific provisions for consumers with smart gas meters.**

We do not have a clear understanding of the consumer impact of the differences in the requirements for gas and electricity smart meters. However, in general, we would want to see harmonised provisions (eg same resolution timelines) across both fuels, except where there is a compelling argument that these should differ. We would also expect that where smart metering can improve the speed and/or quality of resolutions, requirements are updated to take advantage of these capabilities. We think Ofgem should follow these principles when determining whether to make specific provisions for smart gas meters in the Exception Schedule.

**Questions 5.15 - 5.16**

Not answered.

**Question 5.17: Do you agree that a consolidated PPM Schedule should be developed and given effect as part of REC v2.0?**

Yes. We agree that it is logical for a consolidated PPM Schedule to be created for REC v2.0. Harmonisation of legacy requirements, ideally to ensure that the highest standards for both fuels, should simplify supplier processes and benefit consumers.

**Question 6.1: What do you think are the pros and cons of Model A and Model B and which do you think we should use to develop an Exceptions Schedule in the REC?**

While we recognise there are benefits to both models, we generally think Model B is preferable. Model B safeguards against poor supplier practice and provides more certainty to suppliers about the processes they need to follow and how other suppliers will engage with them.

Model A places more reliance on the PAB. Given the undeveloped performance assurance arrangements in the MRA and SPAA it is difficult for us to have any assurance that the PAB will be able to perform, from go-live, to the standard required to ensure that Model A is successful.



Using Model A would mean a further level of change, in a process that will already cause upheaval. It may be better to review the arrangements at some point after go-live, and transition to an exceptions schedule based on Model A once it is clear that the PAB is working effectively and the new switching arrangements are embedded.

**Question 6.2: Do you agree that the theft of gas and electricity provisions should be moved to the REC?**

Yes. It is sensible to transfer the electricity provisions from DCUSA at the same time as the gas provisions are transferred from SPAA, in order to ensure they are aligned and to make their management more efficient.

Theft of gas makes up part of the unidentified gas costs faced by gas industry parties, which is governed by the UNC. There may be opportunities for the UNC and REC to work together to ensure that there is alignment between the two codes in this area.

**Question 6.3: Do you agree that the REC Manager should undertake the (re)procurement of any services due to commence at or after REC v2.0 implementation?**

Yes. We also support the planned review of the arrangements before procurement takes place. This should ensure the arrangements are effective and offer good value for money.

**Question 6.4: Do you support the establishment of an industry-wide data catalogue that all code bodies incorporate by reference into their own codes and collaborate on the maintenance of?**

Yes. We can see that there may be efficiencies that can be derived from a single dual-fuel catalogue.

**Question 6.5: Do you think that the REC should have the responsibility of hosting the industry-wide data catalogue?**

Yes. Given the improved governance and resource available within the REC, this would seem to be the best place to host the catalogue. The consultation states that appropriate parties will retain responsibility for defining the content and structure of individual data flows. It is unclear the extent to which 'hosting' the catalogue would mean changes to these would need to be progressed through the REC itself, rather than through the original 'owner' code. If the former, it will increase the need for non-REC parties to be suitably represented by the Manager, and for their changes to be appropriately prioritised.

**Question 6.6: Do you think that an industry-wide data catalogue should be developed for REC v2.0 (to enable REC CSS messages to be incorporated from day 1) or should consolidation be undertaken as part of REC v3.0?**

Not answered.

**Question 6.7: Subject to further development, assessment and consultation, would you in principle support aligning the gas and electricity metering codes of practice under common governance?**

Yes. We support alignment of these codes to drive efficiencies.

**Question 6.8: If yes, do you consider that the REC would be a suitable vehicle for such common governance?**

Yes. The metering codes of practice have consumer impacts that mean they align with the objectives and scope of the REC, rather than any of the other codes. We also agree that the improved governance and performance assurance in the REC could help improve industry recording of meter technical data.

**Question 6.9: Do you consider that the SMICoP should be incorporated into an industry code, and if so, do you agree that this should be the REC?**

Yes. We think that it is appropriate to incorporate SMICoP into the REC, to align with the other metering codes of practice, and the general consumer facing focus of the REC. While we support a review of the requirements in SMICoP as it transitions from focusing on rollout activities to ongoing smart installation activity, we are not convinced that the smart meter rollout will be sufficiently progressed by 2021 for this review to take place. The REC may therefore need to review the SMICoP provisions at some point after go-live.

**Question 7.1: Do you agree with the five incentivised milestones identified? Do you think any milestone should be given greater importance and therefore a larger proportion of margin placed at risk?**

We think the five incentivised milestones are correct, and we are pleased that these five milestones cover in total the entire DCC margin.

We have expressed concerns about the DCC's price control for the smart metering which are also relevant for the control of its costs for the switching programme.

We continue to have concerns over the margin that the DCC is permitted to make, particularly in the context of tougher price controls for monopoly network companies which Ofgem has recently signalled. This tougher stance is related to the high returns

that these companies are making for the relative level of risk they face. We recognise that the unique function of the DCC made an ex-post approach to the price control the best option at the outset. At the same time, we are keen to see a transition to a fully ex-ante control as soon as possible both for smart metering and the switching programme.

We are concerned that the underlying dynamic of this price control is potentially skewed against consumers. DCC clearly have a strong incentive to argue for a higher allowance, and since these costs would affect all users equally and be passed on to consumers, they will have a minimal effect on those users' competitiveness. A similar situation could arise in the arrangement for the switching programme.

This dynamic could remove any clear counterweight of advocacy within industry to offset DCC's position. With this in mind, we would hope that Ofgem's attitude would always be to give consumers the benefit of the doubt where any doubt in the price control exists.

We note that DCC will only be allowed a margin on internal costs. However for the smart metering programme we have been concerned by the overall increase in external and internal costs which consumers ultimately pay. Costs have risen significantly; fixed internal and external costs for 2018-19 are almost £180m more than initially expected in the DCC licensing competition. Cornwall Insight reported that in July 2017 the DCC forecast its fixed revenues for the 2018-19 charging year at £344.9m. In October, just three months later, forecast revenues had increased 12.8% to £389.1m. Cornwall estimate that although these costs equate to around 2% of the domestic bill, they provide an upward influence alongside other rising drivers on the electricity bills such as higher Capacity Market, Contracts-for-Difference, and Renewables Obligation costs for 2018-19.

Continued revised forecasts of revenue upwards does not bode well for consumers getting a good deal from an ex-post arrangement. Although we recognise this is partly for reasons beyond DCC's control, an ex-ante approach would give more certainty for stakeholders and a stronger mechanism for keeping costs under control.

**Question 7.2: Do you agree with our proposals for the shape of the margin loss curves. Do you have any suggestions for other margin loss curves which may better incentivise DCC to achieve its milestones in a timely manner while encouraging quality?**

We welcome the shape of the margin curves, and recognize the need to ratchet up the incentive if delivery slips.

We think Ofgem should also consider DCC's past performance in relation to stakeholder satisfaction. Stakeholder engagement by DCC during SMIP has not been optimal, despite improvements over time. We would want Ofgem to consider if DCC should develop a business plan in consultation with stakeholders, and Ofgem should consider whether this should be scrutinised by a Stakeholder Panel. Similar parallels can be drawn with the framework for price control of monopoly energy networks where stakeholder engagement is a key part of the next set of price controls, and has been successfully used in the water industry. This would ensure transparency and help both Users and other stakeholders to hold DCC to account. This could be financially incentivised through a discretionary reward for stakeholder engagement

**Question 7.3: Do you agree with our proposal for a potential recovery mechanism? Please give reasons. What types of criteria could be considered for demonstrating clear, transparent communication and what portion of lost margin should be available to be recovered?**

We think it is reasonable for a recovery mechanism to exist, but this must be for circumstances and drivers genuinely beyond DCC's control, therefore it is vital that the criteria considered should be within DCC's control. The evidence requirements for demonstrating that the criteria for meeting the mechanism should be clear and realistic, for example the lower than expected incidents in go-live. This needs to be a measurable and objective criteria.

We think that the recovery mechanism should be set at the lower band of  $\frac{1}{3}$  of total margin as a maximum. This reflects the impact which stakeholders will suffer should the programme be delayed.

**Question 7.4: Do you agree with our proposals for a discretionary reward where it can be demonstrated that DCC has gone above and beyond established requirements for REL Address matching? Please give reasons.**

Given the benefit to consumers in this area we agree with the proposal for a discretionary reward.

**Question 8.1: Do you agree with the proposed collaborative approach to consultation and modification report production?**

Yes. We think this approach is the best way to achieve the stated aims in a coordinated way, and within the relatively short time frame allowed for the work.

**Question 8.2: Would you in principle support REC v3.0 code consolidation being progressed as a SCR separate to, but run in parallel with, the Switching Programme SCR?**

Yes. We think that delivering REC v3.0 at the same time as REC v2.0 will achieve the best outcome for consumers. This will enable the full closure of MRA and SPAA at go-live, with associated cost savings. It also means that REC will be in a more settled state at go-live, rather than being preoccupied in its initial phase with integrating new areas towards achieving a consolidated REC.

We think that Ofgem coordination is the only way to achieve this outcome in an efficient and coordinated way, and within the required time frame. We therefore strongly support a second, parallel SCR to deliver the consolidated REC.