

This document is classified as **Clear** in accordance with the Panel Information Policy. Recipients can distribute this information to the world, there is no limit on disclosure. Information may be shared without restriction subject to copyright.

Paper Reference:	SWG_18_0306_04
Action:	For Information
Acronyms and Defined Terms SEC Glossary	

Ofgem Consultation – DCC Review Phase Two Governance and Switching

1. Purpose

Ofgem is consulting on Ofgem analysis and proposals for future governance arrangements for the DCC and the provision of the Centralised Registration Service (switching). A copy of the consultation document may be found [here](#).

The consultation closes on 16 July 2024. The SWG is requested to note the contents of this paper.

2. Background

This consultation builds on the Ofgem decision published in August 2023 for the successor licence arrangements for the DCC and is part of the second (detailed design) phase of the Ofgem review of the DCC licence arrangements.

Ofgem signposts that it will publish further consultations on Determination of Allowed Revenue (cost control) and Future role of DCC, objectives and operating model in summer 2024.

3. Summary of Proposals

3.1 Governance Arrangements

Ofgem set out proposals in the following areas;

a) Future DCC's Board composition

Ofgem present four options for consideration of the future DCC Board composition.

Option 1 Stakeholder Majority Board Under this option the DCC Board is controlled by a majority of representatives from DCC customers (with a minority of independent directors, shareholder representatives and executive board members).	Option 2 Stakeholder (or Independent) plurality board Under this arrangement there would be no overall control of the DCC Board with customer representatives (or independent directors) holding the plurality of votes.
Option 3 Alt HAN Model This option would split the board powers between a shareholder-controlled board and an industry forum representing DCC stakeholders.	Option 4 Majority Independent Board This is a board consisting of a minimum (50%+1) Sufficiently Independent Directors.

Ofgem states that the Majority Independent Board model (Option 4) is its preferred option to adopt in the successor licence. The consultation further discusses issues of ensuring “Sufficiently Independent Directors” and an Independent Chair. The consultation also considers requirements for the size of the DCC Board. The current Licence does not contain a restriction and Ofgem do not propose to introduce into the successor licence any additional restrictions or requirements.

b) Board appointment process and requirements

Ofgem is seeking views on the process and requirements involved in the appointments to the DCC Board. Ofgem propose the new licence has a requirement on the Board to “at all time possess sufficient experience in core areas”. Ofgem has identified core areas as GB energy market (supply and distribution), commercial contract management, data and communication technology, and consumer advocacy. Ofgem is also seeking views on proposals that a “consumer voice” be represented by a “Sufficiently Independent Director with proven consumer advocacy experience” and floats the idea of a specific objective around consumer focus.

The consultation asks for views on options for Ofgem and stakeholder (customer) roles in the Board appointment process, including options for a review process of the Board appointments by Ofgem and a stakeholder representative via the Nomination Committee. The consultation also considers whether the appointment of the first Chair should follow a distinct process, including a potential duty on DCC to consult with Ofgem.

c) Incentivisation of DCC Board and executive

The consultation discusses different methods of incentivisation. Options include proposals to limit the term of appointment for non-executive independent directors to a maximum of 3 years and reputational incentives and regulatory requirements linked to system performance, customer engagement and contract management (covered by the existing Operational Performance Regime – “OPR”). In regard to OPR, the proposed changes include a requirement for DCC to demonstrate to Ofgem how it will act on the contract management auditor findings, and a requirement for the publication of performance measures, and changes to assessing customer engagement activities by the DCC.

The consultation also considers placing a specific Business Planning incentive, to assess the DCC’s plan in regard to compliance with its licence and quality. Ofgem is also seeking views on the need and

design of a cost management incentive. In effect, this would be to report against the costs the DCC is incurring under what is expected to be an ex-ante cost control model.

A further proposal is for measurable outcomes of the reputational incentives to be considered by the Remuneration Committee when setting financial incentives on executive leadership and key staff.

Ofgem is further seeking views from stakeholders on proposals to give stakeholders the ability to pass a (non-binding) motion of 'no confidence' in the DCC management, as a measure to enhance accountability to stakeholders. The purpose is to create a direct accountability link between DCC and its customers, and a means for stakeholders to communicate dissatisfaction on specific issues or intervention on issues of significant concern. Such a motion would have to meet a threshold of DCC customers, and the consultation considers how this might be achieved. An ability for stakeholders to pass a no confidence motion is considered necessary if the DCC Board does not contain any direct industry representatives as proposed under the options for the composition of the DCC Board.

The table below provides a high-level summary of the proposed incentive regime.

Incentive Type	Set By	Enforced By	Aimed at
Term Limits	Ofgem via the Licence	Ofgem	Non-executive directors
Reputational Incentives	Ofgem via the Licence DCC Customers through the SEC	Nomination Committee when deciding on reappointment of directors	Board as a whole
Financial Incentives	Remuneration Committee (on the basis of reputational incentives)	Remuneration committee	Executive directors key staff
No confidence motion	DCC Customers	Ofgem	Board as a whole

d) Interim changes to governance

The exact length of any extension to the current DCC licence is yet to be confirmed. Ofgem have stated in this consultation that a decision will be made before September 2024. On the assumption a Licence extension is agreed, Ofgem would like to see governance changes implemented during the extension period, such as appointing an independent Chair and a board member with consumer advocacy experience, increasing stakeholders' engagement in board meetings and the appointment of an Ofgem observer in a suitable forum to oversee the business handover to the Successor Licensee. Ofgem is seeking views on these proposals and its position that these can be implemented without Licence Modifications.

3.2 Future of Centralised Registration Service

Ofgem is consulting on whether DCC should retain a licence obligation for the provision of the Centralised Registration Service (Switching). Ofgem are of the view that the provision of Switching could be separated from the DCC Licence and an obligation placed in the REC for delivery of the

Managed by

service. RECCo would then be responsible for procuring the Switching services. Ofgem is seeking views on these proposals. Whilst theoretically this should not impact the SEC, it would seem prudent to reflect on the implications of the change, so that there are no unintended consequences from the Ofgem preferred approach.

4. Next Steps

There are some important topics in this consultation that will impact the current and future DCC Licensee, and the relationship that stakeholders, including Panel will have with the DCC.

From an initial review we consider the sections on Board composition and Incentives as critical areas for review and response, but we also believe the proposals to move the switching obligation from the DCC Licence to REC also needs careful review. The proposals to bring in some of the governance changes early seem sensible and ambitious but rely on an extension being agreed, which is yet to be confirmed.

SECAS will develop a draft response for Panel and provide an update at the June Panel (SECP_129) meeting. The consultation response is due 16 July 2024.

5. Recommendations

The SWG is requested to **NOTE** the contents of this paper and the next steps.

Tim Newton

SECAS Team

22 May 2024

Attachments – Annex 1 – Consultation Questions

Annex 1 – Consultation Questions

DCC Board Composition

Q1. 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.

Q2. 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?

Q3. Do you agree with our proposal that the Chair of the future DCC board should meet the requirements on 'Sufficiently Independent Directors' without exception?

Q4. 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?

Board appointment process and requirements

Q5. 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?

Q6. 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?

Q7. 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?

Q8. 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?

Q9. 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?

Incentivisation DCC Board and Executive

Q10. 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?

Q11. What are your views on the identified reputational incentives and associated enhanced regulatory requirements? How effective do you believe these incentives can be?

Q12. 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.

Q13. 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?

Interim Change to governance

Q14. 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?

Q15. 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?

Centralised Registration Service

Q16. Do you agree with our proposal that it would be appropriate to remove provision of the Centralised Registration Service (CRS) from the DCC Licence and transfer the obligation to the Retail Energy Code (REC) to be delivered by RECCo?

Q17. What are your views on the considerations we have identified under option 1?