

Distribution Code Review Panel

7 September 2017

This paper seeks the Panel's views on the creation of Code Administrator Terms of Reference and the annual Code Administration Code of Practice review.

1. Background

1.1 Ofgem has conducted three phases of code governance review since 2007 (phases 1-3):

- The first phase implemented changes primarily to the Balancing and Settlement Code, the Uniform Network Code and the Connection Use of System Code
- The second phase sought to extend the Code Governance Review outcomes to other industry codes and agreements
- Ofgem published its proposals for the third phase (Code Governance Review 3 - CGR3) in March 2016. This was following the Competition and Market Authority (CMA) publishing its provisional decision on remedies following its energy Market Investigation

1.2 Work is still ongoing following on from CGR3. Ofgem has proposed introducing a Consultative Board to coordinate cross code change, but this may require a change in Ofgem's powers to require Code Administrator (CA) participation. Ofgem has also suggested licensing CAs to make them accountable for their work and to introduce an element of competition but this will require a change in primary legislation, which may take some time given the government's legislative priorities. As part of CGR3, Ofgem undertook a survey of all CAs to establish a baseline to assess performance against each other. It has also looked at the quantitative metrics that Codes are required to report on as a measure of their performance. Both are aimed towards encouraging improvements and monitoring performance.

1.3 As part of the work on CGR3, and as a stepping stone towards the creation of a Consultative Board, Ofgem urged the CAs to work collaboratively to lead on strategic changes to the industry that are expected over the coming years. As a result, the CAs established the Code Administrators' Meeting. Meetings take place every two months and this is an opportunity for representatives of each code to inform the CA group of ongoing work as well as collectively identifying future commitments and changes where cross-code collaboration may be required.

1.4 To date the meetings, which Ofgem attends, have produced a high level horizon scan view of future market changes and a Forward Work Plan (FWP) providing a more detailed view of future change. However, the participation and reception for both has been varied across the codes. So far the group has met eight times and has still to finalise formats for the Horizon Scan and the FWP. The CAs often have to revert to their Panels for opinion on whether to accept the latest draft or not.

1.5 The CA meeting is also tasked with conducting an annual review of the Code Administration Code of Practice (CACoP). This is due to take place in the next few months.

1.6 Ofgem attends the CA meeting in order to give guidance and direction to participants. However, it has stated that it wishes the CAs to take the lead on driving forward the work at this stage. In accordance with documentation published in relation to CGR3 and the CMA recommendations, Ofgem's position is

that, until more formal arrangements are put in place, the CAs should work collaboratively on Horizon Scanning and a FWP to drive forward change across the industry.

2. Draft Terms of Reference

2.1 ENA met with Ofgem in June 2017 to discuss the CA meeting purpose, direction and objectives. An outcome was that we prepared and circulated a draft Terms of Reference (ToR) (Appendix 1) to CAs having first been reviewed by Ofgem. Members have provided feedback on the draft ToR and a revised draft has been circulated to members to present to their Panels for review.

2.2 The purpose of the ToR is to establish a governance structure over the meeting in terms of:

- The meeting purpose and objectives
- What is required of attendees
- Who should attend
- Who will Chair
- How the meetings should be conducted
- The minimum attendance required to be quorate

2.3 The ToR calls on members to be suitably qualified, experienced in Industry processes and of sufficient seniority to be able to take decisions on behalf of their Code where appropriate. An example of this would be committing resource for CA meeting related work and agreeing the format and content of documents such as the Horizon Scan and FWP.

2.4 The ToR also calls for all members to be present (and to nominate an equally qualified deputy in case of absence) at each meeting. The purpose of this is to encourage full participation and avoid scenarios where decisions may be delayed due to key participants being absent.

2.5 It should be noted that the CA meeting ToR is not seeking to usurp the authority of the participating Code Panels. It is drafted with the aim of driving efficiency in order to demonstrate to our customers, wider industry and Ofgem that the CAs are proactively embracing and driving forward collaborative work as recommended in the CMA findings published in June 2016.

2.6 Going forward we would recommend that ENA provides updates to the Panel as and when any significant change occurs that will affect ENA's ability to administer the Distribution Code or has the potential for impact on how ENA's business as usual activity is delivered. This should include the principles to be followed when commencing new initiatives.

2.7 For any matters such as document formats and contents or commitment of ENA resource we do not intend to seek the Panel's views as we believe that such things are of an administrative nature and/or execution of ENA's functions in administering the DCode. We will update Panel when requested or at the suggestion of ENA's Executive should either become aware of anything that may affect the DCode, ENA's administration of the DCRP or may affect our relationship with other codes or our position within the industry.

3. Code Administration Code of Practice

3.1 The Code Administration Code of Practice (CACoP) was established following Ofgem's Codes Governance Review in June 2010 (CGR2).

3.2 It defines 13 principles that electricity and gas CAs should follow in order to facilitate convergence and transparency in Code Modification processes, and to help protect the interests of small market participants and consumers. One of the purposes of the survey commissioned by Ofgem last year was to assess how well CAs are performing against the 13 principles¹.

3.3 The CACoP is reviewed annually by a group consisting of CAs and users of these Codes. The next review is due to commence in September 2017 but before that can happen, the CA meeting must first agree on the format the review should take.

3.4 The Electricity Network Association (ENA), in its role as the Distribution Code Administrator, has agreed to coordinate the review this year and has suggested a covering letter our final version is included in Appendix 3 of this paper.

3.5 Concern has been expressed over how 'another survey' would be received following Ofgem's survey earlier this year as well as similar surveys conducted by various Codes. Discussion at the last two CA meetings suggested that the preference would be to simply make a few minor amendments to the CACoP document if required and ask if there is any comment.

3.6 ENA does not believe that there needs to be any significant change to the CACoP document and is not aware that any of the other CAs are intending to propose changes. However, as we will be reaching out to industry as part of the review, we should take the opportunity to seek feedback on certain areas and as such intend to propose that the questions at Annex 1 to Appendix 3 are asked.

3.7 The questions that we are proposing are not specific to any CA, other than identifying best practice. These questions will give a sense of how the CAs are performing as a collective and how we are collectively viewed as an industry. Once we have the industry view of the CAs collectively, this information can then be used to move forward collectively in developing our collaborative working practices.

4. Next Steps

4.1 The draft ToR will be presented to CAs' Panels in August and September and feedback collated ahead of the CA meeting in late September. If there are any substantive changes to those at Appendix 1, we may seek further guidance from the Panel. Once all of the CAs have agreed to the ToR, they will become effective and we will publish them on the DCode website alongside the CACoP.

4.2 Once the ENA has received feedback from each of the other CAs it will collate and present to the September 2017 CA meeting. So long as the draft is approved, the review will be issued shortly thereafter. If the results are of concern, and require ENA to reconsider how the DCode is administered we will inform the Panel of our implementation strategy.

¹ 1 The survey took place between October 2016 and February 2017 and the results were published in April 2017 and saw ENA receiving favourable results

5. Recommendations

5.1 We invite the Panel to:

- a) **NOTE** the content of this paper;
- b) **AGREE** to the draft terms of reference;
- c) **COMMENT** on when you wish to be informed of CA meeting activity; and
- d) **AGREE** with ENA's recommendation for the CACoP review.

Appendices

Appendix 1 – Terms of Reference – Code Administrator meeting

Appendix 2 – CACOP Principles Appendix 3 – CACOP Open Letter

APPENDIX 1: DRAFT TERMS OF REFERENCE – CODE ADMINISTRATOR MEETING

1. General terms and objectives

1.1. These are standard terms of reference as agreed by the member organisations² and will apply to all Code Administrator meetings. They shall not refer to meetings convened by two or more members outside of these meetings for the purpose of discussing specific issues relevant to that meeting. The members may change these terms of reference from time to time, subject to majority agreement of the members³. Members shall act in accordance with these terms of reference.

1.2. The objective of the Code Administrator meetings is to achieve greater co-ordination across Codes for identifying and delivering strategic change that benefits consumers and competition.

1.3. This will be achieved by:

- Developing and maintaining a horizon scanning document for any industry change that will affect two or more industry Codes
- Providing updates on forecasted and existing Modifications of a strategic⁴ nature [in future, as included within Ofgem's Strategic Direction]
- Provide updates on changes that may impact multiple Codes;
- Identifying changes and initiatives where cross Code groups should be established and proposing these to relevant Code panels;
- Identifying initiatives to improve the transparency and user participation in the industry Code processes;
- Annually reviewing and consulting on the Code Administration Code of Practice (CACoP)
- Assessing performance against the CACoP principles. This shall include, but not be limited to assessing third party feedback provided by parties outside of the membership or feedback gathered by a member on behalf of the membership.

2. Membership

Chairman and Secretary

2.1. The group shall have a Chair who shall be a person nominated by the members. The Chair shall undertake the duties for a maximum of three months. So far as practicable, the role shall rotate through the members

2.2. The group shall have a Secretary who shall be a person nominated by the Chair.

2.3. The Chair and the Secretary may appoint an alternate to attend a meeting in their place.

Members

2.4 The Meeting membership shall comprise of at least one representative from each Code Administrator. The Code Administrators are:

- Balancing and Settlement Code (BSC)
- Connection and Use of System Code (CUSC)
- Distribution Code (DCode)
- Distribution Connection Use of System Agreement (DCUSA)
- Grid Code

² Shall mean those organisations listed in Section 2.4 of these Terms of Reference

³ Which will incorporate any governance requirements to give assent to/make decisions

⁴ Strategic shall refer to anything that will impact more than one area of the industry and may bring about a change in which the industry operates. Strategy shall deal with high-level overarching objectives e.g. 'introduce code amendments by Q3 2020'. The specifics of how the strategic objective is achieved are tactical and therefore not of a strategic nature.

- Independent Gas Transporters Uniform Network Code (iGT UNC)
- Master Registration Agreement (MRA)
- Smart energy Code (SEC)
- Supply Point Administration Agreement (SPAA)
- System Operator – Transmission Owner Code (STC)
- Uniform Network Code (UNC) 2

2.5. The group member should have relevant suitable experience relating to their area of work, the CACoP and change mechanisms. The member shall have the authority to act on behalf of, and make decisions for⁵, the Code they represent. Where they are unable to make decisions on behalf of their Code, they should act as a conduit between the Code Administrator meeting and their organisations/relevant Panels. Additional representatives from each Code Administrator may attend to offer subject matter expertise if appropriate.

2.6. Where possible, members should seek guidance from their respective Panel on where they should defer to higher authority within their own respective governance structure and where they may act on behalf of the Code Administrator without reference to higher authority.

2.7. At the discretion of the group member, attendance need not be in person. If not attending in person, then the member should inform the Secretary ahead of the meeting and ensure they are able to follow the entire proceedings of the meeting.

2.8. The group member may appoint an alternate to attend a meeting in their place. The alternate shall meet the same requirements for membership (or as close as possible) as those laid down elsewhere within these Terms of Reference. The alternate should also have the same delegated authority as the member.

2.9. An individual may represent more than one Code. Where this is the case, if a vote is to be taken, then they shall have one vote per Code, the distribution of their voting shall be clarified by the Chair when voting occurs.

2.10. An Ofgem representative will also attend the meetings to:

- Encourage participation in line with the CACoP;
- Where appropriate, provide a strategic steer in advance of setting its future Strategic Direction

Impacted and interested third parties/users

2.11. Third parties who are impacted and/or interested by cross Code issues and governance may also attend meetings in an observational capacity. Attendance must be notified in advance to the Secretary. Third parties should be encouraged to participate in discussion but should not form part of the quorum.

3 Duties of members

3.1. In conducting its business, the group shall:

- Operate in a manner that is consistent with the CACoP principles;
- Be guided by Ofgem's future Strategic Direction; and
- Work with their relevant Code Panel(s) to implement cross Code initiatives and improvements to code users.

3.2. Each member agrees that they will be available to attend group meetings and to carry out work outside meetings as necessary, including but not limited to, confirming meeting availability, reviewing documents and completing actions by the deadline agreed by the group. If they are not able to meet these duties then they should inform the Secretary and/or Chair as appropriate.

⁵ Within the delegated decision making authority as allowed by their specific Code Administration

3.3. Each member agrees that they, and the Code they represent, will cooperate with any decisions taken by the group so long as such decision is not contrary to the governance of the code they represent. Where a member, or the Code they represent, is unable to comply, they shall provide an explanation to the Chair as to why they are unable to comply.

3.4. Members shall inform the Secretary if they do not wish to continue as a member of the group.

4. Meetings General

4.1. Meetings will be held at least every other month, unless cancelled or delayed by agreement of the members.

4.2. Any meeting of the group shall be convened by the Secretary by notice to each member setting out the date, time and place of the meeting. These details shall be circulated to all members via email. Meetings will be held at a time and place agreed by the Chair following consultation with members.

4.3. Meetings will be held in open session, except where there is material which is confidential⁶, in which case that part of the meeting will be held in closed session.

4.4. Where the Chair considers it appropriate, a meeting of the group may be held by telephone conference call (or other similar means). Any decisions taken at such a meeting shall be considered equally as valid as decisions made at meetings conducted in person.

4.5. An agenda and any supporting material for the meeting will be issued to group members five working days in advance of the meeting. Where practicable, the agenda order should be such to allow members to only attend part of a meeting if appropriate. The Chair will have then final decision on the meeting agenda.

4.6. The proceedings of a meeting of the group shall not be invalidated by the accidental omission to send notice of the meeting or any of the accompanying agenda or supporting material to, or any failure to receive the same by, any person entitled to receive such notice or items.

4.7. Meeting minutes will be issued for member comment by the Secretary within 10 working days of the meeting taking place. Comments are to be returned to the Secretary within 5 working days of issue. Final minutes will be agreed at the next meeting.

4.8. Any material relating to the meeting may be made public by any Code Administrator unless specifically marked as Confidential. Quorum

4.9. A meeting of the group is quorate if at least five of the membership are in attendance.

APPENDIX 2 – CACOP PRINCIPLES

1. Code Administrators shall be critical friends
2. Documentation published by Code Administrators shall be in clear English
3. Information will be promptly and publicly available to users
4. This Code of Practice will be reviewed periodically and subject to amendment by users
5. Code Administrators shall support processes which enable users to access a 'pre- Modification' process to discuss and develop Modifications
6. The Proposer of a Modification will retain ownership of the detail of their solution
7. Code Administrators will facilitate alternative solutions to issues being developed to the same degree as an original solution
8. Estimates of implementation costs to central systems will be produced and consulted upon prior to a Modification being recommended for approval
9. Legal text will be produced and consulted upon prior to a Modification being recommended for approval
10. Modifications will be consulted upon and easily accessible to users, who will be given reasonable time to respond
11. There will be flexibility for implementation, to allow proportionate delivery time and realisation of benefits
12. The Code Administrators will report annually on agreed metrics
13. Code Administrators will ensure cross Code coordination to progress changes efficiently where modifications impact multiple Codes.

APPENDIX 3 – CACOP OPEN LETTER

Open Letter: 2017 review of the Code Administration Code of Practice.

Dear Industry Colleagues,

This open letter seeks views on the Code Administration Code of Practice (CACoP) from all GB Code parties as part of its annual review.

Background

Ofgem's Code Governance Review concluded in 2010 and led to the development of the Code Administration Code of Practice (CACoP) by Code Administrators and Users.

The purpose of the CACoP is to provide simplification and convergence of the Code modification processes in order to reduce complexity and encourage best practice across the Codes. In turn, the CACoP aims to protect the interests of small market participants and consumers.

The CACoP achieves this through a set of 13 principles that seeks to ensure Codes are delivered in a consistent manner. The principles range from standard Code modification process, to key performance indicators and cross Code coordination.

All Code Administrators follow the principles set out within the CACoP; however Code Administrators must also comply with relevant Codes and licences, so where inconsistencies or conflicts exist between these and the CACoP, the relevant Code or licence shall take precedence.

Principle 4 of the CACoP states that the Code of Practice will be reviewed periodically and subject to amendment by Users. As part of this review process, we are inviting your views on the CACoP to feed into the annual Code Administration Review being held in July 2017.

The Current CACoP can be found via the following link; <https://www.ofgem.gov.uk/publications-and-updates/code-administration-code-practice-version-4>

Responses

As Code Administrator of the Distribution Code, Energy Networks Association (ENA) is leading the 2017 review of the CACoP and is seeking responses from all GB Code Users. Responses are sought to the specific questions outlined in Annex 1 of this Open letter.

Please could you provide any responses via e-mail to david.spillett@energynetworks.org by XX on XX XXX 2017. It is our intention to discuss any responses received at the CACoP Annual Review meeting in XXX 2017.

If you wish to discuss any aspect of this letter, please do not hesitate to contact me.

Yours sincerely,

Annex 1 – Questions

This letter invites views from all Code parties on the content and application of the CACoP. In particular, we are interested in your views on the following questions:

1. Are you aware of the key principles of the Code Administration Code of Practice (CACoP)?
2. Do you believe the Principles in the CACoP effectively meet their purpose?
3. Do you believe the CACoP aligns with Ofgem's future direction for Code Governance reform?
4. Do you believe the current metrics under Principle 12 are fit for purpose? Should any additional metrics be included to those under Principle 12?
5. In relation to Principle 13, do you believe Code Administrators effectively facilitate cross Code coordination? Are there any areas where this could be better achieved?
6. Are there any Principles that any Code Administrators deliver/meet in such a way that could be used as 'best practice' amongst all Code Administrators?
7. If you have used the "standard modification templates" to raise a change or have assessed an industry change that was issued on these, please tell us about your experience: a. Were these easy to use? (Yes/No) b. What improvements, if any, would you like to see?
8. As a user of the Code of Practice, do you have any suggested improvements?