

By e-mail to: switchingprogramme@ofgem.gov.uk

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17 July 2018

Dear Rachel,

Ofgem Switching Programme: Proposed modifications to regulation and governance – ELEXON response

We welcome the opportunity to comment on the proposed modifications to regulation and governance around Ofgem's Switching Programme.

As you are aware, ELEXON is the Code Manager for the Balancing and Settlement Code (BSC). We are responsible for managing and delivering the end-to-end services set out in the BSC and accompanying systems that support the BSC. This includes responsibility for the delivery of balancing and imbalance settlement and the provision of assurance services to the BSC Panel and BSC Parties. We manage not just the assessment, but also the development, implementation and operation of changes to central systems and processes. In addition, through our subsidiary, EMR Settlements Ltd, we are the Electricity Market Reform (EMR) settlement services provider, acting as settlement agent to the Low Carbon Contracts Company (LCCC), for the Contract for Difference (CfD) and Capacity Market (CM). EMR services are provided to the LCCC through a contract and on a non-for-profit basis.

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

We summarise our overall considerations in the covering letter below. Furthermore,
Appendix 1 contains Responses to the specific consultation questions
Appendix 2 contains Detailed commentary on BSC Panel composition and its key beneficial features
Appendix 3 contains Detailed considerations that have to be taken into account for the entry and systems testing requirements
Appendix 4 contains Detailed comments on the proposed code modification process
Appendix 5 contains Further commentary on competitive tendering and ELEXON-specific concerns

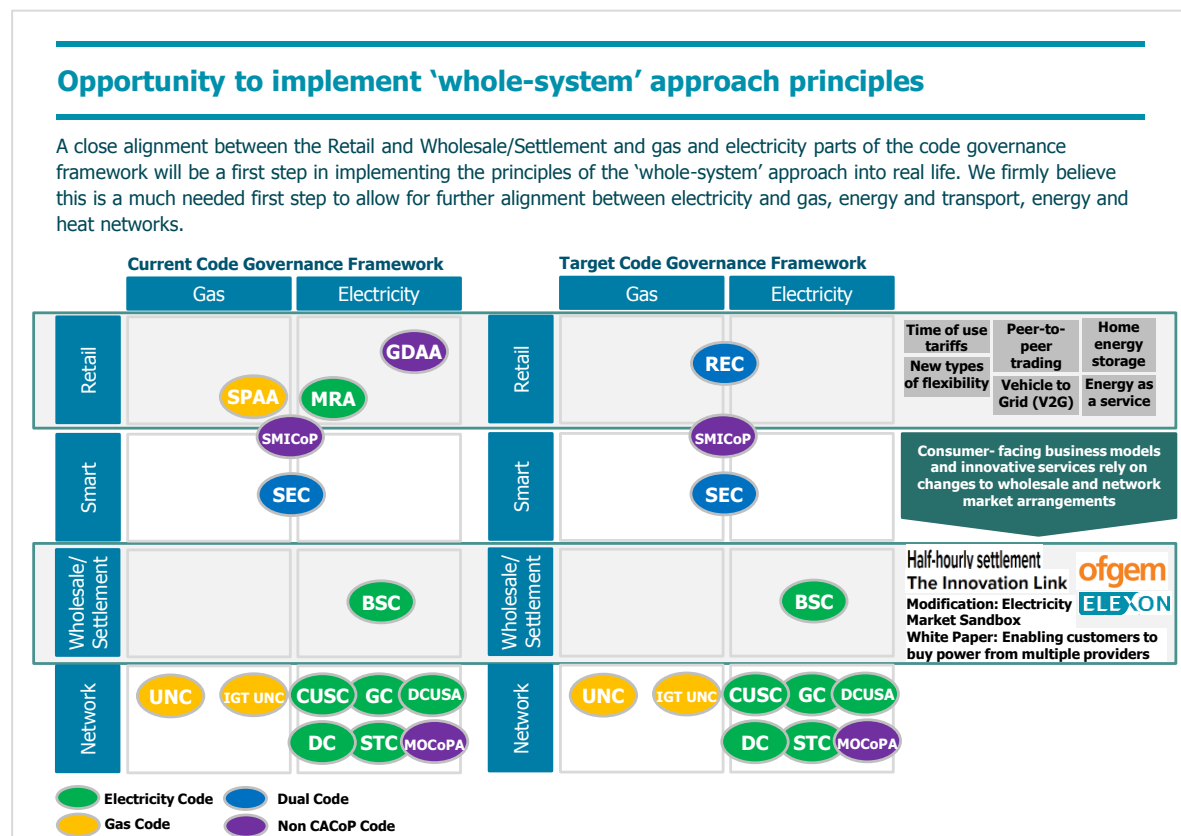
ELEXON supports the overall objective to consolidate all retail energy code provisions

We note Ofgem's overriding intention that the REC should ultimately allow for consolidation of all retail energy code provisions. We recognise the need and have been advocating greater coordination and even consolidation of the industry code administrative functions for a number of years. We firmly believe that consolidation (be it of codes themselves or code administrative functions) is a necessary step if the energy industry, Government and Ofgem are to collectively deliver on BEIS and Ofgem's joint Smart Systems and Flexibility Plan objectives (2017) to provide value to end customers.

We believe an even greater alignment of central code services systems is possible, bringing the 'whole systems' approach to life

Through our work on Half-Hourly Settlement (HHS) and now Market Wide Half-Hourly Settlement (MWHHS) programmes, as well as support to other Ofgem initiatives, we conclude that a much closer alignment between wholesale/settlement and retail parts of the code governance framework is required to enable innovation and fully support emerging business models. End customer-facing business models such as peer-to-peer trading, small-scale electricity storage (residential and small to medium commercial), smart tariffs (time of use tariffs) and a number of other new services rely on changes to the wholesale/settlement market arrangements specified under the BSC. ELEXON has been fully involved in shaping and delivering a number of Ofgem's Significant Code Review (SCR) programmes in order to bring the electricity industry's central arrangements in line with the last decade's changes in generation and consumption of electricity. Furthermore, ELEXON has proactively identified practical solutions to support specific innovations: e.g. lamp-post charging for Electric Vehicles (EVs), or a recent [White Paper](#) on enabling customers to buy power from multiple suppliers.

If adopted, a close alignment between the Retail and Wholesale/Settlement and gas and electricity parts of the code governance framework will be a first step in implementing the principles of the 'whole-system' approach in real life. We firmly believe this is a much needed first step to allow for further alignment between electricity and gas, energy and transport, energy and heat networks.



ELEXON supports the intention for REC to be a best-in-class industry code, putting end customer outcomes at the heart of everything it does and providing market participants with an accessible and comprehensible set of rules

We wholeheartedly agree with Ofgem's intention for the Retail Energy Code (REC) to become a best-in-class industry code. To that end we have outlined a number of detailed observations in our

response below that ELEXON has learnt through its 18 years of end-to-end code administration, operational services, system development and policy delivery support. We believe the following principles are critical in order to support the delivery of the stated objectives.

- 1. Early establishment of the RECCo and appointment of the enduring Code Manager is required.** This will provide much needed support and assistance to the Switching Programme and ensure that key operational processes are established and proven before the go-live of the new switching arrangements. We have made some suggestions for those areas where we see an early involvement of an experienced and pro-active Code Manager as beneficial in paragraphs 2.6 – 2.10 of our response. Furthermore, Ofgem needs to be mindful of the potential future requirements of a REC Manager role, e.g. when thinking of the management of the CSS (Central Switching Service) to be novated to the RECCo. We believe REC Manager will have to demonstrate proven capabilities in managing real-time outsourced services in order to be able to effectively and cost-efficiently deliver this service on behalf of suppliers and other REC parties.
- 2. We firmly believe that the success of the REC will be dependent on appointing the right individuals to the RECCo Board and REC Panel,** recognising that both will require different skill sets and experience and that any interim governance arrangements should be replaced as soon possible following the designation of the transitional version of the REC in early 2019.
- 3. Greater clarity is required on lines of accountabilities between the REC Panel and REC Manager.** Roles and responsibilities of the RECCo Board, REC Panel and REC Manager appear to be in line with the intent to produce a code that is forward thinking, consumer focused and supportive of innovation. However, we believe that there would be further benefit in clarifying the lines of accountability both as between the RECCo, REC Panel and REC Manager (this will depend on where the bodies derive their obligations e.g. from licence, code or contract), as well as accountability of each of those bodies (this will depend on who appoints and removes individuals from those bodies), particularly as the proposed approach represents a deviation from governance models that the gas and electricity industry will be more familiar with.
- 4. The proposed alternations to the change management process need to take into account an 'end-to-end' change process and lessons learnt from different models that exist at present.** We welcome Ofgem's approach to the progression of change with an emphasis on self-governance and the introduction of proportionate and flexible change management arrangements that reduce complexity for users. However, there are a number of areas, such as raising change proposals, reporting to the REC Panel, number of alternatives and voting where, we believe, further consideration should be given to better facilitate the principles of self-governance and efficiency. We have outlined our suggestions in more details in our response to Q3.4 of the consultation.
- 5. Consideration needs to be given to the not-for-profit model for REC Manager.** We strongly believe that for the REC Manager to deliver on the stated underlying principle of operations, i.e. "putting consumers at the heart of everything it does", it will have to be solely focused on delivering value to the industry and end customers. This is rather than its shareholders' priorities and/or their commercial objectives that may evolve with time. Additionally, in line with ELEXON's position expressed in our response to [Industry Code Governance: Initial consultation on implementing the Competition and Markets Authority's recommendations](#) and [BSCCo 2018/2019 Business Plan](#) we strongly believe the industry should not overpay via a profit margin for essential market services that bear no commercial risk such as industry code administration or management.

Careful consideration needs to be given to competitive tender terms and conditions to ensure an open competition

We note that careful consideration needs to be given to the competitive tender terms and conditions for the REC Manager role in order to ensure as open a competition as possible and enable participation of entities with different business models (e.g. for profit and not-for-profit). We argue that it is not always necessary that a service provider is exposed to liability in order to deliver the desired behaviours. We have successfully delivered the BSC arrangements on a no risk and no reward basis for over 18 years, as well as providing the settlement services for CfDs and the Capacity Market under a contract to LCCC/ESC (both government owned companies) with no liability, whilst achieving all service levels and KPIs. This should be addressed by understanding the appropriate balance of potential risks and rewards and the use of non-financial levers to incentivise performance.

We note that BSC Modification [P365 'Enabling ELEXON to tender for the Retail Energy Code \(REC\)'](#) received unanimous support from the electricity industry and the BSC Panel.

Some of the comments we received from the electricity industry on P365 include:

"ELEXON's expert knowledge of the electricity industry mean that they are ideally placed to administer the REC, acting as a single point of contact and enable synergies between the REC and the BSC" (Drax Power)

"We are supportive of ELEXON's desires to broaden their vires to allow them to tender for non-BSC work. We also believe there is industry benefit should additional participants enter the tendering process for the Retail Energy Code service provider" (Npower)

Further considerations on competitive tendering and ELEXON-specific concerns are outlined in Appendix 5.

Continued engagement with Ofgem

As experts in code management, code operations and systems delivery with deep industry knowledge, especially expertise in balancing and settlement, we will continue to offer support to Ofgem in implementing the strategic change initiatives to the electricity sector and energy industry.

If you would like to discuss any areas of our response, please contact Mark Bygraves, Chief Executive on 020 7380 4137, or by e-mail at mark.bygraves@elexon.co.uk or Alina Bakhareva, Strategy and Market Advisor on 020 7380 4160, or by email at alina.bakhareva@elexon.co.uk.

Yours sincerely,



Mark Bygraves
CEO, ELEXON

List of enclosures:

- Appendix 1 – Responses to specific consultation questions
- Appendix 2 – BSC Panel composition and its key beneficial features
- Appendix 3 – Detailed considerations that have to be taken into account for the entry and systems testing requirements
- Appendix 4 – Detailed comments on the proposed code modification process
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Appendix 1 – Responses to specific consultation questions

This Appendix contains ELEXON's responses to specific consultation questions.

1. Introduction.

- 1.1. We have outlined our general considerations on Ofgem's overriding intention and vision for the REC Manager in the covering letter. No further comments are offered in this section as it contains no specific questions.

2. Transitional Requirements: Generic Licence Obligations and REC v1

Q2.1: Do you support our proposal to introduce a high level duty upon licensees to cooperate, where appropriate, in delivering the outcome of a significant Ofgem-led programme, such as a SCR?

- 2.1. Yes. Given the scale and significance of the Switching Programme SCR, it is essential that industry activity is coordinated and that participation is maximised. We agree with Ofgem's proposed approach, whereby a high level obligation in the licence is supplemented by detailed requirements in the Transitional Requirements Schedule (or its equivalent for other SCRs) which clearly and unambiguously sets out what is expected of Parties.
- 2.2. At the same time, we believe Ofgem needs to be clear on the criteria that might determine whether a licensee has or has not cooperated. Additionally, we believe Ofgem should consider if there needs to be any enforcement action stipulated in the detailed requirements in the event that licensees do not cooperate.
- 2.3. Arguably, there are already sufficient natural incentives for licensees, suppliers in particular, to comply as the switching programme is not dependent upon the readiness of the market as a whole in order to go-live. Additionally, mechanisms to ensure that a party's lack of readiness does not inhibit the customer's ability to switch away from them may provide sufficient incentive to both cooperate and to participate in the proposed transitional arrangements.
- 2.4. Additionally, under paragraph 2.11 the consultation is seeking views on "whether this consolidation of drafting is preferable to the current approach of specifying the arrangement in full, for each code individually". We believe that it will be beneficial to consolidate the drafting rather than specify the arrangements in full for each code individually. We believe such consolidation of drafting is likely to remove unnecessary complexities and make the changes in arrangements more accessible to a wider range of interested parties.
- 2.5. Also, we would like to make an observation on paragraph 2.14 that proposes placing a requirement on industry participants to "...fully and effectively cooperate with all relevant aspects of the programme before, during and after the DBT phase in order to ensure that they are ready to interact with the CSS when it goes live...". Consequently strong leadership is required in order to maintain the right level of cooperation and engagement from the industry. We believe ELEXON through its efforts on electricity industry coordination of P272 implementation has gained valuable insights into managing the whole electricity industry transition programme. We offer our key observations below:
 - 2.5.1. ELEXON co-ordinated the industry transition under BSC Modification P272 (Mandatory Half Hourly Settlement for Profile Classes 5-8). Directed by Ofgem, we were responsible for ensuring the electricity industry migrated the required MPANs from NHH to HH Settlement. This included working with the Performance Assurance Board and the existing Performance Assurance Framework to monitor the migration across the industry and provide assurance this was being completed.

- 2.5.2. To support this work, we utilised a number of communication streams.
- During the development of the solution, we held a number of Workgroups (as part of the normal BSC Change process) to elicit views and solutions.
 - When it was later realised the approved solution would cause issues for Parties to deliver within the timescales required, we held further Workgroups to develop alternative solutions to propose to Ofgem.
 - Once approved, these were then communicated to the electricity industry through an Industry Event we held.
- 2.5.3. Throughout the whole process, we also utilised our Operational Support Managers (OSM) service to provide continual help, advice and guidance to Parties. Our OSMs are named ELEXON individuals known to and dedicated to one or more BSC Parties, who act as a point of focus for queries and guidance. We also set up an internal expert team to provide co-ordination between the various workstreams as needed.
- 2.5.4. Finally, at the end of the process we held a 'Lessons Learnt' workshop, involving all elements of the supply chain, including most importantly end customer representatives, not just BSC Parties and industry participants. This provided incredibly useful feedback and analysis of the whole end-to-end process. We have fed back in to our future work areas. This has led to us adopting more workshops/webinars/stakeholder events during design and development phases, to ensure the whole industry understands potential impacts and what they need to do to remain compliant and operating smoothly. This feedback proved extremely valuable for our leadership on the market design of HHS under Ofgem SCR process. Engagement with all our customers and stakeholders is a significant part of ELEXON's work to ensure we obtain useful input and views on the end-to-end design of the improved HHS settlement process.
- 2.5.5. In addition to coordinating the cross-industry effort on P272, we liaised with other code bodies such as MRA and CUSC. For example, to obtain data to support the reporting and monitoring, we had to work with MRSCo to receive an extract from ECOES database.
- 2.5.6. We would be happy to discuss any of the above points in more detail with Ofgem.

Q2.2: Do you agree that the RECCo should be established earlier than REC v2 in order to assist with the successful delivery of the switching programme?

- 2.6. Yes. We strongly support the early establishment of the RECCo in early 2019. This will enable the appointment of a Board, the establishment of the appropriate funding mechanisms and the appointment of the Code Manager.
- 2.7. Early establishment of the RECCo and appointment of the enduring Code Manager will provide much needed support and assistance to the Switching Programme. It will also ensure that key operational processes are established and proven before the go-live of the new switching arrangements, currently planned for the end of 2020. Indeed, we would also argue that the RECCo should be involved early to help design the digital format REC from the earliest opportunity as a digital REC will likely require a different approach and layout from a traditional paper-based code.
- 2.8. Furthermore, early appointment of the enduring Code Manager will ensure that the Board has the support that it needs to enable it to meet its objectives and enable early engagement with industry, the DCC, and other key participants as well as facilitating the development of REC v2.

- 2.9. This approach (appointment of a Board, the establishment of the appropriate funding mechanisms and the appointment of the Code Manager) will also facilitate the development of the plan, for inclusion within the REC, of all of the relevant retail provisions which will allow for the removal of the MRA and SPAA.
- 2.10. In summary, we see the following main areas of responsibilities for the REC Manager during the initial period:
- a. Providing expert support to Ofgem in designing critical parts of the REC, such as but not limited to:
 - Market entry and systems testing requirements
 - REC Performance Assurance Framework
 - Change processes and procedures
 - Disputes and step-in provisions
 - Party default and breach of the REC provisions
 - b. Designing operational working processes
 - c. Defining the timescale and schedules for main streams of activities
 - d. Aligning with other code bodies
 - e. Designing and putting in place necessary administrative procedures (e.g. to support REC Panel meeting processes)
 - f. Designing the website with the principle of digitisation of the REC code content in mind.
- 2.11. Given the scale of change and other significant industry changes in place (such as smart meter roll-out) we strongly believe the REC Manager will have to put in place a comprehensive support programme for the industry participants in order for the industry to “fully and effectively cooperate with all relevant aspects” of the Faster Switching Programme.

Q2.3: Do you agree that the bodies constituted under the REC could suitably play a formal part in the programme governance?

- 2.12. Yes, most significantly the RECCo, REC Manager and potentially the interim REC Panel. Where individuals from REC Parties are involved, there would need to be adequate assurance that this does not disadvantage those REC Parties not involved. For example, they should be required to represent the interests of the retail energy sector as a whole, rather than those of their individual company or a particular constituency.

Q2.4: Do you agree that our definition of ‘large supplier’ in REC v1 is suitable for ensuring an adequate level of engagement with User Entry Process Testing?

- 2.13. Yes, as we note that a qualifying threshold of 250,000 customer accounts is consistent with the use of this definition elsewhere, such as in the Smart Meter Implementation Programme.

Q2.5: Do you agree that it would be appropriate to have in place interim governance arrangements prior to REC v2 coming into effect?

- 2.14. We note and fully support Ofgem’s objective to create a new “best in class” code that puts consumer outcomes at its heart, providing market participants with an accessible and comprehensive set of rules that are easy to understand and comply with. Therefore, we support having in place interim governance arrangements prior to REC v2 coming into effect. It is our view that the early establishment of the enduring REC Panel, along with the Board and Code Manager, is critical if the “best in class” objective is to be met and consumer outcomes ensured.
- 2.15. We firmly believe that the success of the REC will be dependent on appointing the right individuals to the RECCo Board and REC Panel, recognising that both will require different skill

sets and experience, and on appointing a strong and experienced Code Manager, and that any interim governance arrangements should be replaced as soon possible following the designation of the transitional version of the REC in early 2019.

- 2.16. Furthermore, we believe that the interim governance arrangements for REC Panel will have to be aligned to the target enduring REC Panel composition as early as practically possible to ensure the objective of “putting consumer outcomes at the heart of everything it [REC] does” are woven into the decision making process from the start.

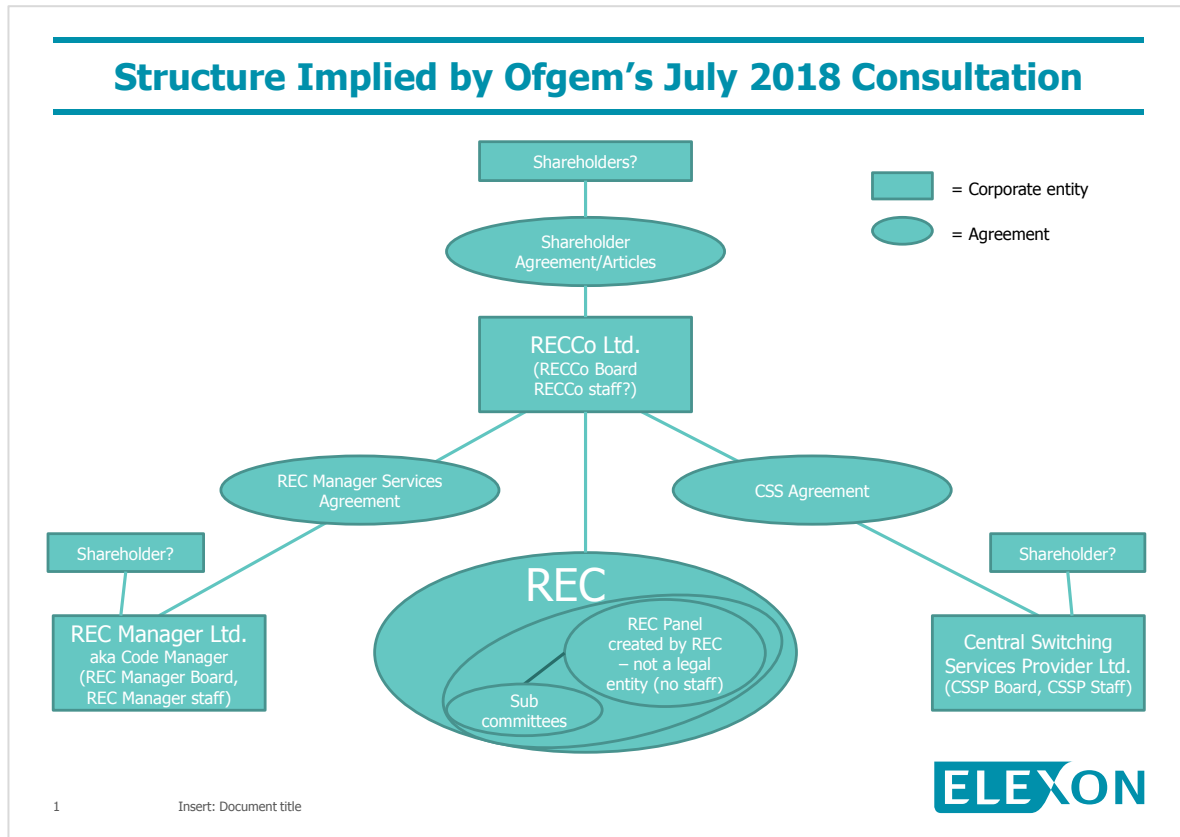
3. Retail Energy Code: Governance

Q3.1: Do you agree with the proposed powers and functions of the RECCo Board, REC Panel and REC Manager, and how they would be distributed amongst them?

- 3.1. Overall, ELEXON agrees with the proposed powers and functions of the RECCo Board, REC Panel and REC Manager. Roles and responsibilities of each appear to be in line with the intent to produce a code that is forward thinking, consumer focused and supportive of innovation. However, we believe that there would be further benefit in clarifying the lines of accountability both as between the RECCo, REC Panel and REC Manager (this will depend on where the bodies derive their obligations e.g. from licence, code or contract), as well as accountability of each of those bodies (this will depend on who can appoint and remove individuals from those bodies), particularly as the proposed approach represents a deviation from governance models that the gas and electricity industry will be more familiar with. This clarification should also extend to the Sub-Committees and Work Groups: they are clearly junior to the REC Panel and REC Manager, but appear to be jointly accountable to both bodies.
- 3.2. Our experience of operating and delivering the governance and services necessary for, and in compliance with the BSC, has highlighted the need for clarity on the following for each of RECCo, REC Panel and Code Manager, which was not apparent in the consultation document and on which we would suggest further clarification:
 - 3.2.1. **Ownership** – typically ownership determines who controls the body and therefore to whom its officers are accountable. This is particularly relevant to RECCo, not relevant to REC Panel and we presume Ofgem is not specifying ownership for the Code Manager. Therefore, who owns RECCo? If industry is to own RECCo, we would recommend similar arrangements are introduced as those for ELEXON in order to maintain the independence of RECCo from control by industry or a subset of industry. For example, whilst ELEXON is owned by National Grid, ELEXON and its officers are not controlled by or accountable to it, an arrangement that has preserved ELEXON’s independence.
 - 3.2.2. **Accountability/in whose interests does the body act?** Accountability is usually determined by who has the power to appoint and remove officers. This will be particularly relevant to RECCo and REC Panel, not REC Manager. Therefore, it is not clear who can appoint and remove directors of RECCo. The consultation indicates that Ofgem and Citizens Advice have the right to appoint, although it is not clear if this is only for the initial officers or is an enduring right. To promote independence and accountability, we suggest RECCo directors are appointed by Ofgem and Citizens Advice (if that is Ofgem’s desire) but only for an initial period, after which it will be the responsibility of the Nomination Committee of the Board of RECCo, which is the normal corporate practice, to appoint replacements at the end of the fixed term of office or to renew for another fixed term. As for the right to remove directors of RECCo, Ofgem could also retain a right to remove directors and we would recommend that REC Parties have a right to remove directors to introduce some accountability of RECCo to industry (as well as to Ofgem). As for the Panel Members, we presume that as it is RECCo which

appoints them then it is RECCo that can remove them but this is not clearly stated. We suggest a fixed term at the end of which RECCo replaces or reappoints the Panel Members.

- 3.2.3. **Composition** – there needs to be clarity on the number and the type of person and the duration of their appointment. As with the point above, this will be relevant to RECCo and Panel, not REC Manager. For RECCo, the type of person is covered in Q3.2 of the consultation to which we respond below and we would propose fixed terms (other than for any executive directors) after which RECCo directors are extended or reappointed by the RECCo Board’s Nomination Committee as described above. REC Panel Members should also be appointed for their independent expertise rather than as representatives of their employer or of a constituency, and for fixed terms, after which they are replaced or reappointed by the RECCo as suggested in the consultation.
- 3.2.4. **Obligations and the source of obligations** – Obligations can derive from a body’s licence, a code to which it is a party, or in a contract to which it is a party. This is very relevant to RECCo, REC Panel and Code Manager. We presume RECCo is not licensed, so its obligations derive from the REC. It will therefore need to be a party to the REC which we note is not currently the intention. The REC Panel is not a legal entity so cannot be licensed or sign up to a code or contract, but provisions describing its role and importantly, the interaction with other organisations can be set out in a code. The REC Manager can derive its obligations either from its own licence (which is not being proposed by Ofgem) or from a code to which it is a party or from a contract to which it is a party. Based on the consultation document we presume REC Manager will derive its obligations from a contract for code manager services entered into with RECCo whereby RECCo subcontracts certain of its obligations under the REC to REC Manager. We presume REC Manager will not be a party to the REC (if it is also a party to the REC this will result in obligations appearing in both the REC and the contract with RECCo which is at best confusing and at worst leads to conflicting obligations in different documents). As for the REC Panel, it will also be subject to the code (although cannot enforce it as it is not a legal entity). We have sought to portray the relationships in the diagram below. On a separate but linked point, we do not think it is sufficient to capture principles or obligations in a vision or mission statement and instead they need to be set out in a document enforceable by others. Similarly, Articles of a company are not really relevant as they are only enforceable by shareholders, not those necessarily impacted.
- 3.2.5. **Hierarchy** – hierarchy and control are usually dictated by contract or ownership. It is not clear whether the Panel reports to the REC Manager or vice versa.



- 3.3. Note the above diagram depicts what we presume to be the enduring commercial structure between RECCo, REC Manager and REC Panel although it is not clear. We have not shown the structure for the initial period when we understand, based on the consultation, that the DCC and not RECCo will be the REC Manager's contractual counterparty. We had assumed the DCC was merely providing a procurement service to RECCo to identify a REC Manager and that the REC Manager services contract would be entered into by RECCo and REC Manager only, but the consultation seems to state that DCC will be REC Manager's customer for an initial period. We would welcome clarification of this and in particular clarity on where obligations on each player are to sit and who can enforce them.
- 3.4. There are further considerations based on the BSC governance structure and roles and functions for RECCo Board, REC Panel and REC Manager. It is clear that ultimate accountability for compliance with the REC and delivery of strategy sits with the RECCo Board, and that the REC Panel and REC Manager both report to the RECCo Board. However, the proposal to assign some functions and responsibilities to the REC Manager rather than the REC Panel, in addition to the autonomous relationship between the REC Manager and the REC Panel, will represent a change from the approach adopted by existing gas and electricity codes. Given this, clarity on the relevant accountabilities between the RECCo Board, the REC Panel and the REC Manager will be particularly important.
- 3.5. The accountabilities and responsibilities between the REC Panel and REC Manager should be clearly specified, perhaps highlighting differences between the envisaged relationship and current Panel/code administrator relationships to set expectations and ensure clarity from the inception of the roles. Care should be taken to militate against any tendency for the REC Panel or REC Manager to revert to the responsibilities and relationships that exist between existing

Panels and code administrators that industry parties are more familiar with once the REC goes live.

- 3.6. The REC Manager's role and responsibilities are set through its mission statement and objectives. ELEXON notes and is supportive of the intention to broaden the 'critical friend' role to include being a 'critical friend' to third parties, a role ELEXON is already adopting with its approach to developing the BSC Modification P344 (TERRE) design to enable independent aggregator participation. This specification is useful given the intention for the REC to embrace and support new technologies and new business models; actively enabling the REC Manager's support of customers and future parties should help to encourage a focus on the evolution of the market arrangements. However, we note that powers and functions of the REC Manager are not detailed to the same extent as those of REC Board and REC Panel.
- 3.7. We note that in paragraph 3.15 under REC Manager role description ("we envisage that the REC Manager role will go much further than the current code administrator role") the REC Manager role is distinct to a code administrator role. There are several observations we would like to share in connection with that:
 - 3.7.1. We recognise the concept of a Code Manager has been introduced by the Industry Code Governance: Initial consultation on implementing the Competition and Market Authority's recommendations (2017) as an extension of the code administrator role. We agree that a more proactive code management process will deliver clear benefits to the industry.
 - 3.7.2. At the same time, we observe a wide range of code services at present from: the basic, i.e. focusing primarily on administrative activities (such as the SEC); to all-encompassing end-to-end models spanning change assessment, prioritisation delivery and implementation to ongoing day-to-day operation (ELEXON and the BSC model).
 - 3.7.3. Whilst this variety exists, the terms 'Code Manager' and 'Code Administrator' have been used interchangeably by the gas and electricity industry and indeed by Ofgem itself. Therefore we believe it will be important not only to outline the processes that the REC Manager is expected to support (such as Support for Parties and third parties, Code change process, performance management, cross code collaboration, etc.) but also provide a clear indication what type of behaviour and outcome is considered as suitable for a Code Manager rather than a Code Administrator.
- 3.8. We also note and support the inclusion of a specific 'Cross Code Collaboration' objective. We note that in paragraph 3.22 of the consultation that it is deemed as "essential that the REC Manager work with the administrators of the other industry codes to remove barriers, drive efficiencies and improve processes for parties as well as sharing lessons learnt." ELEXON strives to support and actively engage in cross code collaboration on behalf of the BSC Panel, for the benefit of the wider industry. However, in our experience, not all code administrators have been as enthusiastic in their adoption of active cross code collaboration, so an explicit objective in this area should help to ensure that focus is not lost. We believe that for the cross code collaboration to work as intended, similar objectives have to be replicated across other existing code bodies' strategic priorities so that their particular business models (e.g. competitive or profit-driven) do not drive them to a less than cooperative approach. ELEXON's experience of working with other code bodies is that bodies that are not motivated to act in their own interests by virtue of being a not for profit entity are more likely to cooperate enthusiastically and effectively than those that are, since inevitably the for profit model with its associated requirement to act in the best interest of its shareholders, drives a particular behaviour of only cooperating if it is commercially attractive to do so.
- 3.9. We note in paragraph 3.38 that the "creation of a strong REC Panel would free the RECCo Board to focus on more strategic objectives for the REC". This implies the directors of RECCo

will delegate responsibility for delivering obligations for which RECCo is responsible, to a part-time group of people who are neither employees of RECCo nor subject to a contract for services with RECCo. Even if RECCo can remove (or threaten to remove) Panel Members (which does not appear to be the case) and is therefore satisfied that it has sufficient comfort that Panel Members can take on this responsibility, how will the Panel be able to conduct these day to day operations? Will the Panel have a team of managers to do the daily work (if so who are they employed by?) or is this the REC Manager? If it is the REC Manager where will the obligations be set out: they cannot be in the Code since the REC Manager is not a party to the Code so will they be set out in the REC Manager Services Agreement, in which case RECCo should simply look directly to REC Manager for these day to day operations, rather than to the Panel. We would welcome Ofgem’s clarification on these questions. We would suggest that day to day operations are conducted by the REC Manager in accordance with the contract between the REC Manager and RECCo.

3.10. We have more detailed comments on some of the wording used to describe the powers and roles of the RECCo, REC Manager and REC Panel.

3.10.1. Our detailed comments on the RECCo Board powers and functions in addition to the general comments above are:

	Paragraph of the consultation	ELEXON’s comments/questions
1	3.13(d)	What is the meaning of ‘overseeing’ the appointment of REC Panel Members? Is this the same as appointing or simply conducting a process in which others make the appointment decision?
2	3.13 (d)	Also in (d), which refers to managing the procurement/contract of the REC Manager. We understood the RECCo Board to be part-time non-executive directors. How are they to be resourced to oversee the contract? This could create duplication and unnecessary costs if RECCo is to have its own management team and staff.
3	3.13(g)	Managing the resolution of relevant appeals to REC Panel. We presume this means process, rather than being the body that determines the appeal?

3.10.2. Our detailed comments on the REC Panel powers and functions include:

	Paragraph of the consultation	ELEXON’s comments/questions
1	3.14 (h) “developing and managing the approved RECCo Budgets, including payments to REC Service and System Providers”	We believe RECCo would need to manage its own budget even if it doesn’t set it. If it has no control over budget or the management of its budget then this could risk undermining how effective RECCo can be. Further, payments will need to be made by a corporate entity, so either by RECCo or the REC Manager.
2	3.14 (i) “appointing and removing professional advisors”	As per above, it will either need to be RECCo or the REC Manager who appoints professional advisors since RECC Panel is not a legal entity. This, of course, may involve running procurements and ongoing contract management which will require day-to-day resourcing. It may therefore be most appropriate for this role to be undertaken by the Code Manager (much as ELEXON does under the BSC arrangements).

3.10.3. Our detailed comments on the REC Manager powers and functions in addition to the general comments in our main response include:

	Paragraph of the consultation	ELEXON's comments/questions
1	3.21 The REC Manager is to manage the REC Service Providers including the CSS service provider.	We presume the CSS service provider will be contracted to RECCo and that contract will enable REC Manager to manage the contract on behalf of RECCo. If not, how is RECCo to be resourced to manage the CSS service provider contract?

- 3.11. We have made several observations on the budget setting process as described in the main consultation document and legal text.
- 3.11.1. According to The Retail Energy Code draft paragraph 10.1 the costs will largely be RECCo costs. However, the task of putting together a draft budget will be the Panel's (The Retail Energy Code draft paragraph 10.2)
- 3.11.2. It is not clear how this process will work in practice:
- either the Panel will simply adopt the budget the RECCo Board proposes
 - or it will propose a different budget. In the case of the latter, it does have the potential to undermine the accountabilities under the REC i.e. the Panel is supposed to be accountable to the Board but we query how this accountability will work if the Panel controls the money.
- 3.11.3. Once the Panel has set a draft budget, it then has to be approved by way of an industry vote (either through the REC Forum or directly by REC Parties). We query how this will work if industry does not agree with RECCo's strategic priorities and refuses to approve a budget that will enable RECCo to deliver on these priorities. If Ofgem wishes to persist with energy industry controlled costs under the REC then there may need to be a mechanism for the RECCo Board to appeal directly to Ofgem if the industry approved budget will frustrate the delivery of strategic priorities.
- 3.11.4. The consultation document describes the budget being set by reference to the RECCo's strategic priorities however this is not reflected in the legal text.
- 3.11.5. There seems to be a discrepancy between the consultation document and the REC draft on who should resolve any deadlock over the approval of the RECCo budget. The suggestion in the REC draft paragraph 10.4 is that the Authority should resolve any deadlock over the approval of the RECCo budget but the consultation says that this should be the REC Board.
- 3.11.6. It is not clear from the consultation how substantial an organisation RECCo is intended to be i.e. is it just a corporate entity and a Board or will it have its own resource to call on. Further clarity on this aspect will help understand the scope of work of the Code Manager. If RECCo is 'thin' then most of the substantial work will need to be undertaken by the REC Manager, less so if RECCo is 'thick' but the latter may also lead to some scope for duplicated resource and lack of clarity in roles leading to additional cost ultimately borne by the end customer.

Q3.2: Do you agree with our proposal that independent Non-Executive Directors (NEDs), potentially from outside of the energy industry, should be present on the RECCo Board and that the composition of the RECCo Board should be subject to thorough review, both periodically and/or whenever the scope of the REC/RECCo Board responsibilities changes substantively?

- 3.12. We agree that:
- the RECCo Board should include independent non-executive directors

- b. a RECCo Board comprised of directors who have been appointed (rather than elected on a constituency basis) is appropriate
 - c. the composition of the RECCo Board should be sufficiently flexible to allow the inclusion of individuals from outside of the energy industry
 - d. the composition, and the effectiveness, of the RECCo Board should be subject to periodic review
- 3.13. We note that the ELEXON/BSCCo Board operates to a similar model to that described in the consultation, being comprised predominantly of non-executive directors who have diverse backgrounds both from within and outside the industry. Our experience is that this balance (together with a CEO who sits as an executive director) is an effective model which is closely aligned to best practice.
- 3.14. The ability to appoint NEDs from outside the electricity industry enables ELEXON to recruit individuals with a greater breadth of expertise. For example, we have been able to leverage expertise from the payment processing industry and from telecoms and other non-electricity industry non-executive directors.
- 3.15. To the extent that it is intended that the REC sets out rules for board composition, we recommend that these parameters are flexible rather than strict parameters. Effective boards need to have an “appropriate balance of skills, experience, independence and knowledge to enable them to discharge their...duties and responsibilities effectively.”¹ Consequently, our suggestion is that the rules around RECCo Board composition allow flexibility both to appoint individuals with the right skill sets and to ensure that the size of the RECCo Board is managed so as not to become unwieldy.
- 3.16. We agree that the composition of the RECCo Board should have the flexibility to evolve as the challenges facing the REC, and RECCo’s strategic priorities, change over time. For example, the expertise needed on the RECCo Board as the REC arrangements are established is likely to be different from the expertise that will be needed in future. An important part of this, and a further facet of good corporate governance, is that the Board’s effectiveness (including the continued suitability of its membership) should be reviewed on an annual basis.

Q3.3: Do you agree with the REC Panel Composition as set out in paragraph 3.43?

- 3.17. We support the principles set out in paragraph 3.46 that Ofgem expects to use to define the precise composition of the REC Panel.
- 3.18. We note the REC Mission Statement:
- “The REC will facilitate innovation, competition and cost effective arrangements that protect and promote positive customer outcomes in the retail energy market”.
- 3.19. Whilst we acknowledge that the inclusion of independent REC Panel members with specific responsibility for promoting end customer interests may be of some concern to funding parties,

¹ Corporate Governance Code, which is the UK’s standard for best practice corporate governance - Main Principle B.1

it is difficult to see how the REC Mission will be achieved without their inclusion. A REC Panel that does not include independent members will always be open to the suggestion (real or otherwise) that end customer interests are not being considered or protected.

- 3.20. Our more detailed comments on the REC Panel Composition, Power and Functions can be found below.

Composition

- 3.21. While the precise composition of the REC Panel is yet to be finalised, ELEXON agrees with the four principles proposed by Ofgem. They strike a sensible balance in terms of ensuring that customer interests are represented, whilst also providing accountability to REC Parties and assurance that their interests are adequately represented. It is important that the REC Panel contains an appropriate cross-section of expertise and experience in order to promote informed and balanced decision-making, and the principles appear to be able to cater for this.
- 3.22. We note the suggestion to include provision for a review of the REC Panel membership. Given the intention for the REC to promote the evolution of market arrangements, it is likely that the knowledge and expertise required by the Panel will shift and that the demographic of REC Parties is likely to change over time as the arrangements evolve. Therefore, ELEXON supports the proposal to include periodic review of REC Panel membership. Such periodic reviews may be linked to key events, such as a new version of the REC or subsuming other codes into the REC.
- 3.23. We also agree with the proposal that the REC Panel and RECCo Board functions are carried out by separate members. We endorse Ofgem's observation that Panel and Board positions are likely to require different skill sets and experience. This is certainly something that featured in the BSCCo's observations on Panel governance via the [Knight Review](#) and fed into BSC governance changes implemented to improve accountability of the BSCCo Board to BSC Parties.
- 3.24. We note that the current documentation remains silent on the arrangements for chairing the REC Panel. This is an area that ELEXON has considered in depth, including the relative merits of a dual or split role for Panel and Board Chair and we would be happy to provide Ofgem with further information on this if it would assist in development of the REC governance arrangements. We could also provide insight into Panel member election processes and the approach taken to manage the biennial BSC Panel Member election.

Powers and Functions

- 3.25. We presume the powers and functions of the REC Panel will be set out in the REC Code. We note that the role of the REC Panel will be slightly different to that of other gas and electricity industry Panels, with certain roles associated with current code Panels being the responsibility of the REC Manager and/or RECCO Board. Given this difference, the accountabilities and responsibilities between the Panel and REC Manager should be clearly specified, perhaps highlighting differences between the envisaged relationship and current Panel/code administrator relationships to set expectations and ensure clarity from the inception of the roles. Care should be taken to militate against any tendency for the Panel or REC Manager to revert to the responsibilities and relationships that exist between existing Panels and code administrators and that gas and electricity industry parties are more familiar with once the REC goes live.
- 3.26. Lack of ambiguity in roles, responsibilities and accountabilities will be crucial to the effective delivery of the REC. We assume that further clarity will be provided through the development of the operational objectives, which should provide a blueprint and foundation for the Panel in

undertaking its work and making its decisions. Whilst we are supportive of the broad powers and functions of the REC Panel as defined in the consultation document, we believe that further detail on the powers and functions of the Board, Panel and Code Manager is still required.

- 3.27. Also, we attach a separate note on the BSC Panel composition and its key beneficial features (Appendix 2) as we believe this may be a useful summary for Ofgem to refer to. We would be happy to discuss any of the above points in more detail with Ofgem.

Q3.4: Do you agree that there should be entry and systems testing requirements placed on new entrants, comparable to those that we expect incumbent suppliers to undergo as part of the transition to the new switching arrangements?

- 3.28. Paragraphs 3.49 – 3.77 of the consultation cover a wide range of topics, namely:

- a. Code Modifications
- b. Charges, Billing and Payment
- c. Disputes and step-in provisions
- d. Party default and breach of REC
- e. Performance Assurance

However, Q3.4 seeks views only on the entry and systems testing requirements. We outline our answer to the question below. At the same time, we would like to share more detailed comments and observations on the topics outlined above based on our end-to-end experience in operating BSC and central settlement systems.

- 3.29. Answer to Q3.4 - Yes, in principle we agree that there should be entry and systems testing requirements placed on new entrants, comparable to those that we expect incumbent suppliers to undergo as part of the transition to the new switching arrangements.

- 3.30. We would like to offer the following further comments for discussion and consideration:

- 3.30.1. We note that entry and systems testing requirements are proposed to be applied to suppliers only. We would agree with this suggestion if suppliers are viewed as the only party role able to introduce risk to or impact on the objectives of the REC.
- 3.30.2. We note that at present under the BSC, Party Agents (as well as Suppliers) undergo the BSC Qualification process to demonstrate capability to operate in certain roles. We would therefore propose adequate and proportionate entry and systems testing requirements for other market roles that already exist (such as Party Agents) or may be introduced by Ofgem in the future.
- 3.30.3. Furthermore, there are also service providers outside of those Party Agent roles whose activities may directly or indirectly affect Suppliers' performance. We would like to suggest that it would be useful to understand how and where these Third Party Agents (TPAs) are likely to deliver or affect REC provisions, so necessary assurance can be put in place on REC Parties to control risks and assure compliance. We would like to offer our support to Ofgem in devising such assurance principles based on our experience in developing and delivering the BSC PAF (Performance Assurance Framework).

- 3.31. Bringing the 'whole systems' approach to central services, we believe that market entry and systems testing requirements need to be coordinated and harmonised across different gas and electricity industry codes to provide a simple, intuitive solution to existing and new market participants.

- 3.32. Managed properly, such coordinated approach to market entry and systems testing will eliminate any unnecessary duplication of processes and procedures. Additionally, we believe such a coordinated approach is very likely to deliver the following benefits:
- a. Improvement in service (sharing best practices)

- b. Reduction in cost to parties
 - c. Reduction in total cost of central services in medium to long term.
- 3.33. There are further more detailed considerations that have to be taken into account for the entry and systems testing requirements that we outline in Appendix 3.
- 3.34. In the following section, based on our experience in operating the BSC to the highest standard we would like to offer our detailed comments on topics described under sections 3.49 - 3.77 of the consultation.
- a. Code Modifications
 - b. Charges, Billing and Payment
 - c. Disputes and step-in provisions
 - d. Party default and breach of REC
 - e. Performance Assurance

Code Modifications

- 3.35. We welcome Ofgem's approach to the progression of change with an emphasis on self – governance and the introduction of proportionate and flexible change management arrangements that reduce complexity for users and have a potential to reduce timescales from change inception to solution delivery.
- 3.36. We have opened a dialogue with the BSC Panel (BSC Panel meeting [279/12](#)) on how the BSC arrangements could be simplified. More so than ever, this year's [BSCCo Business Plan](#) highlights the need for greater cooperation and closer alignment between code administrators; reduced fragmentation in the delivery and operation of code services and the promotion of opportunities for the simplification of code governance arrangements. To this end we are further considering how the BSC change process could be more flexible and agile to adapt to the changing needs of the electricity industry.
- 3.37. We are considering whether the principles and approach taken in the draft REC change process should be applied to the BSC. However, there are a number of areas where we believe further consideration should be given to better facilitate the principles of self-governance and efficiency. We outline our detailed considerations on the following topics under Appendix 4:
- a. Who can raise change proposals
 - b. Reporting to the REC Panel
 - c. Number of Alternatives
 - d. Voting

Charges, Billing and Payment

- 3.38. We support the proposals in respect of Charges, Billing and Payment and that a cost recovery arrangement is based on the number of individual meter numbers (MPxNs) and that the supporting information is provided, in a timely manner by the CSS. We agree that energy volumes are not a particularly relevant or cost reflective approach for the recovery of REC costs.

Disputes and step-in provisions

- 3.39. We believe careful consideration needs to be given to this section of the REC code to make sure the processes to be put in place are transparent and streamlined to allow for a quick resolution of any disputes. We will comment on the finalised version of the REC legal text when it is available. We believe an early appointment of an experienced code manager will allow for a best in class procedure to be developed building on the REC Manager's vision and objectives

and taking into account number and types of new market entrants and new types of business models in the energy industry.

- 3.40. It will be important to bear in mind that with energy, transport and heat sectors beginning to converge, end customers are likely to interact with an increased number of energy providers, such as a household may be buying their electricity from a number of suppliers/providers (e.g. local community energy scheme, a neighbour with solar panels, EV provider in addition to their main supplier), gas from a different supplier and heat as a 'bundled' service with heat equipment. Therefore, the disputes and step-in provisions will have to be flexible and quick to adapt in order to ensure innovative business models continue to thrive.

Party default and breach of the REC

- 3.41. We believe there is more clarity needed on the proposed wording and will comment on the finalised version of the REC legal text when it is available. We would be happy to share with Ofgem how BSC processes are designed and work when it comes to party default events and breaches of the code. We believe there needs to be a coordinated approach among codes to party defaults and breaches to effectively mitigate risks to other parties and ensure the accuracy of central industry processes is intact.

Performance Assurance

- 3.42. We strongly believe that the early versions of the REC should create sufficient PAF (Performance Assurance Framework) "placeholders and principles" rather than attempt to develop the detail now. We believe that the appointed REC Manager should be in a position to develop the appropriate performance assurance regime in collaboration with Ofgem and with REC parties (and in line with 'one-stop-shop' approach across the relevant codes). We believe this should be one of the REC Manager's priorities to be completed during the REC transition.
- 3.43. We note (paragraph 3.4 of the consultation) Ofgem's vision for the REC is "a consumer centric code, where protection and promotion of consumer outcomes, including through ensuring stability and efficiency of relevant market systems, is the focus of REC operations". We also note the proposal to create a Performance Assurance Board (paragraph 3.68 of the consultation) to oversee specified aspects of the performance assurance regime. With this vision in mind we believe it is key that, in designing the Performance Assurance Framework the starting point should be to firstly determine the required end customer outcomes.
- 3.44. Only when these end customer outcomes, and their relative importance, have been identified will it would be possible to determine:
- what systems and processes underpin the required end customer outcomes;
 - what entities influence achieving end customer outcomes and how;
 - how can the outcomes be measured and reported on;
 - what sanctions are to be applied where the required end customer outcomes are not achieved, noting that sanctions must be both appropriate and proportionate.
- 3.45. Regarding Limitations of Liability (paragraph 3.72 of the consultation), we note the proposal for "prescribed liability payments designed to incentivise performance, or liquidated damages". ELEXON operates the BSC's Performance Assurance Reporting and Monitoring System (PARMS) arrangements (as well as the wider PAF, which we are currently reviewing). It is our view that a liquidated damages regime is unlikely to deliver the performance incentives required. We would be happy to share with Ofgem our detailed thoughts on this topic and what we believe needs to be put in place to make it work successfully.

- 3.46. We have found that a PAF can be an expensive overhead for industry, a cost that is ultimately met by end customers. We would encourage Ofgem to consider what opportunities exist to bring together the different components of retail PAF that are currently fragmented across existing codes. For example, whilst we support the suggestion that there should be entry and system testing requirements placed on new entrants, we believe that the introduction of the REC provides the ideal opportunity for the creation of a 'one-stop-shop' for retail market entry which, as highlighted in Appendix 2 of the consultation, is a requirement (albeit inconsistently applied between gas and electricity suppliers) under the SEC, MRA, BSC and SPAA. This approach would improve efficiency, simplify the new entrant interface, ensure consistent treatment of suppliers irrespective of fuel type and reduce a perceived barrier to entry.
- 3.47. Based on operating BSC PAF, we believe Ofgem's role should be clearly stated and agreed in the REC and in practice. For example, there is clarity under the BSC PAF on those sanctions where Ofgem's involvement is needed, however, in practice, Ofgem's involvement is not guaranteed. We have further thoughts and observations on how the escalation process can be designed and put into practice that we would be willing to share with Ofgem.
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4. Retail Energy Code: Content

Q4.1: Do you agree with the proposed minimum content for REC v2 (as listed in Appendix 3)? Is there any other content we should consider for inclusion in REC v2? If yes, please provide further details.

- 4.1. Yes. We have not identified any obvious omissions from the content listed in Appendix 3 of the consultation.

Q4.2: Do you agree with our proposal that the REC Code Manager should collate Switching Domain Data and make it available to Market Participants? Or do you consider that the Data Master for each element of Switching Domain Data should make it available to Market Participants?

- 4.2. Where there are overlaps in such data, such as electricity Market Participant data held in Market Domain Data under the BSC, the REC should seek to avoid duplication by making the same data available through another route. For that reason, we propose that data provision is considered on a case by case basis, so that where Switching Domain Data is already published elsewhere, it may be preferable for Participants to receive it via that route.
- 4.3. ELEXON has embarked on our Foundation Programme to re-architect our central systems to deliver a flexible, scalable and open platform to provide settlement and, in time, other value-added services to meet the future needs of a changing energy market. Apart from bringing our settlement systems in line with the electricity industry's requirements we would like to help break down the barriers and data silos, to support an open and more transparent electricity market. By creating a data platform that is open and accessible (subject to the appropriate controls around privacy) we can collaborate with others to bring about consolidation of market data. As we build the Foundation Architecture, we will be able to provide industry insight through our extensive data and analytics capabilities. Therefore, we would welcome further discussion with Ofgem on our ideas to improve the provision of data on one data platform where synergies and efficiencies across the gas and electricity markets can be achieved.

Q4.3: Paragraphs 4.20-4.24 suggest that the DCC should be subject to a data quality objective and performance standards around the quality of REL Addresses. Do you have suggestions on the quality measure areas and levels quality measures will take? Do you believe that the REC Panel should have a role in setting these targets (initially and/or on a periodic basis)?

4.4. Yes, the REC Panel should have a role in setting the targets and reviewing them on a regular basis. It would be useful to combine address data quality indicators with other measures, such as erroneous transfer monitoring, to help agree and review KPIs. This will allow targets on address data quality to be flexed in response to levels of risk and ensure that any penalties or rewards are appropriate and proportionate. Data analytics would also help to establish the extent to which plot addresses, multi-occupancy sites (e.g. address lines containing "flat") or premises with no house numbers (e.g. in rural locations) are subject to erroneous transfers. This could help to target address data quality remedies.

Q4.4: Paragraph 4.25 outlines that the REL Address data quality indicator is currently intended to be an internal measure for the CSS. Do you believe there is value in making this available to other market participants? If so, please provide your rationale for this and outline which market participants should have access.

4.5. We assume that the REL Address data quality indicator represents a measure of confidence that the meter point addresses provided by the electricity distributor and gas transporter respectively match a high quality REL address. This triangulation appears to rely as much on the quality of the meter point addresses used by the electricity distributor and gas transporter as it does on the CSS applying timely updates to address data from reliable sources. On this basis, it would be prudent to share address data quality indicators with distributors, transporters and, potentially, suppliers so that all parties can work on improving data quality.

Q4.5: Paragraph 4.25. suggests that the DCC should set out the methodology it will apply to meet the REL Address data performance standards on an annual basis. Do you agree that it would be beneficial to make this methodology publicly available?

4.6. Yes. Making the methodology public would allow for scrutiny and continuous improvement.

Q4.6: Do you support the creation of an Enquiry Services Schedule in REC v2? If so, which of the options around the requirements (in paragraph 4.32) do you prefer? Please provide details to explain your answer.

4.7. Yes. ELEXON's preference is for enquiries related to non-switching items not to be transferred to the REC as part of v1 or v2 releases. In this regard, we have a slight preference for Option 3, although Option 2 would be acceptable.

Q4.7: Do you agree with our proposal to create a REC Exceptions Schedule to be contained in REC v2, with the scope outlined in Figure 3? If not, please provide further details.

4.8. Yes. However, we note that the current MRA disputed Change of Supply (CoS) Meter Readings process includes obligation on electricity NHH Data Collectors who will not be signatories to the REC. Is the intention to extend the 'Supplier Hub' principle to the REC, pending the outcome of Ofgem's 'Future of supply market arrangements' initiative?

Q4.8: Do you agree that the grey areas highlighted in Figure 3 should be out of scope of an Exceptions Schedule for REC v2? If not, please provide further details.

- 4.9. Yes, these areas seem more suitable for inclusion in REC v3 when the remainder of the MRA and SPAA are subsumed into the REC.
- 4.10. CMRS transfers and retrospective changes in electricity should be considered to the extent of ensuring that, if they are not incorporated in the scope of REC v2, this doesn't create gaps or inconsistencies between REC v2 and the BSC/MRA.

Q4.9: A list of suggested content for a set of REC Technical Documents can be found in section 4.44. Do you believe that any of the content listed is unnecessary or is there any content that you would expect to be included? If so, please provide details.

- 4.11. No. ELEXON believes that the four subsidiary documents proposed are sufficient.

Q4.10: Do you believe that table 1 captures all of the items that should become a REC subsidiary document? If not, please provide details of the additional items that should be included and why.

- 4.12. Yes. Potentially, a list of 'outstanding issues' may be a useful transitional product, although perhaps not a code subsidiary document, given that it will be variable and time-bound.

Q4.11: Do you believe we have assigned the correct responsibility for producing each REC subsidiary document? If not, please provide further details.

- 4.13. Yes.

5. The DCC Licence

Q5.1: Do you agree with the role we have set out for DCC during the DBT phase and steady state operations? If not, why not?

- 5.1. Yes in the current circumstances where Ofgem has used an existing licence to introduce new obligations. However, we remain concerned that a for profit commercial entity has been placed at the centre of this programme.

Q5.2: Do you believe that our proposed drafting to amend LC 15 of DCC's licence would, if implemented, accurately reflect our expressed intentions? If not, why not?

- 5.2. Yes.

Q5.3: Do you agree with our proposal to add new CRS specific price control terms. Do you think any of these terms are unnecessary or are there other terms we should consider adding?

- 5.3. Yes.

Q5.4: Do you agree with the high-level programme outcomes we believe the programme should look to incentivise? Can you suggest further areas we should look to include and are there aspects you believe should be prioritised?

5.4. Yes (to the first question). No (to the second question).

6. Significant Code Review

Q6.1: Do you agree with the changes that we propose to make to the scope of the Switching SCR?

6.1. Yes.

Q6.2: Are there any further changes that you consider we should make, either to bring something into scope, or to explicitly rule it out of scope?

6.2. The list of exclusions includes end customers that are directly connected to the national gas and electricity transmission networks. In electricity, generation embedded within distribution networks may also be registered under the Central Volume Allocation (CVA) arrangements. These are subject to the same bespoke switching arrangements as transmission connected customers, so we would expect them to be excluded as well. We suspect that this was always Ofgem's intent, so this is seeking a clarification, rather than proposing a change.

Q6.3: Do you agree with our proposed approach of publishing the drafting of all SCR related changes circa Q1 2019, but waiting until systems have been proven through testing before submitting the proposals into the modifications process?

6.3. Yes.

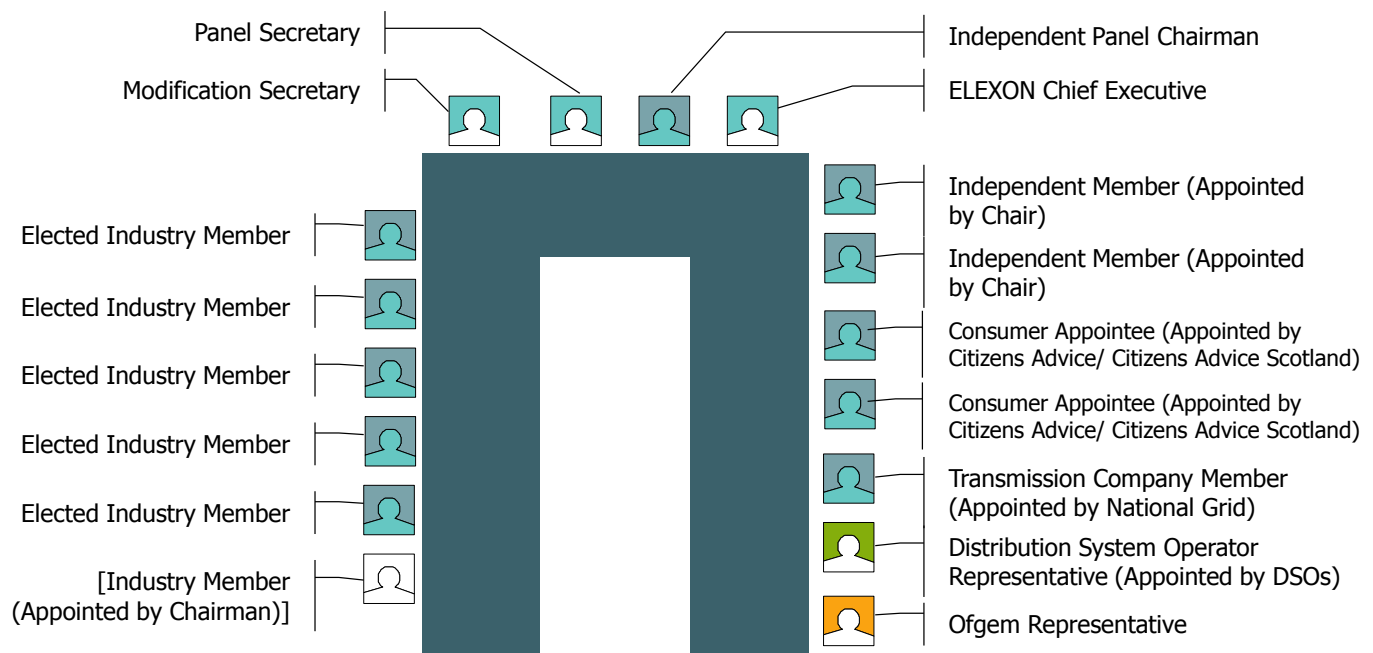
Appendix 2 – BSC Panel composition and its key beneficial features

ELEXON, often seen as the leading provider of code services, as demonstrated through its own independent customer survey and through Ofgem’s cross-code survey, believes there that whilst there is always room for further improvements, there are a number of lessons to be learnt from how the BSC Panel is constituted and operates.

The BSC Panel model is frequently cited as one of the better models for ensuring broad representation of stakeholders to feel they are engaged and their views understood within the code panel.

Below we show what the BSC Panel looks like and highlight the benefits of such a model.

The BSC Panel



Key beneficial features:

1. An annual public BSC meeting where anyone, not just BSC Parties, has the opportunity to hear from, and question the BSC Panel and ELEXON as the Code Manager.
2. All Panel Members are required to act impartially and not as representatives of any organisation/sector. This means that when they vote on changes they are required to explain their reasons as to why changes would make the arrangements better or worse than currently, using 'Applicable Objectives' developed by Ofgem.
3. The Panel has clear objectives set out in the BSC, which includes the need for the Panel (and ELEXON) to give effect to the Code 'without undue discrimination between Parties or classes of Parties' and also to ensure that 'there is transparency and openness in the conduct of the business'.
4. An independent Chair.
5. Two members appointed by organisations representing end customers (Citizens Advice, however Ofgem has the power to assign to other end customer groups).
 - 5.1. Citizens Advice as the end customer representative also has the ability to bring forward changes.

6. Five industry members, elected by BSC Parties every two years:
 - 6.1. Voting rights for Panel elections are aligned to the concept of 'Trading Party Group', this effectively levels the playing field between large and small Parties (so a big 'Trading Party Group' gets the same number of votes as a small, non-vertically integrated BSC Party and no Party can dominate voting by having multiple 'Parties').
 - 6.2. Results of Panel elections are published on the ELEXON website.
 - 6.3. Updated Trading Party Groups and their constituent BSC Parties are published monthly on the ELEXON website.
 - 6.4. The Chair can appoint an additional 'industry member' where he feels that a particular area of insight from the industry is missing.
7. Two members who are independent of BSC Parties are appointed by the Chair, these have historically included individuals who have expertise in policy, economics or governance from academic or (non-energy specific) industry.
8. A member appointed by the Transmission Company but does not vote on modifications.
9. A person appointed by Distribution System Operators as their representative but does not vote.
10. A person appointed by Ofgem as their representative but does not vote.
11. As the BSC Code Manager ELEXON's Chief Executive attends but does not vote. ELEXON also provides an independent Modification Secretary and Panel Secretary.
12. For Modifications overseen by the Panel:
 - 12.1. ELEXON, as the independent expert Code Manager, chairs the majority of any change workgroups.
 - 12.2. Although not required to do so, most Panel members do not normally participate in the working groups appointed to assess change, where they do they have abstained from voting on the final changes when returned to the Panel.
 - 12.3. Although not required to do so, most Panel members do not vote on changes that have been proposed by their own company.
 - 12.4. Proposers of changes can be invited to speak at the Panel when their changes are being considered and the Proposer of a change 'owns' their solution.

Appendix 3 – Detailed considerations that have to be taken into account for the entry and systems testing requirements

We would like to offer further considerations on the entry and systems testing requirements below:

1. Given that suppliers joining after go-live will be subject to the same Code obligations as those transitioning during introduction of the REC, it initially seems appropriate and proportionate that the Entry Assessment testing requirements are equivalent.
2. As the nature of faster switching means new Suppliers could gain a large number of customers in a very short space of time on entering the market, they must be prepared to operate compliantly at scale from their date of passing Entry Assessment (or, alternatively, Controlled Market Entry processes will have to be suitably modified). This risk could be mitigated by any on-going assessments but that may be less efficient than preparing to operate at scale in advance.

However, there may be exceptions. For instance:

- a. Activities unique to the transition period may not be applicable in live operations, e.g. migration activities and cleansing of data for initial population of the central systems.
- b. In the Entry Assessment for incumbent Suppliers, (anonymised) sharing of near-misses or issues experienced by one Supplier may help all transition participants prepare compliant and robust systems and processes. Whereas once the REC is established, it may not be appropriate or necessary (outside of the Modification process to fix defects or improve processes) to share issues experienced by Entry Assessment applicants.
- c. Under the enduring REC arrangements, new entrants could propose innovative operating models, whereby specific parts of the Entry Assessment testing are varied or omitted if a new entrant's proposal is to operate with derogations initially. If the derogation were not to be made a permanent operating approach (via the Modification process), the supplier may have to complete the relevant Entry Assessment tests in full. This sort of operating variation may not be appropriate for incumbent suppliers in the transition phase.
- d. The licence drafting refers to "small participants" including suppliers or new entrants that may require particular assistance. This distinction may not be necessary or applicable in the entry processes during the transition phase as it is likely most applicants will be the larger incumbent suppliers that are obliged to go through User Entry Process Testing, and all UEPT applicants would receive an equivalent level of assistance.
- e. In the enduring REC arrangements, it may be reasonable to scale entry processes back where the party was using a system that was already in use by other suppliers, for instance as part of a managed service. Though consideration should be given to the wider business processes in which the system was used (which will be unique to each party). This would include consideration of how the supplier is to interact with the service provider to ensure risk mitigation, compliance and minimum performance standards. In the transition phase it may be preferable for such new, untried systems to go through full testing with all applicants to capture any variations from the unique usage by all users.
- f. The application approval process could vary in the transition versus the enduring arrangements due to the REC go-live date.
- g. We note the proposal for a minimum threshold for the Entry Assessment Requirements (Appendix 2 1.4 of the consultation). It would seem likely that most applicants will only aim to exceed these where it is beneficial (or co-incidental) to

their business/operating model to do so. It's worth considering whether there could be cause for the performance assurance function to set higher thresholds in particular circumstances, e.g. relating to riskier business models or where the organisation plans to have dynamic operations or spread its functions across third party(s).

3. There are an increasing number of pre-Qualified suppliers using "supplier in a box" type solutions with managed service providers. We would note that at any time after market entry, a supplier could decide to move away from that service provider (including bringing REC-related processes in-house) and therefore be using a system that has not undergone testing or assurance. Therefore, it is worth considering the applicable risks of such situations under the REC assurance framework.
4. Paragraph 3.76 of the consultation states that there is a re-qualification requirement for systems in electricity and that gas and electricity codes should be consistent in this regard.
5. We believe it is important to clarify that:
 - a. There is no Re-Qualification for Suppliers under the BSC, to cover scenarios where Suppliers carry out substantive changes (one-off or cumulative) to systems, processes, staff, ownership, portfolio size or use of a managed service for back-office functions. This assurance technique is only available for Party Agents.
 - b. The re-qualification process has limitations that reduce its effectiveness. Agent Re-Qualification can be required by the Performance Assurance Board, but usually initiation is by Party Agents on a self-assessment basis set against their own view of the potential risk and impact of potentially 'material' change. Applications are infrequent as generally such changes are determined to be insufficiently material in self-assessment.
6. So if re-qualifications were to be introduced in the REC, the design should seek to avoid those weaknesses that we have identified.
7. We also would like to point out that there are other techniques such as audit, technical assurance and Error and Failure Resolution (monitoring of rectification plans) that can be used to address Supplier non-compliance or underperformance due to changes.

Appendix 4 – Detailed comments on the proposed code modification process

We would like to offer further considerations on paragraphs 3.49 – 3.55 of the consultation below:

1. Who can raise Change Proposals

Regarding the list of organisations (as set out in paragraph 3.54 of the consultation) that may raise Change Proposals, we have the following comments.

- a) We would recommend that careful consideration is given to the circumstances in which the REC Panel may raise Change Proposals. In our experience of operating the BSC change processes, it is our view that the circumstances in which the BSC Panel may propose a Modification to the BSC, is too limiting as it relates to efficiency only modifications. Progression of other modifications can stall if a sponsor cannot be found which is not necessarily due to lack of support but more lack of resources. So whilst we understand the requirement to ensure that Panel in general do not inadvertently become conflicted i.e. being the proposer, assessor and approver of a change, there can be circumstances where wider powers would enable changes that are low risk/impact or for efficiency reasons to be raised and progressed in the most efficient manner (as with the BSC currently) plus other types of modification (to be defined) beyond simply ones of efficiency.
- b) Similarly, we would also recommend that careful consideration is given to the circumstances in which the Code Manager may raise Change Proposals, e.g. where a proposed change supports Government/Ofgem's directives or initiatives or when a proposed change delivers clear benefits to the end customers.
- c) We note the proposal to allow REC Change Proposals to be raised by "any person representative of interested third parties as may be designated in writing for this purpose by the Authority....." and would ask Ofgem to note that a BSC Modification Proposal P370 was raised by the BSC Panel (the BSC Panel is allowed to raise Modification Proposals where the change will further applicable BSC Objective (d) – 'Promoting efficiency in the implementation of the balancing and settlement arrangements') at its meeting on 12 July 2018.

P370 proposes to move the designation process from the Authority to the BSC Panel and for the Authority to become the appeals body. It is the BSC Panel's view that this change will:

- extend and improve the scope of the Panel's self-governance arrangements;
- improve the accessibility of the Modification Procedures to "interested third parties" removing any perceived barriers to innovation and change;
- be complementary to other proposed changes, particularly P362: 'Introducing BSC arrangements to facilitate an electricity market sandbox' to the extent that it facilitates increased engagement with non-BSC Parties; and
- improve designation timescales and transparency through the development and publication of the criteria to be used by the Panel to determine which "bodies representative of interested third parties...." may be designated as organisations that may raise Modification Proposals.

We would encourage Ofgem to take a similar approach to the REC as is being proposed for the BSC, as it brings about the above efficiencies.

2. Initial Report to the REC Panel

We note that the draft Change Management Schedule requires all accepted Change Proposals to be submitted to the REC Panel, via an Initial Report, for decision. The REC Panel is asked to determine

seven matters (as set out in paragraph 8.5 of the consultation), including the change path and the progression timetable.

Given that the Code Manager must determine these matters for recommendation to the REC Panel, we believe it would be more efficient for the Change Proposal to progress in accordance with the Code Manager's determinations, instead of waiting for the next REC Panel meeting.

Under this approach we believe it would be important for the REC Panel to be informed of, and to have the right to re-determine these matters. This approach would allow changes to progress more quickly, support the self-governing principle, whilst maintaining REC Panel oversight.

3. Unlimited Alternatives

We are concerned that having an unlimited number of Alternative Change Proposals could exacerbate the costs and lead times for delivering Change Proposals and place unnecessary regulatory burden on market participants. We question whether the REC Panel or the Authority should have to assess and compare more than two or three solutions. It may be that multiple options are considered and assessed, but we believe that ultimately these options should be able to be reduced to no more than five for voting purposes. We note that there is no requirement for the Central Service provider to provide a detailed impact assessment within a specified time period, but believe that there should be one to avoid drawn out assessment phases, delays to timescales and unnecessary increases in costs. We believe the Performance Standards for the Central Service Providers will be of utmost importance.

If the pre-assessment process has been successful, we note that the need for multiple solutions should be much reduced. The more Alternative Change Proposals there are the more complex the assessment and voting becomes. Should no restriction on the number of Alternative Change Proposals be palatable we would recommend that the conditions under which the Code Manager could reject an Alternative Change Proposal should be strengthened.

Further, we welcome further thought of the impact on the change process by allowing Alternatives to be raised by any valid person prior to the voting. Alternatives should be put forward by persons who have been involved in Expert Group discussions or who understand the reasons for the proposed solution. There is a risk that parties could frustrate the process by raising Alternatives, where for example, they do not agree or wish to delay the progression of the change.

4. Voting

For Change Proposals which are subject to Expert Group considerations we believe it would be useful to get their views on whether the proposal should be approved or not. We note that in the case of Authority-Approved Changes, the views of the Expert Group measured against the REC Objectives will be sought. But no views against the business case are collected for Self-Governance changes (and principles-based regulation). We question whether the need for the Authority to approve the Expert Group terms of reference is in keeping with a simplified and self-governing change process. A more proportionate option could be to let the REC Panel own the document, with the Authority having the right to direct changes.

Appendix 5 – Further commentary on competitive tendering and ELEXON-specific concerns

1. While ELEXON Ltd. is a wholly owned, arms-length subsidiary of National Grid, our funding arrangements (which see our costs transparently issued to any interested party for comment and passed directly on to BSC Parties) enable us to operate impartially and independently from our shareholder (who bears no liability or obligation to provide finance or financial support to ELEXON Ltd).
2. Our delivery of impartial services to the electricity industry is further underpinned by our not-for-profit status and our ownership structure (which mitigates the risk of undue influence by electricity suppliers or generators both collectively and individually). Such impartiality is particularly important in relation to the assessment and implementation of change.
3. While we understand that governance and funding arrangements vary across industry codes, we remain concerned that our not-for-profit funding model (which we believe supports our independence) may not be compatible with the use of incentives and penalties proposed under a competitive tender. This would mean that we could be excluded from bidding for the REC Manager role in the same way as we were excluded from bidding for UNC Gas Performance Assurance Administrator (PAFA) role, even though ELEXON was seen as a very strong candidate.
4. Furthermore, we have been successfully providing the settlement services for CfDs and the Capacity Market under a contract to LCCC/ESC (both government owned companies) with no liability, whilst achieving all service levels and KPIs and high customer satisfaction.
5. We believe that our not-for-profit model is an appropriate model for delivering monopoly market services given that we achieved the highest satisfaction scores in [Ofgem's cross code administrator survey](#) (2017). In addition, we see little commercial risk in delivering code services and note that despite a liability regime existing in other code service arrangements, we are not aware of payments ever being made by other code bodies and therefore conclude that the industry and therefore the end customer, are paying a premium in the form of a margin but not deriving any benefit from that.
6. Therefore, we argue that any proposed liability regime needs to allow for not-for-profit entities to bid for the REC Manager role. This should be considered by understanding the appropriate balance of potential risks and rewards and the use of non-financial levers to incentivise performance.