

Decision

DCC Review Phase 2: Governance arrangements - conclusions

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This decision document responds to our consultation published in May 2024, which set out our proposed future arrangements for the governance of the Data Communications Company (DCC) and the Centralised Registration Service. This document summarises the responses to that consultation and outlines our policy decisions on the proposals we sought views on, including:

- DCC Board composition
- Board appointment and requirements
- Incentivisation of DCC board, executive leadership, and key staff
- Interim changes to governance

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Contents

Executive Summary	4
1. Introduction	11
2. DCC Board composition	14
3. Board appointment process and requirements	27
4. Incentivisation of DCC board, executive leadership, and key staff ..	41
5. Interim changes to governance.....	59

Executive Summary

The Data Communications Company (DCC) is responsible under the Smart Meter Communication Licence for establishing and operating a secure national communications network for smart metering in Great Britain. Smart DCC Ltd¹ currently operate the Licence which was awarded by the Government in 2013 for 12 years. The Licence was extended by Ofgem² for a further 24 months in September 2024 and now expires in September 2027.³ We are reviewing the regulatory arrangements to be put in place for the Successor Licensee.

In May 2024 we consulted on our proposals for reforms to the governance and centralised registration service (CRS) arrangements of the DCC.⁴ On 2 December, we published our decision on the CRS.⁵ In this document, we set out our conclusions in relation to the Board governance and incentivisation.

Below we set out a summary of the consultation and stakeholder responses. An overview of our conclusions is presented in the table on page 8, with further details in chapters 2-5.

Future Governance Arrangements

DCC Board composition

We consulted on four options for DCC’s future board composition. Our preferred option was an independent majority board without direct stakeholder representation whereas most respondents favoured some form of stakeholder representation on the Board.

We agree with stakeholder feedback that the Board would benefit from a broader industry knowledge and have amended our proposal in relation to requirements on skills and expertise. However, we have not heard compelling evidence against our concerns

¹ A wholly owned subsidiary of Capita Plc

² References to the “Authority”, “Ofgem”, “we”, and “our” are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day-to-day work.

³ Ofgem (2024) Decision on the continuation of the Smart Meter Communication Licence and the rate of Shared Service Charge and Baseline Margin | Ofgem. www.ofgem.gov.uk/decision/decision-continuation-smart-meter-communication-licence-and-rate-shared-service-charge-and-baseline-margin

⁴ Ofgem (2024), DCC Review Phase 2: Governance and Centralised Registration Service arrangements. www.ofgem.gov.uk/consultation/dcc-review-phase-2-governance-and-centralised-registration-service-arrangements

⁵ Ofgem (2024), DCC Review Phase 2: Centralised Registration Service arrangements – decision. www.ofgem.gov.uk/decision/dcc-review-phase-2-governance-and-centralised-registration-service-arrangements<http://www.ofgem.gov.uk/decision/dcc-review-phase-2-governance-and-centralised-registration-service-arrangements>

around the conflicts of interest arising from direct industry appointments on the Board. Therefore, we have concluded that DCC should have a majority independent board.

Secondly, we have concluded that DCC should be allowed to exercise its own judgement in considering the independence of persons nominated for appointment as Sufficiently Independent Directors (SIDs), having due regard to circumstances which are likely to impair or which could appear to impair that person's independence, especially those set out in the UK Corporate Governance Code and the Licence. Where any of these or other relevant circumstances apply, and the Board nonetheless considers that the non-executive director is independent, a clear explanation should be provided to Ofgem.

Thirdly, we have concluded that the DCC Chair should be an independent director and that independence requirements should apply without exception.

Finally, we have concluded that we will not impose restrictions on the size of the Board, the number of executive members or shareholder representatives.

Board appointment process and requirements

We consulted on the process requirements for appointments to the DCC Board. We proposed that the new Licence would place a requirement on the Board to always possess sufficient experience in certain core areas. Most respondents agreed with the core areas of experience, and that it should be a requirement imposed on the Board as a whole rather than individual members. We have concluded that the core areas of experience will remain as those consulted on. However, we have also concluded there should be an enhanced requirement for industry experience.

We consulted on a requirement for the appointment of a SID with consumer advocacy experience. Most respondents agreed with our proposal which we will implement.

We consulted on the roles of Ofgem and DCC customers⁶ in the Board appointment process with the aim to safeguard the process and allow stakeholders to input in the appointment process while protecting the autonomy of the Board and its members. We have concluded that we will impose a Licence requirement on DCC to notify Ofgem of Board appointments prior to making them, and to ensure stakeholders are represented in the appointment process, which we expect to be done through participation in the Nomination Committee.

⁶ 'DCC customers' mean the users of DCC's system or other services provided by; we may use these terms interchangeably. DCC customers include network companies, small and large energy suppliers, as well as a number of 'other users'. You can find a list of DCC's customers on DCC's website, accessible at : www.smartdcc.co.uk/our-smart-network/dcc-customers/. You can also view the current list of parties to the Smart Energy Code (not all of whom are current DCC's users) on the SEC website, accessible at: www.smartenergycodecompany.co.uk/current-sec-parties/

We also consulted on whether the appointment of the first Chair should follow a distinct process. We have decided that DCC must consult with Ofgem and have due regard to Ofgem's views in respect of the initial Chair appointment on account of the importance of the Chair's position.

Incentivisation of DCC board, executive leadership, and key staff

We consulted on limiting the term of appointment for non-executive directors. We have decided to implement an initial term limit of 3 years for non-executive board members, with the possibility to be reappointed twice, each with a 3-year limit.

We consulted on proposals for reputational incentives and enhanced regulatory requirements in the areas of system performance, customer engagement and contract management. We also considered further incentives on business planning and cost management arising from our proposed shift to an *ex-ante* form of cost control. We have decided to replace the existing Operational Performance Regime (OPR) customer engagement incentive with a new requirement on DCC to carry out, and act on the outcomes of, a customer satisfaction survey assured by an independent third party. We will also require DCC to publish its system performance on its website and to act on the findings of the annual contract management audit.

We consulted on whether reputational incentives should be linked to financial incentives on executive leadership and key staff. We have concluded that we will introduce a targeted incentive model and require DCC to submit to Ofgem for approval its remuneration policy developed by an independent Remuneration Committee of the Board. We are seeking further on what measures should be considered by any targeted financial incentive model in a separate consultation on the process for determination of Allowed Revenue.⁷

We consulted on a proposal to allow stakeholders to pass a (non-binding) motion of 'no confidence' in the DCC management to enhance their accountability to stakeholders. We received mixed responses to this proposal. Those who disagreed with the proposal raised implementation risks. We have decided not to proceed with this proposal; instead, we consider that the new requirement on DCC to act on the outcomes of customer survey would be a more appropriate way to address customer feedback.

⁷ Ofgem (2024) DCC Review Phase 2: Determination of Allowed Revenue, chapter 4, section C. www.ofgem.gov.uk/consultation/dcc-review-phase-2-determination-allowed-revenue

Interim changes to governance

In September 2025, we confirmed that the DCC Licence will be extended by 24 months until September 2027.⁸ We proposed to work with DCC to appoint an independent successor Chair of the Board (subject to the current Chair’s term of appointment), ensure the transitional Board has a member with consumer advocacy experience, and improve DCC’s stakeholder engagement. We also proposed the establishment of a suitable forum to oversee the business handover to the Successor Licensee and the appointment of Ofgem as an observer. Most stakeholders agreed with the key changes we identified and we intend to continue to work with DCC to implement these, including through the Business Handover Plan.

Finally, we consulted on the possible retention of the current Sufficiently Independent Directors (SIDs) on the successor Board. Most stakeholders agreed with this proposal, and we will aim to facilitate the transfer subject to the individual SIDs’ willingness to continue their term, the Successor Licensee’s agreement and a compliant appointment process.

⁸ Ofgem (2024), Decision on the continuation of the Smart Meter Communication Licence [...]. www.ofgem.gov.uk/decision/decision-continuation-smart-meter-communication-licence-and-rate-shared-service-charge-and-baseline-margin

Overview of our main conclusions

Questions	Main conclusions
Question 1: DCC Board composition	The Licence will require DCC to ensure that at any time the majority of persons appointed as its directors must be considered Sufficiently Independent Directors (SIDs).
Question 2: Requirements on Sufficiently Independent Directors	The Board will be afforded more flexibility in considering whether a candidate for appointment as a SID should be considered "sufficiently independent," having due regard to circumstances which are likely to impair or which could appear to impair that person's independence.
Question 3: Independence requirements on the Chair	The Chair will be required to satisfy all Independence Requirements on Sufficiently Independent Directors, which would apply without exception.
Question 4: Board size & Executive and shareholder representatives on the Board	The Licence will not prescribe the Board's size or the number of executives or shareholder representatives.
Question 5 – Core areas of expertise	<p>The Licence will place a requirement on DCC to ensure that its Board possesses sufficient experience in the following core areas:</p> <ul style="list-style-type: none"> • GB energy market (supply and distribution) • Commercial contract management • Data and communication technology • Consumer advocacy <p>At least 25% of the Board will be required to have substantial, recent GB energy market experience.</p>
Question 6 – Consumer representation	DCC will be required to appoint a sufficiently independent non-executive director with consumer advocacy experience.
Question 7 – Ofgem's role in the appointment process	<p>DCC will be required to notify Ofgem sufficiently in advance of making an appointment to the Board to allow Ofgem time to review and assess whether the appointment satisfies relevant Licence requirements.</p> <p>DCC will be expected to have a due regard to Ofgem's view prior to confirming an appointment.</p>
Question 8 – Stakeholder role in the appointment process	DCC will be required to ensure stakeholder representation in the process for appointing Board members.

Decision –DCC Review Phase 2: Governance arrangements - conclusions

Question 9 – Appointment of the DCC Chair	The Chair will be required to have a proven board-level experience in an organisation of comparable size and standing as DCC. DCC will consult with Ofgem and have due regard to Ofgem’s views in respect of the appointment of its first Chair.
Question 10 – Term Limits for Directors	We will introduce a 3-year term limit for all non-executive directors. DCC will be able to reappoint its non-executive directors up to two times with a maximum term of 9 years.
Question 11 - Reputational incentives	The Licence will include five types of reputational incentives: <ul style="list-style-type: none"> • OPR System performance – in addition to existing reporting, DCC will be required to regularly publish its system performance metrics in a prominent position on its website in a plain and intelligible language • OPR Customer engagement – The customer engagement metric will be reformed into a broader customer satisfaction survey to be carried out no less than once in two regulatory years. It will be assured by an independent third party. Where significant failings are revealed, DCC will be required to produce and submit a rectification plan to Ofgem for approval and monitoring. • OPR Contract management – DCC will be required to act on the findings of the annual independent audit. • Business Planning – the quality of DCC’s business plan submitted as part of the price control process will be assessed by Ofgem against a published guidance • Cost management – DCC will be required to report quarterly on its delivery against approved forecasts
Question 12 – Linking reputational incentives to financial incentives	DCC will be required to submit its remuneration policy to Ofgem for approval.
Question 13 – "No confidence" motion	We have decided not to grant DCC customers the power to issue a (non-binding) "no confidence" motion.
Question 14 – Priority areas of interim changes	We will work with DCC to implement the following changes within the extension period: <ul style="list-style-type: none"> • Appointment of a Sufficiently Independent Director (SID) as the successor Chair of the DCC Board (subject to the expiry of the current Chair's term) • Appointment of a SID with consumer advocacy experience • Enhanced stakeholder engagement with DCC Board • Establishment of the Joint Handover Steering Group to oversee the business handover with independent third party assurance and Ofgem observer role

Decision –DCC Review Phase 2: Governance arrangements - conclusions

Question 15 – Retaining existing SIDs on the new Board	Allow the retention of current Sufficiently Independent Directors on the board of the Successor Licensee, subject to the individual SIDs’ willingness to continue their term, the Successor Licensee’s agreement and a compliant appointment process
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1. Introduction

- 1.1 This document is a response to Part I of our consultation on the future governance arrangements for DCC. The consultation was published on 21 May 2024 and closed on 17 July 2024. We published our response to Part II of that consultation dealing with the Centralised Registration Service (Switching) on 2 December 2024.⁹
- 1.2 DCC is the term used to refer to the holder of the Smart Meter Communication Licence ("the Licence").¹⁰ It operates under the conditions of its Licence and is regulated by Ofgem. Smart DCC Ltd is the legal entity that holds the Licence, following a competitive tender process that took place in 2013. The Licence will expire in September 2027.
- 1.3 DCC is responsible for establishing and operating a secure national communications network for smart metering in Great Britain, which connects smart meters in people's homes and small businesses. Its key role is to effectively manage large contracts with communication and data service providers to ensure a stable and secure service that is value for money. We are reviewing the regulatory arrangements for DCC and putting in place a new framework following the expiry of the current Licence and appointment of a Successor Licensee ("DCC review").

Context and related publications

- 1.4 In autumn 2022, we consulted on the first 'scoping' phase of the DCC review. We published our phase 1 consultation response in August 2023¹¹ in which we decided to adopt a set of key features to form the basis of the new regulatory model.
- 1.5 In November 2023 and February 2024, we hosted further stakeholder workshops to test our emerging proposals on the detailed policy design in relation to DCC's governance, cost control and future role.
- 1.6 In May 2024 we published our governance consultation to develop the first key feature about the composition and independence of the future DCC Board.

⁹ Ofgem (2024), DCC Review Phase 2: Governance and Centralised Registration Service arrangements (Decision). www.ofgem.gov.uk/decision/dcc-review-phase-2-governance-and-centralised-registration-service-arrangements

¹⁰ Throughout this decision document, we refer more broadly to "DCC", meaning the holder of the Licence (in its generic sense) and the organisation currently carrying on the Authorised Business, and our references should be interpreted in accordance with the context to which they relate, whether that be the current licensee or the future DCC.

¹¹ Ofgem (2023) DCC review: Phase 1 Decision. www.ofgem.gov.uk/decision/dcc-review-phase-1-decision

- 1.7 In July 2024, we consulted on whether to seek legislative changes to have more flexibility in the appointment process of the Successor Licensee.¹² In September 2024, we published our conclusion that greater flexibility was required to ensure the best outcome for consumers, including the ability to direct award the licence.¹³ Also in September 2024 we published our decision to extend the Licence by 24 months to September 2027.¹⁴
- 1.8 In December 2024, we published our consultation on the process for determination of Allowed Revenue. This includes our policy proposals for the design of an *ex-ante* cost control regime.¹⁵

Our decision-making process

- 1.9 This current consultation process has followed the below four steps.

Decision-making stages

Date	Stage description
21/05/2024	Stage 1: Consultation open
17/07/2024	Stage 2: Consultation closes (awaiting decision), Deadline for responses
17/01/2025	Stage 3: Responses reviewed and published
17/01/2025	Stage 4: Consultation decision/policy statement

Next steps

- 1.10 We expect to publish the remaining policy consultation on the future role of DCC, objectives and operational model with a decision expected in Q2 2025.
- 1.11 We will also publish our response to the consultation on the process for determination of Allowed Revenue.

¹² Ofgem (2024), DCC review: Process for appointing the Successor Smart Meter Communication Licence holder. www.ofgem.gov.uk/consultation/dcc-review-process-appointing-successor-smart-meter-communication-licence-holder

¹³ Ofgem (2024), DCC review: Process for appointing the Successor Smart Meter Communication Licence holder - conclusions and next steps. <https://www.ofgem.gov.uk/consultation/dcc-review-process-appointing-successor-smart-meter-communication-licence-holder>

¹⁴ Ofgem (2024), Decision on the continuation of the Smart Meter Communication Licence. www.ofgem.gov.uk/decision/decision-continuation-smart-meter-communication-licence-and-rate-shared-service-charge-and-baseline-margin

¹⁵ Ofgem (2024), DCC Review Phase 2: Determination of Allowed Revenue. www.ofgem.gov.uk/consultation/dcc-review-phase-2-determination-allowed-revenue

- 1.12 These publications will conclude the detailed policy design (Phase 2) of the review. We will give effect to our policy decisions through drafting a new Licence and necessary code changes in 2025.
- 1.13 We will also continue to work with DCC on reviewing its Business Handover Plan so that a compliant version can effectively support the Licence retender and business transfer. We expect to approve DCC's BHP in early 2025.
- 1.14 We have already commenced work on the selection of the Successor Licensee through market engagement and a webinar in November 2024. We are planning to publish another Prior Information Notice (PIN) shortly and commence the selection process. This work will form Phase 3 (appointment process for a Successor Licensee) of our review programme. Subject to the Phase 3 outcome, Phase 4 (Business Handover to the new Licensee) will conclude the programme by 2027.

General feedback

- 1.15 We believe that consultation is at the heart of good policy development. We are keen to receive your comments about this report. We would also like to get your answers to these questions:
- Do you have any comments about the overall quality of this document?
 - Do you have any comments about its tone and content?
 - Was it easy to read and understand? Or could it have been better written?
 - Are its conclusions balanced?
 - Did it make reasoned recommendations?
 - Any further comments
- 1.16 Please send any general feedback comments to: stakeholders@ofgem.gov.uk

2. DCC Board composition

Section summary

We consulted on four options for DCC’s future board composition. Our preferred option was an independent majority board without direct stakeholder representation whereas most respondents favoured some form of stakeholder representation on the Board.

We agree with stakeholder feedback that the Board would benefit from a broader industry knowledge and have amended our proposal in relation to requirements on skills and expertise. However, we have not heard compelling evidence against our concerns around the conflicts of interest arising from direct industry appointments on the Board. Therefore, we have concluded that DCC should have a majority independent board.

Secondly, we have concluded that DCC should be afforded the flexibility to exercise its own judgement in considering the independence of persons nominated for SID appointments, having due regards to circumstances which are likely to impair or which could appear to impair that person’s independence, especially those set out in the UK Corporate Governance Code and the Licence. Where any of these or other relevant circumstances apply, and the Board nonetheless considers that the non-executive director is independent, a clear explanation should be provided to Ofgem.

Thirdly, we have concluded that the DCC Chair should be an independent director and that independence requirements should apply without exception.

Finally, we have concluded that we will not impose restrictions on the size of the Board, the number of executive members or shareholder representatives.

Questions posed at consultation

1. What are your views on the presented options for the future DCC board composition? Do you agree with our analysis that Option 4 (majority independent model) is the most appropriate to take forward? Please state your reasoning.
2. What are your views on the current and proposed Licence requirements on Sufficiently Independent Directors? Do you agree that one or more of the current Licence-imposed Independence Requirements may be relaxed in favour of more discretion afforded to the Board?
3. Do you agree with our proposal that the Chair of the future DCC board should meet the requirements on 'Sufficiently Independent Directors' without exception?
4. What are your views on our analysis and proposal not to introduce additional requirements or restrictions on the size of the future Board and on the number of executive members and shareholder representatives?

Background

- 2.1 In our 2023 Phase 1 consultation response, we concluded that one of the key features of the new regulatory model would be that the future DCC Board should be majority independent/stakeholder-controlled¹⁶ (with consumer representation).
- 2.2 In reviewing the options for the Board composition, we considered:
- Other licences that Ofgem grants and Ofgem's role within the governance of the licensees
 - Central Service Delivery Bodies (CSDB)
 - Principles and Recommendations of the UK Corporate Governance Code (2018 and 2024)
 - Input from internal and external stakeholders, including an academic panel
- 2.3 Although we have considered the existing governance arrangements in place for other CSDBs, it is important to note key differences between DCC and those organisations. DCC was set up to design, build, test, operate, and maintain the communication infrastructure for smart metering. DCC delivers this role against the objectives and obligations set out in its Licence and the requirements in relevant codes (SEC, REC). However, as we set out in our consultation, DCC is not an industry code administrator or a body representing parties to the code(s). This means that not all lessons learnt from the governance of industry panels or administrators can directly apply in this case.

Question 1: DCC Board composition

Consultation position

- 2.4 In our consultation, we set out 4 models for the Board composition:
- (1) Stakeholder majority
 - (2) Stakeholder (or independent) plurality
 - (3) Alt-Han model
 - (4) Majority independent
- 2.5 We analysed all four options and presented **the majority independent model as our preferred option to adopt in the Successor Licence**. We recognise that all options have merits and proven record in other organisations. For context, we said that we considered the independent model to be the most

¹⁶ By 'stakeholder-controlled' Board, we mean a board composed of the representatives of DCC customers (with a potential consumer representation)

suitable given DCC's position as a licensed entity, the nature of its business, and the overall shift towards a purpose-driven, not-for-profit organisation.

Summary of stakeholder responses

2.6 We received mixed responses to this question. Most responses considered the merits of option 4 (majority independent Board) against options 1 and 2 (direct stakeholder representation). We received general consensus that the DCC Board should be responsive to customers and that customers' views should be taken into account.

Option 4 (Independent model) – preferred

2.7 Those in support of option 4 agreed that an independent model would deliver purpose-driven governance and ensure that the needs of energy consumers and DCC customers were safeguarded without the risk of conflicts of interests arising in options 1 & 2. One respondent noted that an industry-led model may struggle to make effective decisions on account of differing business models and competition among stakeholders.

2.8 Several stakeholders in favour of option 4 highlighted the need for strong expertise on the Board. One respondent noted a risk of the independent model being unable to attract independent directors with sufficient industry expertise, and therefore leaving stakeholders without representation. Similarly, another said that an independent model should be accompanied by added flexibility in the application of the independence requirements to ensure appropriate balance between independence and industry expertise.

2.9 One respondent in favour of option 4 noted a concern that an independent Board may be too risk averse and prone to incurring costs above approved business plan forecasts. They noted that it was important to consider the interaction with director incentives linked to performance management objectives and managing upfront costs.

Options 1 & 2 (stakeholder majority/plurality models)

2.10 A number of respondents supported for some form of direct stakeholder representation either via option 1 (stakeholder majority) or option 2 (stakeholder or independent plurality). These stakeholders said that direct representation and influence by customers would help ensure the Board's responsiveness to industry. A couple of respondents also said that industry representatives would be best placed to provide knowledge and first-hand experience.

- 2.11 One stakeholder commented that the Board “needs to hear directly from stakeholders [about] any impacts poor performance is having or how potential investment decisions will impact [them], which we feel does not adequately happen via DCC’s executive team currently”.
- 2.12 A couple of respondents disagreed with our view that the risk of conflicts of interest arising from stakeholder representation on the Board would be irresolvable and alone should not rule out options with industry representation:
- One respondent suggested that directors' fiduciary duties in the Companies Act, requiring directors to act independently, would help mitigate the risks
 - Another proposed that an independent Chair could help deal with any instance of conflicts of interest
 - Another argued that conflicts were unlikely to arise as customer needs should form the basis of DCC’s Licence
 - One respondent suggested a trustee style board with a majority of stakeholder representatives and sufficiently independent directors

Other comments

- 2.13 Option 3 (Alt-Han) model did not receive substantial support from stakeholders. A couple of respondents believed that the division of responsibilities between the company directors and the industry forum would be complex and could result in delays in decision-making.
- 2.14 Several respondents referred to our previous conclusion that DCC's core mandatory business should be operated on a not-for-profit basis and that we should reconsider this position. Their reason was that a not-for-profit model may not attract a sufficient number of viable bidders to come forward through a competitive process. If the Successor Licence allowed DCC to operate for profit, a couple of respondents said they would prefer a stakeholder-led board.
- 2.15 Similarly, one respondent raised the risk of cost overruns against forecasts in a not-for-profit model and queried who would be responsible for such additional costs being incurred. Our proposals relating to over/underspend and financial incentives on cost management are covered in chapters 3 and 4, respectively, of our recently published consultation on the process for determination of Allowed Revenue.¹⁷

¹⁷ Ofgem (2024), DCC Review Phase 2: Determination of Allowed Revenue.
www.ofgem.gov.uk/consultation/dcc-review-phase-2-determination-allowed-revenue

Decision

- 2.16 Having carefully considered all representations, we remain of the view that option 4 (majority independent board) would be the most appropriate composition. For the reasons set out below, we **conclude that the Successor Licence will require the Licensee to ensure that at any time, the majority of persons appointed as its directors must be considered Sufficiently Independent Directors (SIDs).**
- 2.17 We will retain the existing requirement on the Licensee to ensure that no director is or at any time becomes a director or an employee of (or holds or acquires investments by way of shares, securities, or other financial rights or interests in) DCC customers or External Service Providers.¹⁸

Rationale for our decision

Decision to pursue a majority independent model

- 2.18 We remain of the view that a majority independent model ensures that the organisation decision-making is led primarily by its Licence objectives and purpose. It also best ensures operational independence with a focus on expertise rather than seeking to balance interests of different stakeholders or groups of stakeholders. This may lead to internal conflicts and ineffective decision making.
- 2.19 Our conclusion to adopt an independent model aligns with similar decisions taken by Ofgem in reforming or creating other industry bodies, such as the Retail Energy Code Company, and the National Electricity System Operator.¹⁹ While we recognise DCC is a distinct entity, we consider that the underlying rationale for these changes apply here. In particular, principles of independence from vested interests, concerns about actual or perceived conflicts of interest, and the benefits of operational autonomy.

Decision to maintain restriction on direct customer representation

- 2.20 We note the feedback from a number of stakeholders supporting customer representation on the Board. Having considered the merits of direct customer representation, we have decided to not lift the existing restrictions on employees or directors of DCC customers or Service Providers from becoming directors of DCC. We remain of the view that a director with an interest in one of

¹⁸ LC 9.8

¹⁹ Electricity System Operator Licence, Condition B1. Accessible at: www.ofgem.gov.uk/energy-policy-and-regulation/industry-licensing/licences-and-licence-conditions

DCC's customers may face a conflict of interest that cannot be easily resolved. It is foreseeable that the interests of a particular DCC customer could conflict with the broader objectives of DCC or with interests of other customers. A stakeholder representative may act, or be perceived to act, in a way which benefits their organisation. For example, by seeking to promote (or suppress) specific services or solutions, with impact on the long-term planning or performance of the smart meeting network.

- 2.21 If representatives of individual stakeholders became DCC directors, there would still be a sizeable group of stakeholders who may feel little to no representation should their employee not be chosen as the representative. There is no route to resolve this without DCC having an exceptionally large board.
- 2.22 These risks would also exist in a constituency model where an industry-appointed director would be expected to act on behalf of industry stakeholders. They could risk breaching their legal duties (under the Companies Act 2006) or act independently but risk undermining the expectations placed upon them by stakeholders during their appointment. This could leave industry parties dissatisfied and seeking to remove or replace a representative not seen to be acting in their interest.

Ensuring customer representation within the governance model

- 2.23 Nevertheless, we acknowledge stakeholder feedback that:
- There should be sufficient industry expertise and knowledge on the Board
 - The Board should listen to and consider stakeholder views in its decision-making
- 2.24 To strengthen the presence of industry experience on the Board, we have decided to require that 25% of the Board should have substantial and recent GB industry experience. This is discussed more detail in chapter 5 (Core areas of expertise). We have also taken into account stakeholder feedback that the independent model should be supported by greater flexibility in the appointment process to balance independence with access to expertise. We have decided to afford DCC more discretion when appointing SID candidates with regards to the independence requirements. This is covered in greater detail in paragraphs 2.38-2.46 below.
- 2.25 To ensure that the Board is responsive to customers, we have also concluded that we will implement our proposal under Q11 (Reputational incentives, chapter 4) and place a requirement on DCC to carry out customer satisfaction surveys, assured by an independent third party. The survey will allow DCC customers to

provide feedback on a range of issues. DCC will be required to respond to it and, if necessary, produce a rectification plan if serious failings are revealed. Further detail of this decision is given in our response to question 11 in chapter 4.

- 2.26 Finally, subject to the outcome of our consultation on the Determination of Allowed Revenue, we will enhance customer role in DCC’s business planning and cost control process through creation of a customer challenge group (details are set out in chapter 5).²⁰ We consider that representation of industry experience on the Board, an introduction of a customer satisfaction survey, industry role in the director appointment process (Q8, chapter 3) and the creation of a customer challenge group, together with existing governance arrangements (for example through the Smart Energy Code), will provide both a meaningful set of arrangements for customer engagement and representation, and drive customer-centric culture within DCC2.

Responding to other comments

- 2.27 We noted the comments in relation to our phase 1 conclusion that DCC Core Mandatory Business should be carried out on a not-for-profit basis.²¹ We have provided further details on the profit arrangements through our consultation on the process for determination of Allowed Revenue.²² Nevertheless, we do not consider the question of governance to be intrinsically linked to that of profit arrangements as conflicts of interest may arise regardless of whether DCC operates on a for-profit or not-for-profit basis. We note that some respondents advocated for a stakeholder-led model under for-profit arrangement. However, it is arguable that a profit-making entity would be more opposed to the influence of third parties on its Board, which would make an effective stakeholder-led for-profit model challenging to design.
- 2.28 We recognise the comment made by a stakeholder in relation to the risks of a failed competition when awarding a not-for-profit Licence. Since the closure of this consultation, we have consulted on and sought legislative changes to obtain additional flexibility in the appointment process of the Successor Licensee to mitigate the risk of a failed competition.²³

²⁰ Ofgem (2024) Determination of Allowed Revenue, chapter 4.

www.ofgem.gov.uk/consultation/dcc-review-phase-2-determination-allowed-revenue

²¹ Ofgem (2023), Ofgem DCC review: Phase 1 Decision, chapter 2.

www.ofgem.gov.uk/decision/dcc-review-phase-1-decision

²² Ofgem (2024) Determination of Allowed Revenue, chapter 4.

www.ofgem.gov.uk/consultation/dcc-review-phase-2-determination-allowed-revenue

²³ Ofgem (2024), DCC review: Process for appointing the Successor Smart Meter Communication Licence holder - conclusions and next steps. www.ofgem.gov.uk/decision/dcc-review-process-appointing-successor-smart-meter-communication-licence-holder-conclusions-and-next-steps

- 2.29 We agree with stakeholders that cost control and incentives will be important to provide assurance for any governance model. We discuss our conclusions in respect of reputational, regulatory and financial incentives in chapter 4, including our decision to implement a targeted incentive regime for executive directors and key staff. We have provided further details on cost control arrangements in the consultation on the process for determination of Allowed Revenue.
- 2.30 Finally, for the avoidance of doubt, our decision means that DCC’s Board will consist of a majority of Sufficiently Independent Directors. The Licence will not prescribe where the remainder of directors should be drawn from. However, we would expect the remaining board positions to be filled by nominations from DCC’s shareholder/parent company and by executive directors such as DCC employees, subject to the licence provisions.
- 2.31 As outlined in our consultation, the Nominations Committee will lead the process for selection and evaluation of candidates.

Question 2: Requirements on Sufficiently Independent Directors

Consultation position

- 2.32 The current Licence defines Sufficiently Independent Directors (SIDs) and makes provisions in relation to them in LC 9.
- 2.33 In our consultation, we said that we considered the existing requirements to be generally fit for purpose to support our proposal and safeguard the integrity of the future Board.²⁴ Nonetheless, we sought views on:
- The application of these requirements, especially the First and Second Independence Requirements²⁵
 - The balance between the protection of the Board's independence, and the risk that a strict application of these requirements may unduly disqualify experts with strong sector knowledge from becoming directors which could unduly limit industry experience on the Board
- 2.34 We put forward the following three options:
- Option 1: Maintain the existing 12-month restriction in the First and Second Independence Requirements

²⁴ DCC Review Phase 2: Governance and Centralised Registration Service Arrangements Section (2.49-2.60). www.ofgem.gov.uk/consultation/dcc-review-phase-2-governance-and-centralised-registration-service-arrangements

²⁵ LC 9.16-9.17

- Option 2: Increase the restrictions in line with the UK Corporate Governance Code recommendations to 5 and 3 years for the First and Second Independence requirements, respectively
- Option 3: Relax some (or all) regulatory restrictions in the Licence thereby allowing the Board to exercise its own judgement concerning the appointment of SIDs

Stakeholder responses

- 2.35 Most respondents supported the proposal under option 3 to grant DCC more discretion in the appointment of SIDs. Those in favour of this option generally argued that giving DCC more discretion in assessing whether candidates should be considered sufficiently independent would help to strike the right balance between allowing access to knowledge and expertise, especially sector experience, while also safeguarding the Board’s integrity and independence.
- 2.36 A few respondents agreed with option 3 but preferred keeping the default time restriction to 12 months, instead of increasing it to 3-5 years in alignment to the UK Corporate Governance Code provisions.²⁶ They argued that there was no evidence that existing 12-month requirement has had any adverse impact to date and that longer timeframes of 3-5 years would increase the volume of exceptions to those requirements sought by the Board. Therefore, this option would increase the burden on Ofgem’s process of review and oversight. Longer timeframes could also make it harder for DCC to access recent industry knowledge and, one respondent said, potentially “send the wrong message about the value of sector specific insight and expertise”.
- 2.37 A few respondents favoured retaining the current Licence arrangements in place without change (Option 1) as they did not see any issues with the current system. One respondent was in favour of retaining the existing Licence requirements with the ability for DCC to ask for derogations.

Decision

- 2.38 Having reconsidered stakeholder feedback, we have decided to proceed with option 3 and afford DCC Board more flexibility in considering the independence of persons nominated for SID appointments, subject to Licence obligations set out below.

²⁶ DCC Review Phase 2: Governance and Centralised Registration Service arrangements Paragraph 2.60. www.ofgem.gov.uk/consultation/dcc-review-phase-2-governance-and-centralised-registration-service-arrangements

- 2.39 To safeguard general adherence to best practice in corporate governance, we will retain the existing Licence obligation on DCC to comply with the UK Corporate Governance Code²⁷ and provide to the Authority an annual statement that sets out how the Licensee has complied with the Code during the previous Regulatory Year.²⁸
- 2.40 We intend to amend the Licence such that existing First and Second Independence requirements become “circumstances likely to impair or which could appear to impair a non-executive director’s independence”. We will maintain the existing 12-month period for these purposes. The Board will be able exercise its own judgment with due regard to these circumstances (as well as other relevant circumstances listed in the UK Corporate Governance Code)²⁹ as to whether a candidate for appointment as a SID is considered “sufficiently independent.” Where these circumstances apply, and the Board is nonetheless satisfied that the non-executive director is independent, DCC will be required to provide a clear explanation to Ofgem prior to making the appointment.
- 2.41 In line with our conclusion under Q7 (Ofgem’s role in the appointment process, chapter 3), for any appointment DCC will:
- Notify Ofgem of an upcoming intention to appoint, allowing sufficient time for a review at Ofgem’s discretion (which Ofgem may choose to carry out);
 - Explain to Ofgem whether the appointment meets relevant Licence conditions and, in the case of SIDs, any circumstances which may impair the directors’ independence, with explanation for why the Board still considers them to be ‘sufficiently independent; and
 - Give due regard to Ofgem’s views prior to confirming the director’s appointment in post.
- 2.42 DCC should then identify in the annual report each non-executive director it considers to be independent, and if relevant, explain to Ofgem whether circumstances have changed.

Rationale for our decision

- 2.43 We agree with responses from stakeholders that a more flexible approach may result in DCC attracting industry experience by not arbitrarily ruling out potential

²⁷ The most recent version (effective 2025) can be found on the FRC website here: www.frc.org.uk/library/standards-codes-policy/corporate-governance/uk-corporate-governance-code/

²⁸ LCs 7.3 and 7.4

²⁹ Section 2, Provision 10 of the Code

sector candidates. With the outlined safeguard in the form of Ofgem's review, we consider that this option strikes the right balance between securing required skills and protecting the Board's independence.

2.44 We have decided against a licence derogation process in favour of a more flexible approach. Our chosen approach still provides clarity on independence requirements and process without undue regulatory burden on both DCC and Ofgem. As set out in our decision on question 7, Ofgem can review any appointment and DCC has to have due regard to Ofgem's view. Ultimately, Ofgem retains the power to take action in the event of non-compliance by the Licensee.

2.45 For the avoidance of doubt, we plan to retain the Third and Fourth Independence Requirements in their current form as Licence requirements:

- The Third Independence Requirement is that a Sufficiently Independent Director must at no time hold any remit to represent the interests of: (a) any particular shareholder or group of shareholders of the Licensee; or (b) any Affiliate or Related Undertaking of the Licensee.³⁰
- The Fourth Independence Requirement is that a Sufficiently Independent Director must not receive any remuneration from the Licensee or any Affiliate or Related Undertaking of the Licensee apart from a director's fee and reasonable expenses.³¹

2.46 These restrictions aim to secure director independence from undue influence and relaxing these requirements would not improve DCC's ability to attract expertise or sector experience.

Question 3: Independence requirements on the Chair

Consultation position

2.47 In line with our proposal to shift to a majority independent board, we proposed that the Chair would be required to satisfy all of the Independence Requirements on SIDs, without exception.

Stakeholder response

2.48 A large majority of respondents agreed with our proposal. Stakeholders noted the importance of the Chair's independence in the context of the Chair's role in the appointment of other directors, moderating the Board's discussions and potentially casting a deciding vote in case of a split Board. Several stakeholders

³⁰ LC 9.18

³¹ LC 9.19

agreed that a move towards alignment with the UK Corporate Governance provisions in this area was a positive development.

- 2.49 One respondent disagreed with our proposal on the grounds that they favoured a for-profit model for DCC which would require the Chair to be nominated by the parent company. Similarly, another respondent said they supported our proposal for a not-for-profit model; however, if a for profit model was pursued, they argued the independence requirements may need to be modified to allow the shareholder reasonable autonomy in governance.

Decision

- 2.50 Our decision remains unchanged from the consultation. We will introduce a requirement in the Successor Licence that the Chair of the DCC board must be a SID and that all the requirements on Sufficiently Independent Directors would apply without exception (unlike those relaxed for ordinary SIDs as per our decision under Q2).

Rationale for our decision

- 2.51 We agree with stakeholders that given the central role of the Chair in the proceedings of the Board, whether in mediating discussions or appointing other Board positions, it is appropriate that the Chair should be independent. The Chair's independence will help ensure the overall integrity of the Board and safeguard against potential conflicts of interest.

Question 4: Board size & executive and shareholder representatives on the Board

Consultation position

- 2.52 We proposed that the Licence should not prescribe the Board's size or the number of executives or shareholder representatives. Instead, we said that the most suitable option would be to leave it to DCC's discretion. This solution would provide DCC with operational flexibility and suit a majority independent model focusing on expertise rather than representation.
- 2.53 We also considered whether a restriction on the Board size or number of shareholder representatives could negatively impact the competitive tender process.

Stakeholder views

- 2.54 Most respondents agreed with our view and did not see the need to restrict the size of the Board or the number of shareholder representatives or executive members.

- 2.55 A respondent who preferred option 1 (stakeholder majority) under Q1 thought that a restriction on the board size would be needed for this option. A respondent who advocated for a for-profit DCC thought the same.
- 2.56 Another respondent thought that the not-for-profit nature of the Board would mean that there is little incentive to keep the Board's size small, which would risk it becoming bloated and inefficient.

Decision

- 2.57 Our conclusion remains that it is **not necessary to impose restrictions on the size of the Board or the number of executives or shareholder representative members who sit on the Board.**

Rationale for our decision

- 2.58 We agree with respondents who argued that a restriction may be required in a stakeholder majority board where a firm board structure would have to be set up to allow for a suitably representative model (eg by constituency). However, as we have concluded to proceed with an independent majority Board, which focuses on expertise rather than representation, we do not consider this restriction to be necessary.
- 2.59 While we recognise the concern that the Board could become too large, we see this as unlikely as existing members will want to curtail it to ensure effective decision-making. If the Board does become too large or ineffective, DCC or DCC shareholders should be able to recognise this and act to reduce its size.

3. Board appointment process and requirements

Section summary

In question 5, we consulted on a requirement on the Board to always possess sufficient experience in certain core areas of experience. Most respondents agreed with the core areas, and that it should be a requirement imposed on the Board rather than individual members. We have concluded that the core areas of experience will remain as those consulted on. However, we have also concluded there should be an enhanced requirement for industry experience.

In question 6, we consulted on a requirement for the appointment of a SID with consumer advocacy experience. Most respondents agreed with our proposal which we will implement.

In questions 7 and 8, we consulted on the roles of Ofgem and DCC customers in the Board appointment process. These included options for a review process of the Board appointments by Ofgem, and stakeholder representation via the Nomination Committee. The aim was to allow stakeholders to input in the appointment process while protecting the autonomy of the Board and its members. Most respondents agreed with our preferred positions in the consultation. We have concluded that we will impose a Licence requirement on DCC to notify Ofgem of Board appointments prior to making them, and to ensure stakeholders are represented in the appointment process, which we expect to be done through participation in the Nomination Committee.

In question 9, we consulted on whether the appointment of the first Chair should follow a distinct process. We have decided that DCC will have to consult with Ofgem and have due regard to Ofgem's views in respect of the initial Chair appointment on account of the importance of the Chair's position.

Questions posed at consultation

5. Do you agree with a requirement on the Board to possess expertise in certain core areas? Do you agree with the areas we have identified? What are your views on the implementation options?
6. Do you agree with our proposal to represent consumer voice via a requirement on the appointment of a Sufficiently Independent Director with consumer advocacy experience?
7. What are your views on Ofgem's role in the Board appointment process? Do you agree with our proposal that the Authority could have a role in the appointment process of non-executive directors? Which option would provide the most appropriate and effective accountability framework, and why?

8. What are your views on the role of DCC customers and other stakeholders in the Board appointment process? Do you agree with our proposal to provide representation for DCC customers on the Nomination Committee? What should be the role of an industry representative in such an arrangement of executive members and shareholder representatives?
9. What are your views on our proposals for an additional requirement on the Chair's experience and Ofgem's role in the initial appointment of the Chair? In what other way should the appointment process for the Chair be different to that of other DCC Board members?

Background

- 3.1 The appointment process to the DCC Board is currently led by its Nomination Committee.³² The Nomination Committee is responsible for:
 - Reviewing the structure, size and composition of the Board and its committees
 - Ensuring the Board has the right balance of skills, experience, knowledge, and diversity, including gender, cognitive and personal strengths, needed to carry out its duties
 - Appointing senior management (Executive Committee) positions
 - Considering, formulating, and overseeing succession plans and pipelines in the context of DCC's strategic plans, its leadership needs, and ensuring the company's continued ability to compete effectively
- 3.2 DCC customers and consumer representatives do not currently have a route to input into the structure, governance, or appointment process of the DDC Board. Ofgem oversees DCC's compliance with the Licence and the governance and independence requirements set out in Licence Conditions 7 and 9.
- 3.3 We have assumed that the future Board will establish a nomination committee and that the nomination committee would continue to oversee, review, and recommend Board appointments. The nomination committee would be responsible for:
 - Determining the skill sets, capabilities and areas of specialism required for each Board appointment to enable the Board to deliver its strategy and business plan in line with Licence requirements

³² DCC (2023), Annual Report, p.63. www.smartdcc.co.uk/media/wk4d52yw/annual-report-2023.pdf

- Leading the process for Board appointments, including the selection and evaluation of candidates
- Determining the level of remuneration for the role
- Making recommendations to Board on appointments

Question 5 – Core areas of expertise

Consultation position

3.4 We proposed that the Licence should place an explicit requirement on the Board to always possess sufficient experience in the following core areas:

- GB energy market (supply and distribution)
- Commercial contract management
- Data and communication technology
- Consumer advocacy

3.5 To implement this, the consultation proposed two options:

- Option 1: the Licensee may be required to appoint individuals identified against each of the core areas of expertise
- Option 2: the requirement would apply to the Board as a whole

3.6 We consulted with a preference for option 2 as we considered it was more appropriate since it affords the Licensee more flexibility to construct its Board. Nonetheless, we were minded to take a different approach to consumer advocacy as a distinct area of expertise. This is addressed in question 6.

Stakeholder responses

3.7 The majority of respondents agreed with the concept having of core areas of experience, and supported option 2 (the experience requirement applying to the board as a whole).

3.8 While the majority agreed with core areas of expertise, several respondents called for changes to the identified areas:

- One respondent suggested including additional areas of risk, audit, commercial procurement, and contract management.
- One suggested that the skills requirements of the Board should be kept under review to ensure that they evolve as the DCC itself evolves and potentially changes its remit.
- One respondent suggested that commercial contract management should include experience outsourcing major technology service contracts, and an

additional area of balancing the cost, risk, and customer impact of smart operations.

- One respondent proposed that consumer advocacy should be represented in 25% of the Board.
- In contrast, two respondents disagreed with the requirement for consumer advocacy experience as DCC does not directly interface with consumers.

3.9 One respondent favoured of implementation method option 1 (requirements on individual members) as they considered that the implementation would be more practical and better aligned with the UK Corporate Governance Code.

3.10 Only one respondent disagreed with our proposal for core areas of expertise. They suggested assessing the Board's effectiveness in terms of expertise and capability, which would be carried out periodically by an appropriately experienced independent party.

Decision and rationale

3.11 **We conclude that the consulted areas of expertise, which the Board would be required to possess, are appropriate and should be implemented.**

3.12 We note the suggestion to remove the consumer advocacy area. Our position is that this requirements remains appropriate. Although DCC is not directly consumer facing, DCC charges flow to consumers who are the end-users of the smart metering services and directly affected by DCC decisions.³³

3.13 We also note the suggestions to include additional areas and recognise that DCC's role may evolve and with it the appropriate mix of skills. We consider the mandated areas reflect the core skills DCC leadership must possess to be able to deliver its Mandatory Business. Nonetheless, in addition to this baseline requirement, DCC must comply with the UK Corporate Governance Code,³⁴ which requires DCC to review the experience of the Board annually, with an independent review required every 3 years.³⁵ This provides an opportunity to identify and appoint additional members with other skills and experience. As set

³³ Ofgem (2024), Consent given by the Gas and Electricity Markets Authority (the "Authority") pursuant to Licence Condition 9 (Independence and autonomy of the Licensee) and Licence Condition 10 (Protection of Confidential Information) of the Smart Meter Communication Licence. www.ofgem.gov.uk/decision/consent-granted-dcc-under-conditions-9-and-10-smart-meter-communication-licence-and-section-m43-smart-energy-code-april-2024

³⁴ LC 9.4

³⁵ FRC (2018), UK Corporate Governance Code, provision 21. www.frc.org.uk/library/standards-codes-policy/corporate-governance/uk-corporate-governance-code/#uk-corporate-governance-code-2018-current-019ce5f2

out within our response to Q2 (Requirements on Sufficiently Independent Directors, chapter 2), we will retain the requirement on compliance with the Code in the Successor Licence.

- 3.14 Having considered stakeholders' feedback in respect of greater industry experience on the DCC Board, we have **decided to increase the requisite energy experience such that 25% of the DCC Board must have relevant GB energy industry experience.**³⁶ We have decided to amend this requirement following responses calling for greater GB energy industry experience on the Board and in recognition of the knowledge and understanding of issues that industry experience can bring while allowing the Board to retain its independence. For the avoidance of doubt, DCC would be able to meet this requirement through the appointment of any Board member, whether executive or non-executive. DCC should identify those individuals and report to Ofgem as part of the Board appointment process in line with our decision in question 7 below.
- 3.15 In respect of the requirement for GB industry experience, we would expect such persons to have at the time of their initial appointments, substantial and recent experience working at senior level in, or for, a part of the Great British Energy Industry. By GB Energy Industry we mean those entities engaged in carrying out the activities of:
- The generation, transmission, distribution, and supply of electricity
 - The storage, conveyance, shipping, and supply through pipes of natural gas
- 3.16 We have also decided to adopt the approach under **option 2, which requires the experience to be possessed by the Board as a whole.** In line with the reporting process for board appointments sets out in paragraphs 3.34-3.38 below, the Licensee will be required to notify Ofgem how an appointment or a removal of a board member will impact the Board experience. We consider that this would provide a clear method for monitoring compliance while allowing flexibility in how the Licensee structures its Board.
- 3.17 For illustrative purposes, table 3.1 below shows an example of a compliant board structure.

³⁶ Based on the size of DCC current board, this would be at least two board members.

Table 3.1: Illustration of a hypothetical board composition and the allocation of core area of experience

Role	Example of an area of expertise
Independent Chair	
Executive Director (CEO)	Commercial contract management experience
Executive Director (CTO)	Data and communication technology experience
Shareholder representative	GB energy market experience
Shareholder representative	
Sufficiently independent director	Customer advocacy experience
Sufficiently independent director	GB energy market experience
Sufficiently independent director	GB energy market experience
Sufficiently independent director	

Question 6 – Consumer representation

Consultation position

- 3.18 In our conclusion of Phase 1 of the review, we said that the future DCC Board should include consumer representation. To that end, we consulted on the following options:
- Option 1: A board member acting as a direct consumer representative
 - Option 2: A board member with consumer advocacy experience
 - Option 3: A consumer-facing objective included in DCC's Licence to guide the Board's decision-making process
- 3.19 We stated our preference was option 2, which would introduce a licence condition that the Board must always have an SID with proven consumer advocacy experience.
- 3.20 We said that a direct consumer representative (option 1), who is an employee of a consumer advocacy body, could face conflicts of interest if their mandate conflicted with their director duties under the Companies Act 2006.

Stakeholder responses

- 3.21 A majority of respondents supported option 2 (a board member with consumer advocacy experience) as they considered it important that a Board member brings experience of issues that directly impact energy consumers.
- 3.22 A couple of respondents did not favour any of the options presented. One respondent argued that consumer representation is unnecessary as industry stakeholders should represent consumers.
- 3.23 One respondent was not in favour of appointing a board member who is a consumer representative or had consumer advocacy experience (options 1 or 2) but was in favour of introducing a consumer-facing objective into the Successor Licence (option 3).

Decision and rationale

- 3.24 **We have decided to progress with option 2 requiring a board member with consumer advocacy experience.** The Licensee will be required to ensure that this person is sufficient independent.
- 3.25 While DCC is not directly consumer facing, DCC charges flow to consumers as DCC customers are allowed to recover DCC charges through the price cap (energy suppliers) or network charges (DNOs). Consumers are also the ultimate end-users of DCC's services and as such affected by DCC's decision-making.

Consumer voice should be heard alongside that of industry to ensure decision-makers are aware of the end-user impact.

- 3.26 In respect of option 3 (consumer-focused objective), we note our upcoming consultation on the future role of DCC, which will also include DCC's future objectives and operational model. We have decided to defer our decision on this point until we have considered and consulted on DCC's future objectives in the round. We will consider the feedback we have received to date.

Question 7 – Ofgem's role in the appointment process

Consultation position

- 3.27 The current Licence requires that:
- DCC must notify the Authority *within* 14 days of each appointment (or reappointment) of any SID.
 - DCC must notify the Authority within 14 when a SID is removed from office or resigns, setting out the reasons for the removal or resignation (as far as they are known to the Licensee).
 - The terms of the appointment of each SID must include a condition that requires both the Licensee and the appointee to take all appropriate steps to ensure that the appointee continues to satisfy the Independence Requirements.
- 3.28 To ensure that the Board operates within an effective accountability framework, we sought views on the role of Ofgem in the Board appointment process, setting out two options:
- Option 1 (The Authority's right of review): DCC would be required to notify Ofgem of its intended appointment within a set minimum period preceding the appointment date (14 days). This would provide time for Ofgem to consider whether to initiate a review of the appointment and, if so, assess if the appointment satisfied the relevant Licence requirements. DCC would be expected to have due regard to Ofgem's view when deciding to make the appointment.
 - Option 2 (Licensee's duty to seek Ofgem's views): DCC would be required not only to notify but also to seek the view of Ofgem before making a director appointment. For clarity, we were not proposing that Ofgem authorise the appointments themselves; the onus would remain on DCC to ensure it remained compliant with its Licence. Nonetheless, this option would create a stronger, more formal process for overseeing DCC's Board appointments.

Stakeholder responses

- 3.29 Neither option received a clear majority support from respondents, although a plurality supported option 1. Those who supported option 1 thought that it would offer a balance between regulatory oversight and operational flexibility, and that option 2 was potentially too restrictive or onerous on DCC and Ofgem. This could lead to a lengthy appointment process potentially reducing the calibre of applicants.
- 3.30 A couple of respondents did not think a change was required, with one respondent pointing out that Ofgem had stepped down from roles in the appointment of the RECCo board and the Elexon Chair. They also remarked that Ofgem’s involvement in the appointment of Board members would be inconsistent with principles-based regulation and may pose risk to Ofgem’s enforcement powers.
- 3.31 A few respondents were unclear about the rationale for the proposals and the risks they would mitigate. Nonetheless, a couple suggested that in order to provide further assurance in DCC’s governance arrangements, Ofgem should ensure the Board meet the "fit and proper" test which exists in Ofgem-issued supply licences.³⁷
- 3.32 A couple of respondents supported option 2, arguing in favour of enhanced Ofgem scrutiny of appointments and a more proactive approach.
- 3.33 A couple of respondents also suggested other powers that may be appropriate:
- One suggested that Ofgem and stakeholders have a role in removing ineffective or conflicted directors from the Board
 - Another suggested that Ofgem get a power to direct the appointment of an additional board member if a knowledge gap in the Board composition is identified

Decision

- 3.34 **Having considered stakeholder responses, we have decided to pursue option 1 (Authority’s right of review).**
- 3.35 We will amend the existing Licence requirement on DCC to notify Ofgem of the appointment, removal, or resignation of a SID to apply to *all* Board members.

³⁷ Standard conditions of electricity supply licence, SLC 4C. Accessible at: www.ofgem.gov.uk/energy-policy-and-regulation/industry-licensing/licences-and-licence-conditions

- 3.36 We will also require DCC to notify Ofgem sufficiently *ahead of* an appointment being made to allow Ofgem time to review and assess if the appointment satisfies relevant Licence requirements. As discussed in Q2 (Requirements on SIDs), this will also be the point at which DCC will be expected to explain why it considered candidates for SID roles to be 'sufficiently independent', in particular where there may be circumstances likely to impair or perceived to impair their independence. Ofgem may provide to DCC its view regarding compliance and other factors which DCC will be expected to give due regard to prior to confirming the appointment.
- 3.37 We intend to retain the current Licence requirement on DCC to notify the Authority as soon as is practical but *within* 14 days if any Sufficiently Independent Director is removed from office or resigns, setting out the reasons for the removal or the resignation (as far as they are known to the Licensee).³⁸
- 3.38 We will require DCC to ensure that the terms of appointment of non-executive directors must include the fact that they will meet the Licence requirements. For those that are independent, both DCC and the SID will be required to take all appropriate steps to ensure that the appointee continues to satisfy the independence requirements.³⁹

Rationale for our decision

- 3.39 Some respondents queried the rationale for the proposal. Ofgem's oversight of DCC's compliance with Licence conditions, including those on corporate governance, is an important means of meeting Ofgem's principal objective to protect the interests of consumers. As set out in our consultation, the requirement for DCC to notify Ofgem of appointments already exists in the Licence, but this currently happens after the fact. By bringing this obligation upfront, it will provide a more effective opportunity for Ofgem to review the appointment and provide a view for DCC Board's considerations before an appointment is confirmed. This process will also align to our decision to afford DCC more scrutiny in the appointment process of SIDs under Q2 (Requirements on Sufficiently independent Directors, chapter 2) and provide a suitable control mechanism.
- 3.40 With regards to whether to apply the 'fit and proper' requirement that exists in supplier licenses, we note stakeholder feedback in respect of a precedent which requires that all individuals with Significant Managerial Responsibility or

³⁸ LC 9.24

³⁹ LC 9.22

Influence must be fit and proper.⁴⁰ As set out in our Consumer Confidence report, we plan to expand our existing ‘fit & proper’ requirements to make sure that senior managers at energy companies are suitable.⁴¹ DCC operates at the heart of the energy industry and the decisions taken by DCC have a direct impact on consumers both through their bills and the smart metering service they receive. Therefore, we conclude that DCC’s leadership should be subject to the same suitability standards as retail and network energy companies. Work by Ofgem is already underway to review the requirements in place under SLC 4C. We will consider the outcome of any consultation when we consult on the draft Successor Licence.

- 3.41 We note the proposals that Ofgem and/or stakeholders should have a role in removing ineffective or conflicted directors from the Board, and that Ofgem should have the power of direct appointment if it identifies a gap in the Board’s skillset. We do not consider specific interventions to be necessary for the following reasons:
- DCC is and will continue to be expected to carry out an annual evaluation of the performance of the Board, its committees, the chair and individual directors.⁴² We deem that this practice is sufficient to identify any gaps in the Board’s skillset and performance which the Chair of the Board should act upon in the first instance.⁴³
 - While we would expect the Board and/or the shareholder(s) to act to remedy any failings, Ofgem already has powers of enforcement if the Board’s actions (or inaction) amount to non-compliance.
- 3.42 We agree with stakeholders that option 2 may place greater regulatory burden on both DCC and Ofgem, without significant additional benefit. Ofgem will continue to investigate any suspected non-compliance appropriately.

Question 8 – Stakeholder role in the appointment process

Consultation position

- 3.43 We consulted on the following options for stakeholder involvement in the appointment process of the Board members:

⁴⁰ Electricity and gas supply SLC 4C (Ongoing fit and proper requirement)

⁴¹ Ofgem (2024), Consumer confidence: a step up in standards.

www.ofgem.gov.uk/publications/consumer-confidence-step-standards

⁴² Under provision 21 of the UK Corporate Governance Code. Available at:

www.frc.org.uk/library/standards-codes-policy/corporate-governance/uk-corporate-governance-code/

⁴³ Ibid, provision 22

- Option 1: Stakeholder involvement through the Nomination Committee
- Option 2: Consultation with stakeholders prior to a board member appointment, allowing stakeholders to notify Ofgem of any concerns
- Option 3: A stakeholder vote to ratify the appointment of non-executive directors

3.44 Of the three options considered, we indicated our preference for option 1 (stakeholder involvement within the Nomination Committee). We posited that it would afford stakeholders direct input into the appointment process while protecting the Board's and its members' autonomy. We considered that the absence of a formal right to appeal or ratify the appointment would not prevent any stakeholder from raising concerns directly with Ofgem.

Stakeholder responses

- 3.45 A plurality of respondents supported option 1 as a way to give DCC customers a way to input into and scrutinise Board appointments. Some noted that it was particularly important in the absence of direct customer representation on the Board, although one respondent suggested that it should be skills dependent with industry role in the appointment of directors with industry experience and a Citizens' Advice involvement in the appointment of a consumer advocacy expert.
- 3.46 A few respondents suggested that industry representation in the process could be achieved through the involvement of the SEC Panel and its Chair.
- 3.47 One respondent suggested that industry participants should be encouraged to propose suitable candidates to a 'longlist' which would be considered by the Nominations Committee.
- 3.48 Option A was generally seen as more practical and easier to implement than options 2 or 3 although one respondent preferred option 3 on account of a working precedent in the RECCO model.
- 3.49 One respondent suggested an alternative model akin to the Xoserve process where various stakeholders or stakeholder groups nominate non-executive directors who are nonetheless expected to act independently.
- 3.50 One respondent thought all options were unnecessary for an independent board.

Decision

- 3.51 **We have decided to pursue option 1** and include a requirement in the Licence on DCC to ensure stakeholder representation in the process for appointing Board members.

3.52 As set out in our consultation, we expect this would happen be via the inclusion of an industry representative (eg a SEC Panel member or a Chair) on the Nomination Committee at an interview stage. We would expect the details of this process to be within the Committee’s terms of reference.

Rationale for our decision

3.53 While we have decided to maintain the prohibition on direct customer representation on the Board (as set out in our response to in Q1, DCC Board composition), a role in the appointment process would give stakeholders an opportunity to exercise scrutiny and lend additional legitimacy to the outcomes. We agree that this will be particularly valuable in the appointment of directors with industry experience, but also other core areas of expertise which we identified in our response to Q5.

Question 9 – Appointment of the DCC Chair

Consultation position

3.54 We consulted on an additional requirement for the Chair to have proven Board-level experience in an organisation of comparable size and standing as DCC.

3.55 Given the Chair's unique role, we also suggested that Ofgem should have a role in the initial appointment process. We considered the following two options:

- Option 1: Consultation with Ofgem prior to the Chair’s appointment
- Option 2: Ofgem’s representation on the Nomination Committee

3.56 Our preference was option 1. We proposed that Ofgem should be consulted on the appointment of (at least) the initial Chair, but not have a direct role in the selection process. We considered that this approach would provide additional assurance of the process without undue intervention by the regulator. We invited views on whether this process should only apply to the appointment of the initial Chair or be extended to subsequent appointments.

Stakeholder responses

3.57 Most respondents supported option 1. One respondent commented that this option would strike the right balance between regulatory oversight and operational independence. Nonetheless, views were split on whether Ofgem’s role should apply to the initial appointment or be enduring. One respondent pointed out that our proposals for requirements on the Chair to be independent without exception (Q3) and for Ofgem oversight of Board appointments (Q7) should be sufficient to safeguard subsequent Chair appointments.

- 3.58 One respondent suggested that the Chair’s experience requirement be amended to include experience of complex operations, strategic position, financial flows, and commercial management. A couple of respondents did not think there should be any additional requirements.
- 3.59 One respondent thought it might be suitable for Ofgem to have a direct power of appointment in the case of a not-for-profit DCC.
- 3.60 Respondents who supported option 2 said it would ensure that Ofgem is more actively involved in the decision-making process when finding a suitable candidate, it would be more efficient, and lead to less risk in the process where Ofgem rejects the nominated Chair.

Decision

- 3.61 **We have decided to proceed with a requirement on the Chair to have proven board-level experience in an organisation of comparable size and standing as DCC.**
- 3.62 **Regarding the role of Ofgem, we have decided to pursue option 1 and require DCC to consult with Ofgem and have due regard to Ofgem’s views in respect of the appointment of the Chair of the Board. This will apply only for the initial Chair appointment.**

Rationale for our decision

- 3.63 Given the unique role and responsibilities of the Chair it is reasonable to place a requirement to have experience of chairing an organisation of comparable size and standing. However, we do not consider it necessary to prescribe further specific requirements at this stage. Requirements for specific skills or experience should instead feature as criteria identified and applied in the selection process.
- 3.64 We remain of the view that a requirement on DCC to consult with Ofgem and have due regard to Ofgem’s view in respect of the initial Chair appointment would be sufficient to safeguard the process. This is without prejudice to Ofgem’s general powers to enforce compliance with the Licence.
- 3.65 We do not consider it necessary for Ofgem to have an involvement in subsequent appointments beyond the process outlined in our conclusion to Q7 in respect of other Board members (Ofgem’s role in the appointment process). Subsequent Chairs will be appointed by an established independent Nomination Committee of the Board with further safeguards in the form of Licence requirements on the Chair’s independence, as noted by one of the respondents, which we consider to be sufficient.

4. Incentivisation of DCC board, executive leadership, and key staff

In this chapter, we set out our decisions on the types of incentives that will ensure the right decision-making and outcomes in DCC's governance.

First, we have concluded we will implement term limits for non-executive directors. These will be set at 3 years for their initial appointment, with the possibility of two subsequent reappointments, each with a 3-year limit.

Secondly, we consulted on proposals for reputational incentives and enhanced regulatory requirements in the areas of system performance, customer engagement and contract management. We also considered possible further targeted incentives aligned to the proposed shift to an *ex-ante* cost control, such as targets around business planning and cost management. Most respondents agreed with the proposed reputational incentives. We have decided that in place of the existing OPR customer engagement incentive we will implement a new requirement on DCC to carry out, and act on the outcomes of, a customer satisfaction survey assured by an independent third party. We will also require DCC to publish its system performance on its website and to act on the findings of the annual contract management audit.

Thirdly, we consulted on whether reputational incentives should be linked to financial incentives on executive leadership and key staff. Most respondents supported this approach. We have concluded that we will introduce a targeted incentive model and require DCC to submit its remuneration policy, developed by an independent remuneration committee of the Board, to the Authority for approval. We have provided further details to seek views on what measures should be reflected in the policy in a separate consultation on the process for determination of Allowed Revenue.

Finally, we consulted on a proposal to allow stakeholders to pass a (non-binding) motion of 'no confidence' in the DCC management to enhance DCC's accountability to stakeholders. We received mixed responses to this proposal. Those who disagreed with the proposal raised implementation risks. We have decided not to proceed with this proposal; instead, we conclude that the new requirement on DCC to act on the outcomes of customer survey would be a more appropriate way to address customer feedback.

Questions posed at consultation

10. What are your views on changes to the term of appointment of non-executive directors? Do you agree with our proposals to limit the initial term of appointment for non-executive directors to 3 years, and to allow for up to two reappointments with the total term limited to a maximum of 9 years?
11. What are your views on the identified reputational incentives and associated enhanced regulatory requirements? How effective do you believe these incentives can be?
12. What are your views on direct financial incentivisation of executive leadership and key staff? What would make those incentives effective? Please consider their interlink with the reputational incentives.
13. What are your views on the proposal to grant stakeholders the power to issue a (non-binding) motion of "no confidence", its objective and requirements? If implemented, what should be the methodology for determining a qualified majority and distribution of votes among stakeholders?

Background

- 4.1 The existing regulatory model places three types of incentives on DCC and its leadership: financial (through price control and performance regimes), reputational (through performance reporting) and regulatory (through Ofgem's oversight). In our August 2023 conclusion document, we recognised that a not-for-profit model may lack incentives in respect of cost efficiency or quality of service.⁴⁴ This is due to the absence of a financial margin that can be put at risk. Therefore, additional assurances regarding incentivisation are required to complement changes to the governance.
- 4.2 Our proposals for incentives on the future DCC's Board and senior leadership operating in a not-for-profit model were:
 - Term limits for non-executive directors with the opportunity for reappointment
 - Reputational incentives
 - Financial incentives for executive leadership and key staff, which are tied to measurable outputs of reputational incentives
 - Enhanced accountability through a stakeholder power to pass a motion of "no confidence"

⁴⁴ Ofgem (2023), DCC review: Phase 1 Decision, paragraph 2.56.
www.ofgem.gov.uk/publications/dcc-review-phase-1-decision

4.3 We said that the primary objective of these proposed incentive mechanisms was to provide assurance or safeguards to complement the overall changes in the focus and governance of the organisation. We also clarified that, subject to further consultation, costs will remain subject to (upfront) approval by Ofgem with enhanced input from stakeholders.⁴⁵ We will also be consulting on a revised set of Licence objectives that will feed into the incentive mechanisms.

Table 4.1: Overview of proposed types of incentive mechanisms

Incentive type proposed	Set by	Enforced by	Aimed at	Conclusion
Term limits	Ofgem via the Licence	Ofgem	Non-executive directors	Implement – see Q10
Reputational incentives	Ofgem via the DCC customers through the SEC	Nomination Committee when deciding on reappointment of directors	Board as a whole	Implement – see Q11
Financial incentives	Remuneration Committee (based on reputational incentives)	Remuneration Committee	Executive directors & key staff	Implement – see Q12
No-confidence motion	DCC customers	Ofgem	Board as a whole	Not to implement – see Q13

Question 10 – Term limits

Consultation position

4.4 Under the current Licence, the term of service for a Sufficiently Independent Director may not be longer than six years. However, an individual may be reappointed once (and only once) if they continue to satisfy the Independence Requirements. The Licence does not limit the term of appointment of other Board members, *eg* shareholder representatives.

4.5 Our first proposal was to introduce a shorter appointment term of no more than three years. This ties in with DCC’s current practice of appointing its non-

⁴⁵ We have since published this consultation. Please see Ofgem (2024), DCC Review Phase 2: Determination of Allowed Revenue. www.ofgem.gov.uk/consultation/dcc-review-phase-2-determination-allowed-revenue

executive directors for an initial period of no longer than three years.⁴⁶ This shorter term would also bring the DCC Licence closer to industry practice (terms of one to three years are common) and the UK Corporate Governance Code, which recommends annual re-appointments of non-executive directors.⁴⁷

- 4.6 Our second proposal was to retain the option for reappointment but increase the cap to a maximum of two reappointments, each with a three-year limit. This would cap the total term of non-executive directors at nine years. This upper limit also follows the UK Corporate Governance Code recommendation and aligns with DCC's current practice.⁴⁸
- 4.7 Finally, we proposed that these rules apply to all non-executive members, not only those appointed as Sufficiently Independent Directors.

Stakeholder responses

- 4.8 A large majority of respondents supported reducing the initial term limits to 3 years and favoured limiting the total term length to no more than 9 years in total.
- 4.9 One respondent disagreed with our proposal on the initial term, explaining that in their view a 3-year appointment is too long. This respondent suggested that a robust mechanism should be implemented to ensure that mediocre performance can be quickly addressed.
- 4.10 A couple of respondents proposed a maximum term of 6 years in line with current DCC's practice for independent non-executive directors to mitigate the risk of directors losing their independence as a result of being in post too long.
- 4.11 Meanwhile, one respondent suggested that the total length of an appointment could be longer than 9 years for exceptional circumstances where it may be desirable, subject to controls such as approval by Ofgem.
- 4.12 A few respondents also suggested that board appointments should be staggered to prevent sudden changes in the Board composition and ensure retention of knowledge and experience.

⁴⁶ DCC (2023), Annual Report, p.73. "Independent Non-Executive Directors are appointed by letter of appointment for a period no longer than three years. An individual in this role can be re-appointed only once for a further period of no longer than six years."

⁴⁷ UK Corporate Governance, section 2, provision 10. www.frc.org.uk/library/standards-codes-policy/corporate-governance/uk-corporate-governance-code/

⁴⁸ Ibid.

- 4.13 One respondent answered questions 10-13 collectively and advocated for maintaining a for-profit model with financial incentives.

Decision and rationale

- 4.14 We have decided to follow our consultation proposals. **We will introduce Licence conditions permitting an initial 3-year term and a maximum total term of 9 years for all non-executive directors.** Term limits for all non-executive directors (as opposed to only SIDs) will provide a mechanism for removal of directors who may otherwise not be subject to a reappointment process, and so may have a considerable influence on the Board.
- 4.15 In relation to the feedback regarding a mechanism to address mediocre performance, our view is that this would be hard implement. It is unlikely that Ofgem or an external party would be able to identify a specific poorly performing individual as the Board acts with collective responsibility. It should be the responsibility of DCC Board and the shareholder to ensure that any poor performance is addressed in line with the company's Articles of Association. If this is not addressed and rises to the point that it causes non-compliance, Ofgem has the power to take compliance action.
- 4.16 We note the suggestion for a longer maximum term of non-executive directors subject to the Authority's approval. Nonetheless, we remain of the view that a maximum 9-year term limit is appropriate to guard against the risk of any one individual gaining too much influence in the governance.
- 4.17 We expect DCC to ensure that a substantial number of board term appointments do not end simultaneously. Staggering board appointments is a part of good governance. We consider the risk in this area is low, and imposing additional Licence conditions is unnecessary. However, we have considered this as part of a rationale to potentially enable the retention of the current SIDs on the successor board (see question 15, chapter 5).

Question 11 - Reputational incentives

Consultation position

- 4.18 We consulted on five reputational incentives that could be included within the licence. Table 4.2 below provides a summary of our proposals and decisions.

Table 4.2: Overview of reputational incentives

Incentive	Current form	Current application⁴⁹	Proposed revised form	Proposed new obligation	Change from consultation
OPR System performance	Reporting by DCC against set SEC-based targets	60% of DCC's Baseline Margin at risk against a subset of agreed metrics	Continued reporting	Performance against targets must be published and kept up to date on DCC's website in an intelligible language and accessible format.	None – to be implemented in line with consultation proposal
OPR Customer engagement	Ofgem-determined score based on a qualitative assessment of DCC's performance by both DCC and SEC Panel	15% of DCC's Baseline Margin at risk against the customer engagement score	Option 1 = continued annual self-assessment and scoring by customers Option 2 = reformed into a broader customer satisfaction survey	Obligation to act upon the feedback received through either existing assessment (Option 1) or a new customer satisfaction survey (Option 2) Under Option 2, obligation to commission the customer satisfaction report in set periods	Option 2 (customer satisfaction survey) to be implemented Survey to be carried out at least once in a 2-year period Survey to be assured by a competent, independent third party Obligation on DCC to act upon the feedback received; for serious failings, submission of a rectification plan to Ofgem

⁴⁹ as of March 2024

Decision –DCC Review Phase 2: Governance arrangements - conclusions

OPR Contract management	Ofgem-determined scope based on the score awarded by an independent auditor operating under a modified NAO framework	25% of DCC's Baseline Margin at risk against the contract management score	Continued annual auditing	Obligation to act on the recommendations of the annual independent audit with oversight from Ofgem	None – to be implemented in line with consultation proposal
Business Planning	N/A	N/A	Ofgem-published view of DCC's Business Plan against Licence requirements and quality measures set out in a guidance document	(subject to further consultation on changes to the Price Control) Obligation to produce a Business Plan as part of an ex-ante cost control submission	None – to be implemented in line with consultation proposal
Cost management	N/A	N/A	Quarterly report tracking DCC's spend against approved forecast	(subject to further consultation on changes to Price Control) Obligation to report on cost management and maintain a public account of operating within business plan forecasts (subject to necessary redactions to protect commercial confidentiality where relevant)	None – to be implemented in line with consultation proposal

Stakeholder responses

4.19 Respondents generally supported our proposals. A number of stakeholders notes that reputational incentives may have a limited impact on a monopoly and/or a not-for-profit organisation. One stakeholder noted that financial penalties in not-for-profit model would in effect be circular. However, there was acknowledgement that linking reputational incentives to senior management remuneration could make them more impactful.

Operational Performance Regime (OPR) System performance and contract management

4.20 All respondents agreed with the retention of these metrics with the following comments on possible changes:

- One respondent said that if there was a call to amend a service provider contract, then time and budget should be allowed for DCC to negotiate a change to the relevant contract. There would also need to be a baselining period for any new areas to be incentivised before targets can be set.
- One respondent suggested incentives related to assessing and implementing change.
- One respondent suggested metrics for CSP WAN coverage experienced during the installation of smart meters and DCC Communication Hubs, eg metrics that:
 - monitor and compare No WAN installation outcomes by CSP region
 - focus on PAYG-related services could highlight factors for consideration by the DCC2 Board
- One respondent suggested speeding up the production of reports and producing CSP reports by region

4.21 A couple of respondents highlighted the need for alignment of incentives to end-consumer experience.

Business planning and cost management incentives

4.22 A plurality of respondents agreed with this incentive. Those who agreed supported our view that business planning and prudent cost management will be important areas for DCC2. One stakeholder specifically raised that DCC's 5-year Development Plan should be costed.

4.23 A couple of respondents noted that the design of these incentives would depend on proposals in the future cost control model.

- 4.24 One respondent did not see the need to introduce a specific business planning or cost management incentive, given Ofgem is proposing an *ex-ante* price control process. They argued that a transparent process and guidance from Ofgem will ensure that the DCC’s business plans are effective and that their costs are managed effectively. They disagreed with the proposal for additional quarterly financial reporting to Ofgem as this would create a regulatory burden for both DCC and Ofgem, especially if DCC continues to be required to publish indicative charging statements and 3-year budgets every three months. They suggested that any financial reporting should be against the *ex-ante* price control submission and on an annual (or maximum 6 monthly) cycle.

Customer engagement

- 4.25 Most respondents supported option 2 which would reform the OPR customer engagement to a customer satisfaction survey assured by an independent expert.
- 4.26 While DCC also supported this option, DCC suggested reconsidering how DCC will be “obliged to act on feedback received.” In DCC’s view, the current OPR approach of surveying customers annually is not frequent enough for DCC to respond promptly or understand whether improvements are having the desired impact. DCC recommended that surveying is undertaken quarterly or at least bi-annually to enable closer monitoring of customer sentiment. This view was supported by two other respondents who thought that a survey could be carried out more frequently than annually.
- 4.27 DCC suggested that it could develop its Customer Experience platform (currently Qualtrics) to incorporate the Customer Satisfaction (C-SAT) functionality. They argued this could save research and design costs. However, they preferred a survey carried out by an independent third party on account of impartiality and expertise.
- 4.28 One respondent commented that DCC should be required to demonstrate that it has acted upon the issues arising from the survey results with a clear rectification plan that is approved and monitored by Ofgem.
- 4.29 One respondent advocated for option 2 but suggested the two options were potentially complementary rather than mutually exclusive.
- 4.30 One respondent suggested that a survey should not be limited to funding parties, as others in the supply chain depend on DCC services and might be adversely impacted by mediocre performance.

Decision and rationale

OPR System performance and contract management

- 4.31 Noting stakeholder support for continued incentivisation of system performance, we have concluded **we will maintain the existing reporting obligations**. Additionally, **we will proceed with our proposal to require DCC to regularly publish key performance indicators in a prominent position on its website in accessible and simple language**. We expect these to reflect up to date OPR system performance metrics. However, we may engage further with DCC and industry to identify whether other SEC measures more accurately capture DCC's performance in areas which are important to customers and consumers.
- 4.32 We recognise stakeholder feedback in relation to amendments or update of system performance metrics. We are at present not planning to carry out a wider review of the SEC performance metrics but support DCC and industry in working together to ensure SEC SLAs and metrics remain relevant and reflective of customer expectations. We note the recent successful implementation of MP242 in this area.⁵⁰
- 4.33 In relation to incentive for assessing and implementing change, we note that this area is already incentivised under the contract management element of OPR, specifically, sub-question 6.3.6⁵¹ of the modified NAO framework used by the independent auditor. Additionally, as set out in paragraph 4.38 below, we would expect change delivery to be part of a newly constituted customer satisfaction survey.
- 4.34 Noting a broad support among respondents, we will maintain the existing form of the **contract management audit, carried out annually by an independent third-party auditor**. DCC is already expected to reflect the auditor's findings in its procurement and contract management approach and processes. However, to ensure a clear link to Licence obligations, **we will introduce a formal obligation in this respect**. The outcomes of good

⁵⁰ MP242 'Change to Operational Metrics to Measure on Success'.

<https://smartenergycodecompany.co.uk/modifications/change-to-operational-metrics-to-measure-on-success/>

⁵¹ Contract management incentive, modified NAO framework, sub-question 6.3.6: "Does DCC's contract management of service providers facilitate delivery of SEC Modification-driven change to meet the requirements and timelines agreed with customers as part of the SEC Modification process?" See Ofgem (2024), Revised OPR Guidance decision March 2024, paragraph 5.11. Accessible at: www.ofgem.gov.uk/publications/revised-opr-guidance-decision-march-2024

contract management should be reflected in DCC’s delivery to its Business Plan and, therefore, form part of the proposed cost management incentive.

Business planning and cost management incentives

4.35 **We have decided to take forward proposals for incentives linked to DCC’s production of, and delivery to, a business plan.** This is part of the shift towards an *ex-ante* (“upfront”) form of cost control being consulted on. The Determination of Allowed Revenue consultation outlines detailed proposal at Chapter 4. However, for an *ex-ante* cost control process to be effective, both of the following must be true:

- The business plan must be of good quality allowing customers to engage with it, provide feedback and challenge, and for Ofgem to approve it. This will ensure confidence in the baseline level of costs approved for the cost control period.
- DCC must be able to deliver to the approved business plan. In particular, DCC must be able to manage its costs and operate within the approved Allowed Revenue (subject to application of uncertainty mechanisms where external circumstances or assumptions change for legitimate reasons).

4.36 DCC should therefore be incentivised on both counts through:

- **A business planning incentive**, based on Ofgem’s assessment of the quality of DCC’s business plan against a published business planning guidance. We expect this incentive to take effect from the Successor Licensee’s first business plan submission.
- **A cost management incentive** which will require DCC to report on its spending against the approved business plan on a quarterly basis. We do not agree that financial reporting against the forecast Allowed Revenue approved under a business plan would be unduly burdensome:
 - We are already proposing to assess financial management under reopener applications in the *ex-ante* cost control. We are proposing that DCC will be required explain as part an application how it has managed its contingent surplus and the circumstances, including any mitigating actions, which led to the use of the contingency.⁵²
 - For clarity, we would not expect DCC to publish revisions of indicative charging statements or 3-year budgets every three months. Rather, the report should provide a view of DCC’s spending in the quarter and a

⁵² DCC Review Phase 2: Determination of Allowed Revenue, chapter 3, section C (Contingency). www.ofgem.gov.uk/consultation/dcc-review-phase-2-determination-allowed-revenue.

comparison against the approved business plan to indicate where underspend/overspend may be realising. If DCC identifies a risk of overspend, it should proactively engage customers on the associated trade-offs (for example, descope or delaying an activity vs applying for additional funding). We note that this will also align to DCC's existing quarterly finance forums where DCC already communicates its budgets and charges to customers.

- 4.37 We have provided further details, including on the timeline for implementation of these incentives, within chapter 4 of our consultation on the Determination of Allowed Revenue.⁵³

Customer satisfaction survey

- 4.38 **We have decided to proceed with option 2 and reform the existing customer engagement incentive into a broader customer satisfaction survey to be carried out at least once every two regulatory years with assurance from an independent third party.** Whereas the existing incentive focuses on how DCC has taken account of its customers views, a customer satisfaction survey will go further to:

- Give a more holistic view of customer experience of DCC service
- Provide customers a formal way of communicating their views to DCC
- Help DCC identify issues and priorities

- 4.39 The survey should be assured by an independent, competent third party to maximise objectivity. We may provide further guidance on the process and scope of the survey alongside the Successor Licence. However, we would expect the survey to cover at minimum the following areas:

- Quality of service received, including security, reliability and network management
- Agility and responsiveness, including ability to effectively and timely resolve issues and deliver change
- Communication and customer engagement, including existing measures to gauge timing and frequency of engagement, quality of information provided by DCC and taking account of customer views
- Transparency and cost management

⁵³ Ofgem (2024), DCC Review Phase 2: Determination of Allowed Revenue.
www.ofgem.gov.uk/consultation/dcc-review-phase-2-determination-allowed-revenue

- 4.40 We consider that annual self-assessment scored by DCC customers in addition to the customer satisfaction survey would place unnecessary additional resource and cost burden on DCC, DCC customers and Ofgem. We also consider it unnecessary to carry out the customer satisfaction survey more frequently as there would be insufficient time for DCC to reflect on the results and for changes to be embedded. It is also important to note that the survey is not intended to replace DCC's customer engagement through other forums. In addition, as will be outlined in our price control consultation, we will expect DCC to engage with customers on its costed business plan. This will provide further opportunity for customers to input into and shape DCC's operations and for DCC to seek its customers' views.
- 4.41 We agree that while DCC's in-house functionality could save research design costs, this approach would still require some resources and would not deliver the same level of independence as an externally run survey.
- 4.42 As we have decided not to take forward our proposal for a 'no confidence' motion (see Q13, paragraphs 4.611-4.74 below), the survey will also become an important vehicle by which DCC customers can voice their views. To ensure that the survey results lead to a meaningful change, we have further **concluded that we will place a Licence obligation on DCC to demonstrate to Ofgem that it has acted upon the issues arising from the survey results within a reasonable timeframe. Where serious failings are revealed through the survey, DCC will be required to prepare and submit to Ofgem a rectification plan**, which Ofgem may then approve or direct changes to. We would expect the first customer satisfaction survey to be run within the second regulatory year of the Successor Licence. We will consider further details of the process as part of our development of the conditions of the Successor Licence and any accompanying guidance documents.

Question 12 – Linking reputational incentives to financial incentives

Consultation position

- 4.43 Financial incentives can still play an essential role in the new regulatory regime, even if (at minimum) Core Mandatory Business will be operated on a not-for-profit basis. Instead of focusing on the profit margin, the financial incentivisation can be tailored towards senior management and key staff through DCC's remuneration policy.

- 4.44 A key principle of executive remuneration is alignment with the company purpose and values, with a clear link to the successful delivery of long-term strategy. Under not-for-profit arrangements, DCC’s leadership should focus primarily on delivering to Licence objectives and against key performance measures. To create a strong link between these, we have considered tying measurable outcomes of the reputational and regulatory incentives from question 12 above to the remuneration of key personnel.
- 4.45 DCC’s Board Remuneration Committee currently decide the remuneration policy and principles, incentive design and target setting, and executive and senior remuneration.
- 4.46 We proposed to introduce the following requirements through new Licence conditions (or Articles of Association):
- The Remuneration Committee must be fully independent, *ie* comprising only Sufficiently Independent Directors
 - Remuneration Committee must have due regard to DCC’s performance against its reputation incentives when setting remuneration principles, targets, and policies for executive directors and other key staff. Key staff should include senior leads responsible for the delivery of main programmes or managing major contracts.
- 4.47 We consulted on how prescriptive we should be in these requirements.

Stakeholder responses

- 4.48 Most respondents supported our proposal to introduce a target incentive model that links remuneration of senior management and key staff with measurable outputs of reputational incentives. Most stakeholders also agreed that the remuneration should be set by an independent remuneration committee and that Ofgem should not be prescriptive in its approach. Stakeholder suggested the following metrics for consideration:
- OPR targets
 - Customer satisfaction survey scores
 - Compliance to the Licence
- 4.49 One respondent did not support linking management incentives, specifically cost reduction, in case it creates perverse incentives to inflate initial budgets. They also noted that continued focus on cost savings would be unsustainable in the long term and detrimental to DCC’s future performance. They suggested salaries and bonuses should come from DCC’s core funding.

- 4.50 A couple of respondents, including DCC, recommended that remuneration should be set against both individual and organisational objectives. DCC noted that its remuneration policy follows this practice.
- 4.51 One respondent suggested that the role of the remuneration committee should include evaluating the requirements of the reputational incentives, and in determining any other performance metrics it considers senior management and key staff should deliver.
- 4.52 Another respondent suggested Ofgem adopt a similar approach to its recommendation for the National Energy System Operator (NESO). The NESO licence requires the licensee to submit its remuneration policy for approval to the Authority. The Remuneration Policy must include the principles and methodologies for awarding performance related remuneration, such as how Ofgem’s assessment of the licensee’s performance impacts on level of remuneration.⁵⁴

Decision

- 4.53 **We will proceed with implementation of a targeted incentive model for remuneration of DCC’s executives and staff.**
- 4.54 We agree that it would not be appropriate for Ofgem to set DCC’s remuneration policy and that an overly prescriptive approach may unintentionally introduce perverse incentives. Instead, **we will require DCC to submit its remuneration policy for approval to Ofgem in a manner similar to the process set out in the NESO licence.**^{55,56} **We will also require that the policy be developed a remuneration committee of the Board which comprises only of non-executive directors that are considered sufficiently independent.**
- 4.55 On receipt of DCC’s submitted remuneration policy, Ofgem would:
- Approve the remuneration policy (or any revised version) and notify the licensee of such approval; or
 - Direct the licensee that the remuneration policy requires further development and the date by which the Licensee is required to submit any subsequent revisions to the Authority for approval; or

⁵⁴ Electricity System Operator: Direction and Licence Terms and Conditions, Condition F7. Available at: www.ofgem.gov.uk/energy-policy-and-regulation/industry-licensing/licences-and-licence-conditions

⁵⁵ Ibid.

⁵⁶ Decision on NESO’s performance incentives framework for BP3. www.ofgem.gov.uk/decision/decision-nesos-performance-incentives-framework-bp3

- Following a consultation with the Licensee, direct specific changes to the remuneration policy.
- 4.56 We would expect that following the Authority’s approval DCC will be required to:
- Always comply with the Remuneration Policy
 - Publish the Remuneration Policy on its website as soon as reasonably practicable after the Authority's approval,
 - Review the policy at least every twelve months and revise it as necessary, and
 - Submit any revisions to the Authority, which will only become effective once the Authority has approved them.
- 4.57 We will consider Condition F7 of the NESO licence in developing the detailed requirements to be introduced in the Successor DCC Licence.⁵⁷
- 4.58 As set out above, the Remuneration Committee will be responsible for designing the policy, including link to specific reputational incentives and organisation-wide and individual objectives. **We have set out in our consultation on the process for determination of Allowed Revenue a set of proposed measures which could be subject to the target financial incentive model.**⁵⁸ Based on the outcome of that consultation, we will consider whether to introduce guidance for the committee to set out our expectations for the first version of the policy.

Rationale for our decision

- 4.59 We consider it is sufficient and appropriate for the Remuneration Committee to develop the policy, as long as Ofgem has the ability to intervene where the policy does not meet licence requirements or where the policy is at odds with performance metrics or wider Licence compliance. Most respondents likewise supported our proposal for a non-prescriptive implementation approach.
- 4.60 Allowing DCC to set its own remuneration policy recognises the importance of DCC’s ability to attract and retain staff. We are also mindful of the risk of potential perverse incentives in a rigid, prescriptive model.

⁵⁷ Electricity System Operator: Direction and Licence Terms and Conditions, Condition F7. Available at: www.ofgem.gov.uk/energy-policy-and-regulation/industry-licensing/licences-and-licence-conditions

⁵⁸ Ofgem (2024), DCC Review Phase 2: Determination of Allowed Revenue. See Chapter 4, Section C, paragraphs 4.41-4.47 and table 4.1. www.ofgem.gov.uk/consultation/dcc-review-phase-2-determination-allowed-revenue

Question 13 – “No confidence” motion

Consultation position

- 4.61 We sought views on whether DCC customers should have the power to issue a (non-binding) “no confidence” motion in DCC’s board as a way of voicing significant dissatisfaction with the company’s performance. We considered that if such a motion was passed, DCC would be required to, at minimum:
- Within a set time limit, produce a rectification plan addressing the individual issue and the proposed resolution,
 - Submit the rectification plan to parties and the Authority and report on progress towards resolution of individual issues.
- 4.62 We only proposed this mechanism if the decision on the Board composition did not include any direct industry representatives.
- 4.63 We also presented four different options for the allocation of votes among DCC customers to administer the vote.

Stakeholder responses

- 4.64 Responses were split on this proposal with equal support and not supporting it. A number of stakeholders were concerned about the implementation of the mechanism and its consequences.
- 4.65 One respondent who was strongly opposed suggested alternative routes for enhancing DCC accountability without implementing this option:
- The *ex-ante* price control submission which would involve customer consultation and engagement,
 - The SEC Panel and its associated governance groups,
 - The proposed customer satisfaction survey and the requirement for DCC to respond annually in writing to stakeholders (and Ofgem) on the survey's outcomes and how it will address them.
- 4.66 A few responses likewise considered that our proposal for customer satisfaction survey could serve the same purpose as this proposal.
- 4.67 One respondent suggested that the design of what they considered a ‘nuclear option’ would be very difficult. They suggested instead an appeals process combined with the inclusion of a more agile approach to the board structures.
- 4.68 One respondent noted that it was not clear that a mechanism for a non-binding motion of “no confidence” was necessary or proportionate.

- 4.69 One respondent neither agreed nor disagreed with the proposal but suggested that a mechanism allowing stakeholders to feed into the Board appointment process would suffice.
- 4.70 For the allocation of votes, there was a majority response that option 1 (a single vote for each DCC customer with a minimum threshold for either network usage or funding) should be implemented. A few respondents favoured this option on account of simplicity of implementation.

Decision and rationale

- 4.71 Having carefully considered stakeholder feedback, **we have decided not to implement this proposal.**
- 4.72 Respondents raised concerns about this proposal's necessity, implementation, and effectiveness. We reconsidered the proposal and focused instead on what it aimed to achieve. The two aims of this proposal were:
- Create a direct accountability link between DCC and its customers and provide a way for stakeholders to clearly communicate specific issues causing serious dissatisfaction
 - Allow for intervention in issues which are of significant concern but may not meet the threshold for regulatory action.
- 4.73 We consider that the first aim can be met through a combination of the following:
- The introduction of the customer satisfaction (see Q11)
 - The requirement of additional industry experience on the Board (see Q5)
 - The introduction of a customer challenge group to input into DCC's business planning (subject to our consultation on the Determination of Allowed Revenue⁵⁹)
- 4.74 Meanwhile, the second aim can be satisfied via SEC-based processes, and a requirement on DCC (to be introduced through the Successor Licence) to produce a remediation plan in case of significant failings revealed through the customer satisfaction survey (see Q11).

⁵⁹ Ofgem (2024), DCC Review Phase 2: Determination of Allowed Revenue, chapter 5. www.ofgem.gov.uk/consultation/dcc-review-phase-2-determination-allowed-revenue

5. Interim changes to governance

Section summary

We have confirmed that the current DCC Licence term will be extended by 24 months from September 2025 until September 2027 ('licence extension period').

In the consultation, we suggested that interim changes during the Licence extension period could be implemented without Licence modifications. As such, we proposed to work with DCC to appoint an independent successor Chair of the Board (subject to the current Chair's term of appointment), ensure the transitional Board has a member with consumer advocacy experience, and improve DCC's stakeholder engagement. We also proposed the establishment of a suitable forum to oversee the business handover to the Successor Licensee and considered whether an Ofgem representative should attend in an observer capacity. Most stakeholders agreed with the proposed interim changes. We will ask DCC to implement these, including through its Business Handover Plan.

Finally, we consulted on the possible retention of the current Sufficiently Independent Directors (SIDs) on the successor Board to ensure continuity and corporate knowledge. Most stakeholders supported this proposal. We aim to enable the transfer of SIDs to DCC2's Board, subject to the Successor Licensee's approval and the SIDs' willingness to transfer.

Questions posed at consultation

14. Do you agree with the identified priority areas of interim changes? Are there other governance changes that should be implemented in the Licence extension period?
15. What are your views on the possible retention of current Sufficiently Independent Directors on the Board of DCC2? What provisions may need to apply to facilitate this?

Background

- 5.1 In September 2024, we published our decision to extend the term of the DCC Licence for a period of 24 months until September 2027.⁶⁰
- 5.2 In our phase 1 conclusions, we set out that as part of any extension we would expect DCC to bring in changes to the governance arrangements where benefits can be realised early. We consulted on a set of changes which we considered would not require licence changes.

⁶⁰ Ofgem (2024), Decision on the continuation of the Smart Meter Communication Licence [...]. www.ofgem.gov.uk/decision/decision-continuation-smart-meter-communication-licence-and-rate-shared-service-charge-and-baseline-margin

Question 14 – Priority areas of interim changes

Consultation position

- 5.3 We proposed implementing the following changes in the remaining Licence term and any extension period:
- Appointment of a SID as the Chair of DCC1 Board (subject to the expiry of the current Chair's term)
 - Appointment of a SID with consumer advocacy experience – we said we were minded-to give DCC discretion on whether this appointment should be made as part of, or in addition to, its planned timeline for (re)appointment of non-executive Board members
 - Enhanced stakeholder engagement with DCC Board – improve transparency and the Board's understanding of its customers' views and priorities
 - Ofgem's role in the oversight of Business Handover – we considered whether Ofgem could have an observer role on a Joint Handover Steering Group, a forum created for oversight of the Business Handover Plan implementation.

Stakeholder responses

- 5.4 A majority of respondents agreed with our consultation positions.
- 5.5 One respondent disagreed with the inclusion of a consumer advocacy expert on the Board, noting it did not see the value of a consumer advocate on the Board. Instead, they stated that DCC should appoint an energy-sector, non-executive director during the handover to mitigate the risk of degradation of energy services.
- 5.6 Regarding increased stakeholder engagement, a number of parties welcomed potential improvements:
- One respondent suggested that the proposed customer satisfaction survey could be trialled in the extension period. They considered this would also provide an appropriate mechanism for ensuring customers' voices were heard.
 - DCC suggested quarterly bilateral meetings between the SEC Panel Chair and DCC Chair, and regular stakeholder feedback/engagement items on the Board agenda.
- 5.7 One respondent advocated for the implementation of regular independent audits and reviews of the DCC's operations and governance practices to bolster stakeholder confidence in DCC's operations.

- 5.8 Several stakeholders agreed that Ofgem should have an oversight of the Business Handover activities, although one respondent said an observer role on could pose the risk of fettering Ofgem’s discretion in relation to determinations of any board on which Ofgem was present.

Decision and rationale

- 5.9 **We expect to continue to work with DCC to implement the key changes that were identified in the consultation.**
- 5.10 We welcome suggestions from DCC to increase Board engagement through quarterly meetings with the SEC Panel chair and regular feedback/engagement with items on the Board's agenda.
- 5.11 In respect of introducing a customer satisfaction survey during the Licence extension period, we do not intend to impose additional OPR requirements on DCC at this time. However, if DCC and its customers can agree on improvements to customer engagement approaches, including the introduction of a customer satisfaction survey, DCC can work towards its implementation during the Licence extension. We would note that DCC must demonstrate as part of the annual price control that any associated costs have been incurred economically and efficiently and that it has sought and considered customers’ views.⁶¹
- 5.12 We note the suggestion to appoint an independent energy sector NED Board member for the transition period. While we understand the rationale for this suggestion, we do not consider it to be necessary. As set out in our consultation, we will require DCC to set up a Joint Handover Steering Group, chaired by an independent third party, to provide assurance of the transition, including monitoring and mitigating operational risks. Details of the JHSG, its membership, terms of reference and role will be detailed in DCC’s Business Handover Plan, subject to Ofgem’s approval.

Question 15 – Enabling retention of current SIDs on the new Board

Consultation position

- 5.13 We consulted on whether current SIDs on the DCC Board could be retained by the Successor Licensee where their terms extend beyond the Licence expiry date. This would include any new members appointed during the Licence

⁶¹ Ofgem (2022), DCC Price Control Guidance: Processes and Procedures.
www.ofgem.gov.uk/publications/dcc-price-control-guidance-processes-and-procedures-2022

extension, such as a consumer advocacy specialist. The rationale was to provide continuity of expertise at the Board level and to stagger future appointment of SIDs (such that their terms do not simultaneously expire). The proposal would be subject to an agreement with the Successor Licensee.

- 5.14 We did not outline a preferred position but sought views, including on whether specific licence provisions would be needed to retain members.

Stakeholder responses

- 5.15 Most respondents supported the proposal to retain SIDs. Those in favour mentioned that retention of SIDs would help ensure continuity and stability of the organisation, and support the retention of key skills, experience, knowledge, and corporate memory. Equally, however, a couple of respondents said that controls should be in place to ensure any transferring SIDs were truly independent.
- 5.16 One respondent pointed out that support of the Successor Licensee as well as the individual Directors would be needed (outgoing SIDs would have to agree to take on a directorship on the DCC2 Board). This respondent suggested an explicit requirement should be included in the tender process and, if practical, in the Successor Licence to facilitate the process.
- 5.17 One respondent suggested that there should be an opportunity to evaluate the SIDs' role, including an assessment of how their contribution is, and continues to be, important to DCC's long-term sustainable success.
- 5.18 One respondent suggested there should be an option and process for SEC Parties to have a right to object if there are material concerns over the extension of a particular SID's term.
- 5.19 One respondent disagreed with the proposal. They raised concerns about the transition and the fact there may be procedural matters for the current Licensee after the transfer that would require the SIDs' experience. They instead highlighted the need for the transfer of staff. However, this respondent did agree that there should be no restriction on the individuals applying for positions on the new DCC Board.

Decision and rationale

- 5.20 We have concluded that it would be appropriate to **allow the retention of current Sufficiently Independent Directors on the board of the Successor Licensee, subject to the individual SIDs' willingness to**

continue their term, the Successor Licensee’s agreement and a compliant appointment process.

- 5.21 We do not consider it necessary to include an explicit requirement in the selection process of the Successor Licensee for transfer of SIDs. However, we intend to discuss the possibility of transferring SIDs with the Successor in the process leading up to its appointment and further consider the most appropriate method to facilitate a possible transfer.
- 5.22 We currently envisage that, with the agreement of the Successor Licensee, DCC1 SIDs would be capable of automatic nomination for positions on the successor Board. The Nomination Committee would review and consider these appointments, including assessing whether each nominee continues to meet independence and any other relevant suitability requirements.
- 5.23 The Successor Licensee will be responsible for identifying people for these positions and establishing the new Nomination Committee during the handover period. We would expect the initial Nomination Committee would consist of the independent Chair of DCC2s Board, a DCC2 shareholder representative and a customer representative (in line with our conclusion to Q8), before other independent members are appointed.
- 5.24 We intend to also further consider whether a Licence condition may be required such that the start date of the term of appointment of any transferring SIDs is that of their original appointment on the board of DCC1. This would help ensure that not all terms expire at the same time.
- 5.25 We have carefully considered stakeholder responses and have decided that a report on the SIDs’ contribution would not be required at this time. The Successor Licensee will be bound by the conditions of its Licence, including those on the composition of the Board, the skills requirements and the independence requirements on individual SIDs. The Licensee will be responsible for ensuring its compliance with the Licence and as such should carry out own assessment of the SIDs’ contributions.⁶²
- 5.26 Equally, we do not consider that a bespoke process for SEC Parties to reject an appointment is required. As per our conclusion under Q8, DCC will be required to ensure customer representation in the appointment process; as we said, we would expect this representation through the Nomination Committee.

⁶² DCC currently sets out its evaluation of the Board performance in its Annual report. The latest can be accessed here at: www.smartdcc.co.uk/media/uvnncry/dcc-annual-report-2024.pdf

- 5.27 We agree that should TUPE⁶³ apply, then transfer of in-scope employees would be expected to protect business continuity and expertise. We have required DCC to outline in its Business Handover Plan the plans and timeframe for employee transfer in compliance with TUPE regulations, should they apply.
- 5.28 Please note, in addition to these governance-related proposals, we are separately consulting on a transition to an *ex-ante* form of cost control with proposed requirements on DCC1 to submit to us a costed business plan for period April 2026-March 2028.⁶⁴ Since our publication of this governance consultation, we have also decided to change the rate of DCC’s Baseline Margin and the Shared Service Charge.⁶⁵

⁶³ Transfer of Undertakings (Protection of Employment) Regulations

⁶⁴ For details on this proposal, please see Ofgem (2024), DCC Review Phase 2: Determination of Allowed Revenue. www.ofgem.gov.uk/consultation/dcc-review-phase-2-determination-allowed-revenue

⁶⁵ Please see, Ofgem (2024), Decision on [...] the rate of Shared Service Charge and Baseline Margin, chapter 3. www.ofgem.gov.uk/decision/decision-continuation-smart-meter-communication-licence-and-rate-shared-service-charge-and-baseline-margin
