

By e-mail to: [energymarket@cma.gsi.gov.uk](mailto:energymarket@cma.gsi.gov.uk)

Will Fletcher  
Energy Market Investigation  
Competition and Markets Authority  
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20 November 2015

Dear Will,

**ELEXON's response to the CMA's RFI on Code Governance**

In our response to the CMA's provisional findings we highlighted a number of areas which we felt could improve industry code governance. We are pleased that the CMA is seeking further information in relation to these areas and our response to this request for information (Appendix A) expands on our original submission.

In particular, we believe that, while industry code panels and code administrators such as ELEXON were established as reactive entities, a more pro-active and strategic approach is needed. We have developed a forward view of significant programmes and industry change that informs the work of the Balancing and Settlement Code (BSC) Panel (see the [BSC Panel Strategic Work Plan](#)).

We support the collation of an industry wide change programme (or forward view) and believe there is merit in establishing a cross-code expert group to consider the roadmap of changes. Such a group might offer a mechanism for the industry to provide input on solutions to policy proposals at an early stage and develop a strategy for (or facilitate the design of) cross-code change (e.g. to support the introduction of new business models). However, we are cautious about splitting powers of oversight and policing for individual codes between a centralised project board and the individual code panels.

We believe that code panels and code administrators have an important role to play, engaging with each other and with energy companies to support the efficient and effective delivery of innovations and improvements where changes to industry codes are required. We believe this role could be enhanced and change made more efficient by granting additional powers to code panels and/or code administrators to better support the timely delivery of industry-wide changes.

The views expressed in this response are those of ELEXON Ltd, and do not seek to represent those of the BSC Panel or Parties to the BSC.

We would be happy to discuss our comments and will continue to support the CMA in its work. If you would like to discuss any areas of our response please contact Adam Richardson, Senior Market Advisor, on 020 7380 4117, or by e-mail at [adam.richardson@elexon.co.uk](mailto:adam.richardson@elexon.co.uk).

Yours sincerely,



Mark Bygraves  
Chief Executive, ELEXON

List of enclosures

*Appendix A - ELEXON's detailed response to the CMA's RFI on Code Governance*

## ELEXON's detailed response to the CMA's RFI on Code Governance

### Appendix A

#### Strategic Steer

**Question 1: Ofgem has put to us that it may provide in the future a steer as to its expectations for the way in which codes would need to develop to keep pace with technology and policy developments. If Ofgem were to provide stakeholders with such a 'strategic steer for codes', what content (in relation to substance and level of detail) do you think would need to be provided for such a document to be of practical use for code administrators and the industry?**

The BSC Panel has been contemplating its overall strategic priorities and documenting these in a BSC Panel Strategy<sup>1</sup> since 2014. Such a steer from Ofgem would be a useful input to this annual review of priorities by the BSC Panel.

If a steer were to be provided, we believe that it should clearly set out the overall policy objectives and direction of travel and the desired outcomes in relation to specific objectives. While these may indicate what might need to change, they should also be clear on any things that must be preserved.

It would also be important to articulate the success criteria associated with each objective – i.e. how the desired outcomes would be measured and/or tracked by Ofgem.

The document should be clear on expected timescales in relation to the outcomes – i.e. the target(s) for desired outcomes to be realised.

Ofgem should indicate (at a high level) where it believed there may be interactions between codes that must be taken into account and potentially appoint a lead code to progress any matter (although it would be for code panels and administrators to work through the specific details in each case).

#### Annual work plan

**Question 2: If Ofgem provided a 'strategic steer for codes' (see question 1 above), would it be feasible to require each of the code administrators to work with the relevant code panel (and Ofgem, as the case may be) to develop a forward work plan annually to deliver against that steer?**

We believe it is feasible and appropriate for code administrators to work with the relevant code panel (and Ofgem, as the case may be) to develop a forward work plan annually in light of any steer provided by Ofgem. An important aspect of this interaction would be the potential for code panels and code administrators to provide feedback to Ofgem in respect of its strategic steer.

We believe this would be an extension of the Work Plan we already produce and maintain for the BSC Panel:

- The BSC Panel has set out its priorities in a BSC Panel Strategy. In considering its Strategy, ELEXON works with the BSC Panel to help it establish a work plan of key activities that should be taken forward to support these strategic priorities.
- ELEXON meets with a group of Panel Members on a quarterly basis to review and update this plan.

We note, however, that code panels and code administrators remain limited in their ability to drive change (e.g. by raising Modification Proposals). Consequently, without some of the additional reforms contemplated below, there may be some aspects of any forward work-plan that remain out of the control of code panels and code administrators. In such cases, code administrators and code panels

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<sup>1</sup> <https://www.elexon.co.uk/group/the-panel/>

would be reliant on code parties to bring forward the required changes to deliver against any strategic steer.

**Question 3: Alternatively, could CACoP Principle 13 be extended in such a way that it would lead to the effective delivery of Ofgem's 'strategic steer for codes' (see question 1 above)?**

We expect code administrators to work together under Principle 13. The development of forward views would facilitate greater co-ordination in the spirit of Principle 13. We believe that these forward views should be developed for the consideration of their relevant code panels. We do not believe the CACoP is an appropriate alternative mechanism. However, if it was felt necessary, the concept of forward views could be further detailed under Principle 13 or even afforded its own principle.

As we note elsewhere in our response, without additional powers for code administrators to drive change it would fall to other parties to raise changes to be progressed. Further, on the assumption that each code panel was afforded sufficient scope and had been granted appropriate powers, it would be for code panels to co-ordinate on the timing of any assessment activities and the overall implementation of such changes.

**Initiation of modification proposals (MPs)**

**Question 4: If you were granted the power to initiate MPs, would such a change allow you to improve the efficiency of the modification arrangements, code governance, or play the role of critical friend more effectively?**

- **In your view, should the basis of such a power be general, or restricted to certain circumstances (eg MPs proposed must seek to improve the modification arrangements or delivery of Ofgem's strategic steer for codes (see question 1 above)).**

We believe there would be merit in granting powers to code administrators (and industry code panels) to raise change. This would make the initiation and development of modification proposals more efficient (including within the context of cross-code modifications).

Changes raised by code administrators would be considered by the industry under the usual processes. They would have to demonstrate benefits in the same way as any other change in order to be recommended for approval.

We do not believe that restrictions should be placed on the scope of changes that could be raised by code administrators. However, it would be important to ensure appropriate checks and balances were in place, so that changes were only raised by code administrators where there was an identified need and where it was clear that no change would be otherwise forthcoming. This would mitigate the risk that code administrators might create an unnecessary burden on industry by raising excessive volumes of immaterial or low-priority changes. We believe that industry code panels would perform those checks and balances.

A further extension of these powers might enable code administrators and industry code panels to raise changes in other industry codes. This might be limited, for example, to circumstances where such changes were needed to facilitate the development and/or implementation of changes under their own industry code.

We also believe that the capability of code administrators to act as critical friends would be enhanced by enabling them to highlight and propose amendments to address issues which may otherwise remain unresolved.

## Prioritisation of MPs

**Question 5: If you had the power to prioritise (in relation to resourcing and timing) the development of certain MPs (eg MPs that, in your view, impact on consumers and/or competition or are relevant to the strategic steer for codes), would such a change improve the efficiency of the governance arrangements?**

While the BSC sets time limits on the assessment of Modifications, the BSC Panel can (and from time to time) does vary Modification assessment timetables in order to prioritise its work. This is often based on advice from ELEXON. In doing so the Panel takes account of the complexity, importance or urgency of the change<sup>2</sup>. In extremis, if additional resources are required to progress changes more quickly, the BSC provides for the BSC Panel to approve this approach with a corresponding impact on costs.

Significantly, under the BSC, provisions exist that enable the Authority to direct National Grid (the licence holder) to step in to deliver the BSC Modification process where ELEXON (or the BSC Panel) has failed to comply with the Modification procedures or any Authority direction in relation to the Modification procedures (including any request from the Authority to re-prioritise the assessment or implementation of change). Consequently, the BSC Panel and ELEXON take account of the views of Ofgem in relation to the prioritisation and progression of changes that have been raised.

It should be made clear that code administrators must support their respective code panels by providing advice on the prioritisation of work. Subject to this clarification and to ensuring Authority oversight of code panels' activities is in place across all codes<sup>2</sup>, we cannot see potential for large efficiency gains to be made by transferring responsibilities to prioritise Modifications away from code panels.

## Self-governance

**Question 6: We have noted that Ofgem considers that up to 50% of modification proposals could go through the self-governance process (against the actual rate of 30% at the moment). What are the nature of the concerns that code panels have which prevents them from submitting a MP for self-governance currently? What is your view of Ofgem's proposal to make self-governance the default process?**

We have no issue with Self-Governance being the default process for considering Modification Proposals.

We believe that code panels look to progress changes on a Self-Governance basis where they can. However, the current Self-Governance criteria (as set out in Condition C3 of the Transmission Licence and also reflected in the BSC) place strict criteria on what might qualify as Self-Governance Change. They require that changes must not discriminate between different classes of parties and must be unlikely to have a material impact on:

- existing or future electricity consumers;
- competition;
- the operation of the national electricity transmission system;
- matters relating to sustainable development, safety, security of supply and the management of market or network emergencies; and
- industry code governance / modification procedures.

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<sup>2</sup> Any variation on the assessment timetable for a Modification may be rejected by the Authority and the Authority can, at any time, request that the Panel re-prioritise Modifications, and amend timetables for the development, assessment and implementation of changes.

The above criteria must be relaxed in order to facilitate an increase in the number of Modifications being considered under the Self-Governance provisions.

We note that the current Self-Governance process itself is not designed to deliver a materially swifter decision. While it may seem that Self Governance changes can be progressed faster than other changes, we suggest that this is a result of the changes themselves being, on average, more straightforward than other changes (i.e. those that are not treated as Self-Governance). More complex and material changes naturally take longer to analyse, assess and implement than simple changes. It is the Self Governance criteria that limit Self-Governance changes to those which tend to be simpler to assess and implement.

In our July response to the CMA's provisional findings report and notice of possible remedies we also noted that there would be benefit in providing for consistency across the relevant applicable industry code objectives and also between industry codes objectives and those of Ofgem. Such consistency becomes more important where material changes are being considered under a Self-Governance process. Consistent objectives would reduce the risk that complementary changes arising under different codes are not progressed because they are assessed by different code panels against different sets of principles.

### Scoping of analysis

#### **Question 7: Do you feel that you have any power to help influence the scope of analysis performed by the modification work group during the development phase?**

Yes. As the code administrator for the BSC we support Modification Workgroups by participating in discussions (part of our critical friend role) and helping to scope and set requirements for analysis that we perform on behalf of the Workgroup. We see this as a fundamental part of the value-adding support that we provide as a code administrator in line with our BSC obligations and our responsibility to be a critical friend.

#### **Question 8: If you were given powers to influence the terms of reference provided to modification work groups (in particular, in relation to the scope of analysis to be performed), how would such a change improve the efficiency of the development stage? In your view, how should these powers interact with the relevant powers of the code panel?**

As the code administrator for the BSC we draft the terms of reference for Modification Workgroups, in consultation with the Modification Proposer, for the consideration and approval of the BSC Panel. Consequently, we believe that we have sufficient input to the terms of reference (including the progression timetables) for assessing Modifications.

If the code administrator were to be responsible for setting the terms of reference, we believe that it would be essential for the code administrator, on each occasion, to seek the views of the relevant code panel, Proposer and Ofgem. This ensures that the Workgroup's assessment provided sufficient analysis and evidence for the Panel and the Authority to make their determinations. Consequently, we cannot see large efficiency gains being made by transferring this responsibility away from code panels.

#### **Question 9: Recommendations from Code Panels must be approved by Ofgem, which therefore must be satisfied with the scope of the analysis underpinning these recommendations. Do you see some value in having earlier involvement from Ofgem in the scoping of such analysis? If so, how could that process work?**

We already support and welcome early input from Ofgem and believe this is possible under the existing BSC provisions and processes.

There is an opportunity for Ofgem to provide input when the BSC Panel sets the terms of reference for Modification Workgroups. We look for Ofgem to be clear about the questions that it would need the Panel (and its Workgroup) to consider and the evidence that may be required.

We also welcome active participation by Ofgem during Workgroups to indicate where additional analysis or information would be helpful to its decision-making as the work evolves.

When the BSC Panel considers the findings of a Modification Workgroup (the Assessment Report), Ofgem should be clear about flagging if, in its view, any evidence or analysis is missing, or if additional information may be required so that the Panel can revert back to the Modification Workgroup if need be.

We welcome the contributions that Ofgem makes at each of these stages from time to time and we encourage Ofgem to provide more of this early input, particularly in relation to changes which it believes are strategically significant.

### Performance of analysis

#### **Question 10: If you were required to sit as 'independent chairman' for modification work groups, would that change improve the efficiency of such work groups?**

The BSC Panel can (and does) appoint an employee of ELEXON as the chair of Modification Workgroups. We fulfil this role in line with our obligations to be impartial and the general BSC obligations requiring Modification Workgroup Members to act impartially (BSC Section F2.4.7 and 2.4.9). Our impartiality is held as important and is appreciated by Modification Workgroup members.

#### **Question 11: To what extent do you currently perform analysis (or assist industry participants / work groups in performing analysis) during the development stage (ie analysis which is considered by the code panel in its evaluation of a given MP)?**

As the code administrator for the BSC we perform the analysis on behalf of the Workgroup. This as a fundamental part of the value-adding support that we provide as a code administrator in line with our BSC obligations and our responsibility to be a critical friend. Furthermore, where external expertise is needed we procure, appoint and fund such additional support on behalf of the BSC Panel or Modification Workgroup.

#### **Question 12: To what extent is your specific expertise underutilised in the context of the development stage (ie do you have knowledge that would allow you to perform analysis that is not currently being utilised by the code panel)?**

We believe that the BSC Panel welcomes the support that we provide to Modification Workgroups. We do not feel there is a restriction placed on us in this area.

### General project management

#### **Question 13: In your view, do you think that, in certain circumstances, the code administrator should act as project manager for the delivery of code changes? Or is it preferable to appoint an independent third party (as in Project Nexus)? Is your view the same in relation to both the development and implementation stages?**

We believe code administrators should project manage change in relation to their respective codes. ELEXON project manages the development and assessment of code changes on behalf of the BSC Panel. We also project manage the implementation of any approved amendments to the BSC and its subsidiary documentation.

As the body responsible for the delivery of settlement systems and processes, we also project manage the development and implementation of changes to BSC Agent (central) systems and processes. This has worked well in the past and it is rare that changes to these central BSC systems lie on the critical path when implementing change under the BSC.

It is hard to envisage how a code administrator could project manage the implementation of changes across multiple parties outside of bilateral contracts, without change in their powers. We can envisage a situation in future, for cross-code changes similar to P272 (Mandating half hourly settlement for customers in Profile Classes 5-8), where it would be appropriate to give a code administrator powers over multiple code change delivery. This would ensure a holistic and joined up approach to delivery of a cross code change.

Furthermore, under the BSC, assurance provisions exist that afford the BSC Panel (or the Performance Assurance Board<sup>3</sup>) with tools that can provide checks and balances on the implementation of approved changes. These tools are managed and delivered by ELEXON<sup>4</sup> as an impartial, independent, third party. They include, for example, the re-Qualification process and the independent review of Suppliers' implementation of half hourly settlement (as required by Modification P272).

We believe that the assurance framework under the BSC helps to ensure that large-scale changes are implemented on time while providing mechanisms for parties to identify and highlight potential implementation issues and, ultimately, for addressing any non-compliances with implementation dates.

**Question 14: Do you think that delivery of complex/significant MPs would be made more efficient by the introduction of clearer roles and powers in relation to the project management of the implementation phase (eg similar to the aim of UNC MP 0549 proposed by Gazprom)? In your view, what would be the relative roles of Ofgem and code administrators in any such revised arrangement?**

- **Do you think that the use of such powers would be improved by the existence of a central mechanism intended to aid coordination across codes (eg the 'project board' considered below in question 26)?**

We agree it is important to clearly establish roles and powers in relation to the project management of the implementation of change. As we noted elsewhere in our response, ELEXON project manages the implementation of BSC changes in respect of the documentation, systems and processes for which we are responsible and monitors and reviews the implementation of changes by BSC Parties on behalf of the BSC Panel and its Performance Assurance Board via the BSC assurance regime.

As we noted in our July response, we believe that large, market wide, changes would benefit from a strategic, co-ordinated approach. A cross-code group, comprising experts on the various arrangements with a desire to work together to make things better, could provide expert design advice on issues relating to all industry codes.

If such a body were also to act as a project board, it would need powers to co-ordinate changes and take actions to ensure changes were being progressed effectively by code bodies and (potentially) parties to those codes. This implies an oversight role that sits above existing code panels, including

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<sup>3</sup> A BSC Panel Committee defined in Section Z of the BSC

<sup>4</sup> Either directly or via a subcontractor

the capability to take steps to address poor performance, failures to progress implementation tasks or non-compliance on the part of code panels, code administrators, code delivery bodies and code parties. We are concerned that this approach inserts another layer (between Ofgem and code panels) in the overall governance of industry change. We also believe that additional complexity would arise if these powers were to be granted for only large, multipart, changes such that code panels remain responsible for implementation and compliance in respect of some, but not all, changes.

Alternatively, it could be that code panels themselves establish a joint change advisory board (or similar). This board would include industry experts and code administrators in its membership. It would be responsible for developing and maintaining an industry development plan and for advising code panels on the co-ordinated development and implementation of changes. Importantly, industry code panels would continue to be responsible for setting the timetables for assessing changes and recommending/setting implementation deadlines for individual changes. Any deviations from the plan recommended by the joint change board would be clearly visible to Ofgem<sup>5</sup>. The responsibility for tracking the progress of implementation activities across code parties should be the responsibility of the relevant code panel under appropriate assurance provisions. Consideration should be given to the implementation of such assurance provisions where these do not exist.

Such measures would facilitate a more strategic and pro-active approach being taken by industry code administrators and code panels including the provision of support to industry initiatives and regulatory programmes, identification of issues requiring resolution and active progression of changes.

**Question 15: Similar to question 14 above, do you think that the efficiency of the analysis performed by the modification work groups could be improved by introducing clearer roles and powers in relation to the project management of such analysis (similar in nature to the role and powers granted to PwC in the context of Nexus)? In your view, what would be the relative roles of Ofgem and code administrators in any such revised arrangement?**

- **Do you think that the use of such powers would be improved by the existence of a central mechanism intended to aid coordination across codes (eg the 'project board' considered below in question 26)?**

We agree it is important to clearly establish roles and powers in relation to project managing the development and assessment of change. This project management role is undertaken by ELEXON. Any variations to agreed priorities and timetables are subject to the approval of the BSC Panel and, as noted elsewhere, the oversight of Ofgem.

However, as noted in our response to question 14, we believe that large, market wide, changes would benefit from a strategic, co-ordinated approach. This might be facilitated by a joint change advisory board or industry design authority providing co-ordinated advice to both Ofgem and industry code panels. Such a body could be responsible for producing and maintaining an industry development plan and for advising code panels on the co-ordinated development and implementation of changes. This (together with enhanced powers for code administrators to raise changes as explored elsewhere in this response) would facilitate a more strategic and pro-active approach being taken by industry code administrators and code panels.

However, once a change has been raised, code administrators should be responsible for project managing the assessment of that change and the work of the associated Modification Workgroups on behalf of their respective code panel and the chair of the relevant Modification Workgroup. While a change may be part of a wider programme (perhaps developed under the auspices of a joint change

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<sup>5</sup> As noted elsewhere in our response and in our July response, the BSC affords Ofgem significant oversight provisions to set the timetable and priorities for developing, assessing and implementing change. These include step-in provisions to address non-compliance on the part of ELEXON or the BSC Panel. We believe that equivalent oversight provisions should be established across all codes.



board or industry design authority), it is for the code panel, supported by its code administrator, to ensure the detailed change assessment work remains on track within this wider programme. Any deviations from the recommended plan would be clearly visible to Ofgem<sup>6</sup>.

We believe that, to be effective, any central mechanism (such as a project board) created for the purpose of co-ordinating assessment would need to be afforded powers to set and revise the terms of reference for Modification Workgroups across all codes. This central body would also need powers to prioritise work and vary assessment timetables as required and take action where assessment of change deviated from the planned timetable. Under the BSC, these roles currently fall to the BSC Panel and to the Authority.

We remain unconvinced that there would be substantive additional efficiencies in the analysis performed by Modification Workgroups from creating a project board with powers to co-ordinate change at this detailed level. We are also concerned that additional complexity would arise if these powers were to be granted to a project board for only large, multipart, changes such that code panels remain responsible for the assessment of some, but not all, changes.

**Question 16: Do you think that stronger means to monitor and police compliance with timetables (eg through the power to impose liquidated damages for missed 'milestones' (as per UNC MP 0550 proposed by RWE Npower)), would improve the delivery process of MPs? In your view, what would be the relative roles of Ofgem and code administrators in any such revised arrangement?**

The BSC already contains provisions that provide the BSC Panel (or the Performance Assurance Board<sup>7</sup>) and Ofgem with significant oversight in relation to the implementation of change. These provisions also enable compliance to be monitored and actions to be progressed in the event of non-compliance. We believe that equivalent oversight provisions should be established across all codes.

For example, the BSC's Performance Assurance Framework includes checks on the implementation of material changes by Supplier Agents via the re-Qualification process and (more recently) specific reviews of the Suppliers' implementation plans for Modification P272. We would see any liquidated damages regime operated in relation to the implementation of change as sharing many similarities with the existing Supplier Charges<sup>8</sup> regime that is operated by ELEXON, on behalf of the Performance Assurance Board under the BSC Performance Assurance Framework. Such a regime would need to be extended to cover all relevant BSC Parties, including, for example, Generators.

While it might be possible to develop a liquidated damages regime associated with failure to implement changes, it might be more effective to deal with such non-compliance using the existing breach and default provisions that exist under the BSC. Further, since compliance with the BSC is a licence requirement, failure by a BSC Party to implement changes by an approved implementation date would constitute a licence breach. This may be better dealt with by the regulator where significant industry change programmes are affected.

As the independent body responsible for overseeing the implementation of changes to central settlement processes via BSC Agent services we remain mindful that failure, on our part, to

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<sup>6</sup> As noted elsewhere in our response and in our July response, the BSC affords Ofgem significant oversight provisions to set the timetable and priorities for developing, assessing and implementing change. These include step-in provisions to address non-compliance on the part of ELEXON or the BSC Panel. We believe that equivalent oversight provisions should be established across all codes.

<sup>7</sup> A BSC Panel Committee defined in Section Z of the BSC

<sup>8</sup> Supplier Charges are liquidated damages that Suppliers incur if they fail to meet certain performance levels. They compensate Parties disadvantaged by those who aren't meeting defined Standards. They are a remedial technique in the BSC Performance Assurance Framework. More information on how Supplier Charges are calculated under the BSC is available on the ELEXON website: <https://www.elexon.co.uk/reference/market-compliance/supplier-charges/>

implement changes effectively and in line with approved timetables would constitute a breach of the BSC. The use of sanctions (e.g. liquidated damages) in respect of BSCCo as the code administrators and delivery body for BSC Agent services needs careful consideration since, under our current not for profit funding arrangement, any such charges would be recovered from BSC Parties. However, we believe the adverse reputational impact associated with any significant failure to implement change provides a material incentive to comply.

With the above in mind, we are not convinced that additional incentives are required under the BSC.

## Compliance with substantive provisions of the codes

**Question 17: Do you think compliance by code parties with the substantive provisions of relevant industry codes should be monitored more closely? In your view, what should be the relative roles of Ofgem and code administrators in performing this possible function? How would this change improve the general functioning of the codes regime?**

The BSC contains extensive provisions for monitoring compliance with its obligations. These provisions comprise a Performance Assurance Framework (PAF) comprising various preventative, detective, incentive and remedial tools<sup>9</sup>. The majority of the PAF is overseen by a dedicated committee - the Performance Assurance Board (a Panel Committee defined in Section Z of the BSC). Certain functions (including the BSC Default provisions for dealing with the most serious non-compliances) fall to the BSC Panel.

ELEXON is the Performance Assurance Administrator, providing independent, impartial delivery of Performance Assurance processes on behalf of the BSC Panel and the Performance Assurance Board in line with our BSC obligations. We do this both ourselves and via subcontractors. The BSC Audit, delivered by KPMG, is part of the Performance Assurance Framework.

As noted elsewhere in our response, since compliance with the BSC is a licence requirement, persistent or material non-compliance with the BSC constitutes a licence breach. Ofgem is able to attend the Performance Assurance Board and is kept abreast of significant matters and annual findings via attendance at the BSC Panel and through reporting delivered in accordance with the requirements of the BSC.

We note that equivalent Performance Assurance provisions are not reflected across other industry codes. Consequently, their respective code panels and code administrators do not play significant roles in monitoring compliance or addressing non-compliances should they occur.

## Practical issues

**Question 18: Please describe the process by which you receive funding.**

Our funding arrangements see our costs passed directly on to BSC Parties. ELEXON does not make profit or retain capital. We are not owned by Energy Suppliers, Generators or other Trading Parties. Our accounts are not consolidated with those of our shareholder (National Grid). Further, National Grid is insulated from any liabilities incurred by ELEXON through the provisions of the BSC. This enables us to operate independently from industry parties and National Grid. We believe this is significant and that such arrangements facilitate the delivery of impartial services.

Section D of the BSC<sup>10</sup> outlines the recovery of BSC Costs by ELEXON through BSCCo Charges. These are the costs that ELEXON incurs in operating the trading arrangements. BSC Costs are apportioned to BSC Parties in a number of ways, broadly equivalent to the size of each Party's market share. The

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<sup>9</sup> <https://www.elexon.co.uk/reference/market-compliance/performance-assurance/performance-assurance-techniques/>

<sup>10</sup> <https://www.elexon.co.uk/bsc-related-documents/balancing-settlement-code/bsc-sections/>

vast majority of BSCCo Charges are paid by Trading Parties and the larger Trading Parties (in terms of energy generated/supplied and number of metering systems registered) pay the larger proportion of BSCCo Charges.

For each "invoice month" ELEXON calculates its Annual BSC Costs to be recovered from Parties by all of the Main Specified Charges, SVA Specified Charges and Net Annual Costs for the current BSC Year. An amount equal to 1/12 of the calculated Annual BSC costs for the current year is then used as the amount to recover from Parties in that invoice month.

A final calculation is made within 28 days of the publication of ELEXON's audited accounts for the BSC Year, and a final invoice ensures that the amounts paid by each Party in respect of the BSC Year are then correct. As stated, ELEXON does not make a profit or retain capital.

If a Party fails to pay a charge then ELEXON notifies all Trading Parties, the Panel and the Authority. The other Trading Parties become liable to pay the amount in proportion to their Default Funding Shares or Default Party Charge Share (which is the charge owing by each non-defaulting Party based on market share divided by the total for all such Parties), as appropriate. Where an unpaid amount is recovered, in the case of Party Charges, the amount is refunded on the basis of the Default Party Charge Shares which applied at the time the payment was due, or in the case of BSCCo Charges, is treated merely as an amount already paid in the calculation of the liabilities in subsequent invoice months.

A simple guide to Section D is available on our website.<sup>11</sup>

**Question 19: To what extent do you think that your funding arrangements would need to change in order to allow you to perform the additional roles and functions considered above?**

We believe that our funding arrangements and our not-for profit status, supports our delivery of impartial services in line with our obligations which include many of the roles and functions considered above<sup>12</sup>. We do not believe that our funding arrangements would need to be altered in order to deliver those roles and functions considered above where we do not already provide them.

**CACoP Principle 13**

**Question 20: Once fully established, how do you expect CACoP Principle 13 to work in practice?**

We believe that CACoP Principle 13 will promote cross-code working by encouraging code administrators to engage pro-actively on changes with potential cross-code impacts.

The transparency of cross code changes will be improved<sup>13</sup> and co-ordinated advice will be available to code parties and code panels as a result of dialogue between code administrators on changes with recognised cross-code impacts.

We anticipate that code panels will support CACoP Principle 13 by:

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<sup>11</sup> <https://www.elexon.co.uk/bsc-related-documents/bsc-simple-guides/>

<sup>12</sup> Our current functions include the development of an annual BSC work plan, supporting the BSC Panel in prioritising Modifications, supporting the Panel and Workgroups in scoping and performing analysis, project managing the assessment of BSC changes and the delivery of changes to central BSC systems and monitoring compliance via the Performance Assurance Framework.

<sup>13</sup> For example, we already publish a 'Cross-Code Impact Log' of industry change on our website. This is updated by code administrators on a regular basis: <https://www.elexon.co.uk/change/>

- supporting the establishment of joint working groups to consider complementary changes in the round; and
- taking account of recommendations from code administrators regarding timetables and implementation dates for complementary changes.

### **Question 21: What specific concerns caused Elexon to propose the insertion of Principle 13 within the CACoP?**

In 2010, the Profiling and Settlement Review Group (PSRG), an expert group established under the BSC, considered the industry impact of using Half Hourly data for those customers traditionally treated as Non Half Hourly. The PSRG highlighted that DUoS charges were likely to be an issue. This view was firmly established when, following industry consultation in May 2010, a report by the PSRG was published in June 2010 showing the estimated average charge to customers that DUoS charges would create and concluded that a holistic approach was required to resolve the issue. At the time ELEXON highlighted to Ofgem that whilst it could identify these matters for consideration in DCUSA forums, it was outside of ELEXON and the BSC Panel's jurisdiction. Consequently, there was a need for support in creating this holistic approach.

Modification P272 'Mandatory Half Hourly Settlement for Profile Classes 5-8' was raised by a BSC Party in May 2011. The Modification Proposer believed that raising this Modification under the BSC would bring a lot of the issues to the fore and would press for speedier solutions by creating a date for when DUoS issues would need to be resolved.

Throughout the assessment of Modification P272, the Modification Workgroup and ELEXON highlighted to Ofgem and industry parties the complementary changes that were being progressed or were required to be raised both under the BSC and other industry codes.

In February 2014, Ofgem published an open letter expressing concern over the lack of industry co-ordination in the respect of changes associated with the roll-out of half hourly settlement for profile class 5-8 metering systems (initiated under the BSC by Modification P272). In light of this letter, ELEXON wrote to other code administrators to explore what actions may be necessary to better co-ordinate activities.

At the BSC Panel meeting in February 2014 ELEXON noted that it already attended other code body meetings and that it would look again at how it might build on this including the extent to which processes, powers and responsibilities exist that might enable code administrators to influence the pace of change across codes. The BSC Panel also agreed that it should determine whether it had sufficient clarity regarding any related changes under other codes.

ELEXON subsequently provided monthly updates to the Panel in respect of changes related to Modification P272 (in particular, distribution change DCP179).

In July 2014, BSC Panel members commented that cross-Code involvement is necessary for the changes that Ofgem had cited in its letter of February 2014 and believed that this area should have been progressed under a Significant Code Review (SCR). More information on these matters and the Panel's deliberations is available in BSC Panel Paper 226/04 and the associated BSC Panel Minutes<sup>14</sup>.

The BSC Panel considered a number of minor amendments to the CACoP in December 2014. In light of the concerns raised by Ofgem in February 2014 and the regular reporting provided by ELEXON in respect of Modification P272, the Panel requested that ELEXON work with other code administrators to develop a new CACoP principle regarding the pro-active co-ordination of cross-code change.

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<sup>14</sup> <https://www.elexon.co.uk/meeting/bsc-panel-226/>

## Expert/standing panels

**Question 22: Do you see any value in the creation of a 'project board' that would sit between Ofgem, code administrators, and/or code panels, and which would be primarily intended as a means to promote coordination within the code process? If so, what would be the appropriate composition and powers of such a project board?**

As we note elsewhere in this response (and consistent with our July response), we believe that large, market wide, changes would benefit from a strategic, co-ordinated approach. A cross-code group, comprising experts on the various arrangements with a desire to work together to make things better, could provide expert design advice on issues relating to all industry codes.

Such a body could:

- facilitate the development of solutions to deliver policy objectives from Ofgem/DECC;
- help to identify cross Code impacts from changes that are raised (or that may need to be raised); and
- develop a road-map for large-scale industry change, that could be used by code panels to better co-ordinate development, assessment and implementation of required changes.

In this model, code panels, supported by code administrators, would be responsible for overseeing the assessment of changes, setting implementation dates for changes, monitoring compliance and addressing non-compliance. Code panels would remain responsible for approving, rejecting (or making recommendations to the Authority in relation to) changes as they are assessed.

It could be that this body is operated independently from code panels. In this case it might comprise design authority experts from industry parties as well as code administrators and make recommendations to all code panels (and Ofgem).

Alternatively, it could be a standing group operating under delegated authority from code panels. In this case it might comprise code panel members and code administrators and make recommendations to all code panels (and Ofgem).

In either model, additional powers should be afforded to code administrators to facilitate the progression of changes. This includes the capability for code administrators to raise changes to their respective industry codes. Such changes would be considered by the industry under the usual processes and would have to demonstrate benefits in the same way as any other change in order to be recommended for approval. It would be important to ensure appropriate checks and balances were in place so that changes were only raised by code administrators where there was an identified need and where it was clear that no change would be otherwise forthcoming. We believe that industry code panels would form a key part of such checks and balances.

We believe that breadth of powers that a project board would require in order to co-ordinate change across codes (as contemplated in earlier questions) would create a more complex, three-tier governance structure where:

1. At the first tier, Ofgem can develop and (through the transmission company) effectively raise changes for its consideration under the SCR and subsequent Modification processes. The Authority retains overall control of prioritisation, assessment timetables and implementation dates via existing BSC provisions.
2. At the second tier, the suggested project board could determine that a change has cross-code implications and so, rather than the relevant code panel, it would set the priorities for that change, determine the scope and timetable for any assessment, recommend or set the implementation date(s) for the change and monitoring and take action in respect of failure to take the required implementation steps or any resulting non-compliance. Outside of the implementation date, it is not clear whether code panels would remain responsible for approving, rejecting (or making recommendations to the Authority in relation to) changes as

they are assessed. We assume that the Authority would still be able to override the prioritisations and determinations of the project board.

3. At the third tier, code panels would continue to oversee the change process in the usual way (this includes the self-governance process which could be construed as a fourth tier).

We are concerned that stratifying the code change process and associated powers in this way could lead to additional complexity and/or uncertainty in how changes may be treated.

**Question 23: In the context of the faster switching programme, what were the terms of reference for the input provided by the External Design Advisory Group? Who were the members of that Group and how were they chosen? Who determined it was necessary to have such input and what were the reasons given?**

Please refer to Ofgem.

## Implementation

**Question 24: Who takes the lead on translating the legal text of an approved MP into instructions on how to change the relevant systems?**

ELEXON prepares the legal text for Modification Proposals based on the solutions developed by Modification Workgroups and subsequently approved by the BSC Panel or the Authority.

Under the BSC, as the body responsible for the delivery of settlement systems and processes, we manage the development and implementation of changes to BSC Agent (central) systems and processes. We work closely with our service providers in translating the legal text for approved Modification Proposals into the relevant requirement documents.

**Question 25: If you do not influence directly the above process, to what extent do you have oversight of it?**

N/A

## Incentives

**Question 26: Do you think that the performance metrics set out in CACoP Principle 12 are an effective benchmarking system? Do you have any suggestions for improving those performance metrics?**

Principle 12 of the CACoP sets out a range of metrics regarding the change process.

We report CACoP Principle 12 metrics on a quarterly basis in the [Change Report](#) to the BSC Panel, this includes the results of the annual [customer survey](#) that we commission which provides information on satisfaction in relation to our performance with respect to the change process.

Some of these metrics offer context. For example, the 'number of consultations progressed' tells the reader something about the volume of change activity but it is not a measure of performance (of either the code panel or the code administrator).

Other metrics highlight the challenge in measuring performance. For example, the 'average number of respondents to consultations' figure does not recognise that the number of responses might be indicative of the nature of the change. Industry parties may choose not to respond to simple, straightforward changes, preferring instead to provide feedback on changes which have wide-ranging, commercial impacts. We suggest that one is neither better than the other but it would be

concerning if the wide-ranging commercial change gathered little feedback. The numbers alone cannot make this distinction.

Some metrics are easier to consider as pure performance indicators. These include:

- Number of Modification Reports submitted for decision in line with the original IWA timetable (i.e. that recommended by the code administrator);
- Number of extensions to the timetable requested;
- Number of consultations for which implementation cost estimates were available;
- Number of consultations with a glossary and plain English summary included;
- Number of reports 'sent back' by the Authority;
- Percentage difference between the budgeted and actual implementation cost; and
- Number and percentage of surveyed respondents 'satisfied' or better by the code administrator's assistance in the change process.

Finally, we note that CACoP Principle 12 contains no specifications for how these figures should be compiled. This makes comparison of these metrics between code administrators very difficult (if not impossible) as the basis of the reporting across code administrators may not be the same.

In order to be an effective benchmarking tool, we believe the CACoP should make a distinction between performance indicators and other, more general metrics. The detailed calculation of the performance indicators and metrics should be set out in the CACoP to ensure consistency.

### **Question 27: Is the CACoP an effective means to establish and extend industry best practice for code administrators?**

The CACoP can be an effective tool for describing the minimum required standard. It may help to incentivise code administrators to improve to this basic standard. However, it doesn't drive improvement over and above this minimum unless it is continually reviewed and revised by introducing enhanced minimum expectations. The implementation of CACoP Principle 13 might be an example of this. Overall, taken in isolation, the CACoP doesn't encourage pro-active innovation by code administrators. Consequently, code panels play an important role in defining 'what good looks like' and encouraging innovation, efficiency and the introduction of value-adding services.