

Jakub Komarek
DCC Oversight and Regulatory Review
Office of Gas and Electricity Markets
10 South Colonnade
Canary Wharf
London
E14 4PU

Electricity North West
Hartington Road, Preston,
Lancashire, PR1 8AF

Email: enquiries@enwl.co.uk
Web: www.enwl.co.uk
Direct line: 07879 115204
Email: paul.auckland@enwl.co.uk

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Dear Jakub,

Consultation on DCC Review phase 2: Governance and Centralised Registration Service arrangements

Thank you for the opportunity to respond to this consultation.

ENWL are pleased to see the proposed developments in the regulatory regime for DCC, broadly agree with Ofgem's preferred options and have made suggestions for consideration in some areas.

The challenge for DCC (under existing and proposed licences) is to continue improving the service so that it's stable, efficient and effectively servicing the interests of its customers, stakeholders and ultimately the consumer.

We agree with Ofgem that proposals should include greater transparency, performance and improvement incentives and significantly better opportunities for the stakeholders' voice to be heard and indeed for it to inform performance assessments. And we agree that Board decision-making should be informed by both adequate industry expertise and an independent perspective.

Transferring the Centralised Registration Service should allow DCC to focus on its core activity.

Appendix 1 provides our detailed responses to each of the consultation questions.

I hope these comments are helpful. Please do not hesitate to contact me or Mark Bellman (07385 009419) if you would like to follow up on any particular aspect of our response.

Yours sincerely,



pp. Paul Auckland
Head of Economic Regulation



Appendix 1 – ENWL detailed responses to each of the consultation questions

The following table includes our views on the consultation:

Ref.	Question	Response
Section 2. DCC Board composition		
1	<p>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.</p>	<p><i>ENWL agree with Ofgem’s proposed Option 4.</i></p> <p><i>As part of that model, Ofgem do not specify what directors would make up the minority. ENWL infer from the consultation paper that these would comprise some combination (determined by the Board) of DCC executive directors, shareholder nominee directors and stakeholder representative directors.</i></p> <p><i>ENWL believe that industry parties play a critical role in governance of industry bodies, helping to maintain focus on what’s important to new and existing industry parties. They do this by advising on stakeholders’ wider compliance obligations, including duties to the consumer and by providing expert insight into the market, participants, developments and processes. For this reason we are generally supportive of industry involvement in industry bodies.</i></p> <p><i>There are several different ways to bring this insight to the Board. For example</i></p> <ul style="list-style-type: none"> <i>⇒ both Elexon Ltd and SECCo Ltd Chairs are also chair of their respective Panels, bringing insight of industry developments to Board discussions.</i> <i>⇒ The Boards of SECCo Ltd and DCUSA Ltd are made up of industry representatives who also attend their respective Panels.</i> <i>⇒ The Retail Energy Code Company Ltd and Elexon Ltd Boards comprise 6 and 5 NEDs respectively, of whom three have worked in the energy industry, giving some degree of insight into the industry’s challenges and opportunities.</i> <p><i>ENWL agree with Ofgem’s reference in 2.11 “A stakeholder-controlled board may also be more likely to improve transparency in decision-making, including around the procurement and management of key contracts, and afford industry, through their representatives, more control over expenditure.”. ENWL believe such transparency should be an important outcome from any new governance arrangements.</i></p>

		<p><i>We agree on the potential for a conflict of interest but suggest that, where relevant, Board NEDs who work for industry parties could obtain consents from their employer, allowing them to comply with their fiduciary duties to DCC's Members. This is not unusual for Nominee Non-Executive Directors. And in any case, ENWL believe that DCC's interest in complying with its licence to provide a service to the industry will align to a large extent with the interests of the industry.</i></p> <p><i>A further point to consider, alongside Board composition, is whether to explicitly prohibit or otherwise limit diversification outside or within the industry, unless approved by Ofgem.</i></p>
2	<p>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?</p>	<p><i>ENWL agree with the proposed Licence requirements on SIDs.</i></p> <p><i>Independent directors are a key governance protection and ENWL would not be in favour of relaxing the criteria.</i></p> <p><i>If the Board consider an appropriate candidate does not meet the SID criteria it should apply to Ofgem for a derogation and make its case.</i></p>
3	<p>Do you agree with our proposal that the Chair of the future DCC board should meet the requirements on 'Sufficiently Independent Directors' without exception?</p>	<p><i>No Response</i></p>
4	<p>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?</p>	<p><i>ENWL are not in favour of leaving the number of Board members unrestricted, while acknowledging the need to ensure sufficient numbers to provide effective management of the Company. The present proposal would mean that DCC could determine the size of the Board without limit which seems contrary to the principle of efficiency in the control of the cost burden on parties and ultimately the consumer.</i></p> <p><i>While faced with a need for additional expertise the Board would reasonably be expected to vote for additional members with appropriate expertise. But there seems little incentive otherwise for the Board to <u>reduce</u> their number if it becomes out-sized, or indeed reduce the risk of that happening by limiting the number of increases.</i></p>

		<p><i>In addition at 4. Ofgem states “a not-for-profit model with the absence of margin that can be put at risk, the organisation and its shareholders may lack strong incentives in respect of cost efficiency”. ENWL agree with this statement and note that Board costs are part of the overall cost which should be efficient to prevent burden on funding parties and ultimately consumers.</i></p> <p><i>ENWL believe that an organisation of DCC’s size could quite effectively operate with a maximum of 2 executive directors, the CEO, 1 shareholder representative and 5 SID NEDs and that the licence should therefore limit the size of the Board to 10 (including the Chair).</i></p>
<p>Section 3. Board appointment process and requirements</p>		
<p>5</p>	<p>Do you agree with a possible 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?</p>	<p><i>ENWL do not agree that core areas of expertise should be prescribed in the licence, although the 4 areas indicated are certainly amongst those required. ENWL agree with Ofgem’s assumption stated at 3.4 that the Board, via its Nominations Committee would ensure that it has the requisite expertise to carry out its duties.</i></p> <p><i>It is quite usual for a Board to comprise members with expertise in various areas, such as IT, engineering, business continuity, cyber defence, financial, legal, commercial, strategic planning, customer & marketing, etc. Prescribing specific areas could mean less weight is given to expertise in other matters which at various times might bear equal importance.</i></p> <p><i>In any case, ENWL agree that Ofgem’s preferred Option 2, requiring expertise to be assessed on the entire Board is preferable to Option 1 (individual with expertise).</i></p> <p><i>ENWL believe that central to incentivising the Board to hold the required mix of expertise to is ensure that obligations and performance targets that the licensee is required to meet are clearly identified and appropriately incentivised.</i></p> <p><i>ENWL believe that an alternative to Ofgem’s proposal to prescribe core areas of expertise, and one that provides a broader assessment of the effectiveness of the Board in both expertise and capability, would be for a Periodic Board Effectiveness Review to be carried out by an appropriately experienced independent party, highlighting to Ofgem and potentially to industry any key findings and actions.</i></p>
<p>6</p>	<p>Do you agree with our proposal to represent consumer voice via a requirement on the appointment of a</p>	<p><i>ENWL agree with Options 2 & 3 in conjunction would give the most effective voice to consumer’s interests on the Board.</i></p>

	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?	<p><i>ENWL agree that Ofgem could have a role in nominating NEDs but it is ultimately for the Board to appoint those whom it considers the Board requires to meet its obligations.</i></p> <p><i>Our preferred role for Ofgem would be similar to option 1 but noting some adjustments (per response to Q.5 above) with regard to the licence requirements.</i></p> <p><i>DCC submits its proposed appointments to Ofgem as noted in 3.15 before the appointment is made but noting the skills, knowledge and experience gap being filled by the candidate. Ofgem reviews the proposals in respect of the</i></p> <ul style="list-style-type: none"> ⇒ <i>Conflict of Interest criteria on being a director</i> ⇒ <i>SID requirements, and</i> ⇒ <i>Skills, knowledge and experience brought to the Board</i>
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?	<p><i>ENWL agree with Ofgem's proposed Option 1 for stakeholder involvement in the Board appointment process with some amendments.</i></p> <p><i>For example we suggest that industry participants are encouraged to propose (with their consent of course) suitable candidates for consideration on the 'longlist' by the Nominations Committee.</i></p> <p><i>The Board would of course not be obliged to appoint the nominees and they would be subject to review by Ofgem (as per Q.7). This would allow the Nominations Committee to draw from the widest possible talent pool of potential candidates, rather than being limited to a recruitment agent's prospect list.</i></p>
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	<p><i>ENWL agree with option 1 that DCC should be obliged to consult Ofgem before appointment of the first Chair. And that Ofgem may express a preference in the event that multiple suitable candidates are proposed.</i></p> <p><i>ENWL agree that it is not appropriate for Ofgem to play a dual role, being involved in the selection and appointment process as well as the subsequent review of DCC as regulator.</i></p>

	different to that of other DCC Board members?	<i>ENWL suggests that to maintain continuity, the appointments are staggered to avoid coincident expiry of all directors' terms.</i>
Section 4. Incentivisation of DCC board, executive leadership and key staff		
10	What are your views on changes to the term of appointment of nonexecutive 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?	<p><i>ENWL believe that 9 years as a NED (three lots of three-year terms) presents a governance risk of partiality. NEDs will be 'marking their own homework' many years after decisions have been made and this partiality might make improvement actions more difficult to agree.</i></p> <p><i>ENWL suggest a maximum of 6 years (two lots of consecutive three-year terms) are included in the Articles of Association for DCC.</i></p>
11	What are your views on the identified reputational incentives and associated enhanced regulatory requirements? How effective do you believe these incentives can be?	<p><i>It is ENWL's view that reputational incentives can be effective.</i></p> <p><i>As a not-for-profit, the effect of reputational risk on the DCC might be limited, but reputation can have somewhat more impact on the service provider's parent company where reputation could impact their winning new business for the parent company.</i></p> <p><i>ENWL agree with Ofgem's statement at 4.15 "to retain the OPR as a Licence requirement" which comprises measurements of system performance, customer engagement and contract management. We agree with the proposal at 4.19 Option 2, that the engagement measure includes a quarterly Customer Satisfaction Survey ('with teeth' as noted in our response to Q.13).</i></p> <p><i>We agree with the proposal at 4.22 for "a requirement on DCC to demonstrate to Ofgem how it will act upon the auditor's findings and recommendations."</i></p> <p><i>We agree with the proposal at 4.23 to introduce "a specific business planning incentive. This incentive would take the form of an assessment of DCC's business plan carried out by Ofgem".</i></p>

		<p><i>ENWL strongly agree with 4.26 and 4.27 that “DCC could be required to report on how its incurred costs compare with (“track against”) its Allowed Revenue approved by Ofgem.”</i></p> <p><i>As a NFP funded by parties, the use of financial incentives is circular and for this reason ENWL would not support them being applied to the company. However note response to Q.12 with regard to the executive leadership and wider team.</i></p> <p><i>Noting Ofgem’s statement at 4.13 that there will be further consultation on “whether any profit could be generated in other areas of DCC’s Authorised Business, for example through any additional services provided on a commercial basis”. ENWL would not be in favour of such a carve-out, it is very likely to divert attention of the management team and the Board from DCC’s “Core Mandatory Business” and has the potential to affect its performance. ENWL would accept that it would be reasonable for Ofgem to review this position in future once the new service arrangements have stabilised and demonstrably delivering to customers.</i></p>
12	<p>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.</p>	<p><i>ENWL agree that financial incentivisation of the executive leadership is important and that “financial incentivisation can be tailored towards senior management and key staff through remuneration policy.”</i></p> <p><i>We agree that it’s for the Board (via the Remuneration Committee) to ensure that the various incentive measures included such measures as customer satisfaction survey results, staff survey reports, budgetary performance, key milestone were included in directors’ incentive schemes.</i></p> <p><i>However we also agree with 4.31 that licence (or Articles) should provide clear guidance on expectations. ENWL note the reference “performance against its reputation incentives when setting remuneration” and believe it should be more explicit with regard to “hitting the OPR targets” and “licence compliance” (for example incentivising no non-compliances).</i></p>
13	<p>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</p>	<p><i>ENWL agree with Ofgem’s proposal for the Rectification Plan outlined in 4.38 and 4.39.</i></p> <p><i>ENWL agree with the purpose of such a mechanism as noted in 4.35 that, for “specific issues creating serious dissatisfaction” but that “may not meet the threshold for regulatory enforcement”, DCC should be required to engage with Ofgem on a Rectification Plan.</i></p> <p><i>ENWL agree with 4.36 insofar as, in the absence of a direct stakeholder involvement on the Board, a mechanism for ensuring their voice is heard, such as this proposal or similar, would be essential.</i></p>

	<p>distribution of votes among stakeholders?</p>	<p><i>We don't believe that this 'voice' should be limited to funding parties, as there are others in the supply chain who depend on the services and might be adversely impacted by poor performance.</i></p> <p><i>However ENWL don't agree with the particular mechanism proposed, namely a vote of "No confidence" due to the burden on DCC stakeholders. In order to determine the point at which the vote should be taken, stakeholders would be required to maintain a forum and process for consideration of proposals to vote. This is likely to be a non-trivial burden on parties. In addition the term has connotations of a shareholder or parliamentary vote which are generally only for exceptional circumstances and therefore rare and with significant/terminal repercussion.</i></p> <p><i>ENWL suggests that the trigger for the Rectification Plan should be a Licence mandated quarterly Customer Satisfaction Survey (as suggested by Ofgem at 4.19 Option 2 and 4.20) to be completed by a wide range of DCC stakeholders, such list prepared by DCC (i.e. not just funding parties). The Customer Satisfaction questions should be agreed by a DCC customer forum. The voting rights for this should be based on Option 4 at 4.40, with a de minimis threshold based on number of registered customer numbers (i.e. not limited to extant smart meter count).</i></p> <p><i>On receipt of the Survey results, they might be considered by REC PAB/Panel, BSC PAB/Panel and comments presented with the results to Ofgem for review. Ofgem can then decide whether the scores warrant actions by Ofgem. Such actions could include on an escalating scale as shown below for example, depending on the severity:</i></p> <ul style="list-style-type: none"> <i>⇒ Ofgem publishing a statement noting the performance failure (reputational incentive to perform)</i> <i>⇒ Ofgem engage with DCC and, per 4.38 and 4.39, require them to produce a Rectification Plan (negotiated corrective action to perform)</i> <i>⇒ Ofgem impose an Order upon the Licensee (an order to perform)</i> <i>⇒ Ofgem revoke DCC licence (enforcement action).</i>
<p>Section 5. Interim changes to governance</p>		
<p>14</p>	<p>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?</p>	<p><i>ENWL agree with the proposal to take advantage of the 2-year licence extension to test some of the new governance arrangements.</i></p> <p><i>ENWL agree with 5.5 "changes that may be introduced in the remaining term of this Licence, including any extension: • Appointment of a Sufficiently Independent Director as the successor to the current Chair (subject to the expiry of the</i></p>

		<p><i>current Chair’s term) • Appointment of a Sufficiently Independent Director with consumer advocacy experience • Enhanced stakeholder engagement with DCC board • Ofgem’s oversight of Business Handover”</i></p> <p><i>And would further suggest consideration be given to how the following could be trialled during the period of the 2-year licence extension to DCC:</i></p> <ul style="list-style-type: none"> <i>⇒ Introduce the “Customer Satisfaction elements of the Customer Engagement survey” and the right for Ofgem to review and take actions suggested in our response to Q.13</i> <i>⇒ Introduce monthly or quarterly reporting of ex-ante performance to allow DCC and Ofgem to determine the most effective reporting framework and measures for price control tracking under the new ex ante price control.</i> <i>⇒ Consider Introducing some of the Board composition changes to commence transition to DCC2. Such as for example introducing new SIDs (compliant with whatever new criteria Ofgem decide so that they would be eligible). This proposal in particular could present the opportunity to preserve some continuity in knowledge and expertise and allow the directors terms to be staggered</i>
15	<p>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?</p>	<p><i>ENWL agree with the principle of creating some continuity but it needs to be thoughtfully implemented.</i></p> <p><i>ENWL agree with 5.11 “To provide a degree of continuity of expertise at the Board level and to allow for future staggered appointment of Sufficiently Independent Directors (such that their terms do not co-expire), we have considered whether Sufficiently Independent Directors serving at the time of the Licence transfer could be offered to retain their posts under the Successor Licence.”</i></p>
<p>Section 6. Centralised Registration Service (Switching)</p>		
16	<p>Do you agree with our proposal that it would be appropriate to remove provision of Centralised Registration Service (CRS) from the DCC Licence and transfer the obligation to the Retail Energy Code (REC) to be delivered by RECCo?</p>	<p><i>We support the proposal to move the CRS from the DCC Licence and transfer the service to RECCo.</i></p> <p><i>ENWL consider the provision of the CRS service by DCC an interim solution as there wasn’t a viable option available. RECCO represents a viable efficient enduring alternative.</i></p>

17	What are your views on the considerations we have identified under option 1?	<p><i>ENWL support decoupling the provision of the CRS from the Smart Meter Communications Licence on account of the delivery of Switching services being materially different to the scope of DCC's other obligations.</i></p> <p><i>ENWL agree that a shift of responsibility for the CRS to RECCo would streamline the current approach of DCC operating as both a REC party and Service Provider to REC parties.</i></p>
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