Retail Energy Code Company Ltd
27 Old Gloucester Street
London, WC1N 3AX

Retail Energy Code Company
info@retailenergycode.co.uk
www.retailenergycode.co.uk

By email only:
codereform@energysecurity.gov.uk; and
industrycodes@ofgem.gov.uk

27 June 2025

RECCo response to: Consultation on Code Manager Licence Conditions and Code Modification Appeals to the Competition and Markets Authority

We welcome the opportunity to respond to Ofgem's consultation on the Code Manager licence and appeals to the Competition and Markets Authority (CMA). This non-confidential response reflects our views as the manager of the Retail Energy Code (REC), which governs key aspects of the retail energy market.

RECCo is a not-for-profit, corporate vehicle established to ensure the proper, effective, and efficient implementation and ongoing management of the REC arrangements. We seek to promote trust, innovation and competition, whilst maintaining focus on positive consumer outcomes. Through the REC, the services we manage, and the programmes we run, we are dedicated to building a more effective and efficient energy market for the future. We are committed to ensuring that RECCo is an "*intelligent customer*", ensuring efficacy and value-for-money of the services we procure and manage on behalf of REC Parties.

While we are broadly supportive of the proposed Code Manager licence conditions, we consider that some areas would benefit from further development and clearer drafting, as follows:

Defined Code Manager role - The definition of "Code Manager Business" should reflect the full range of services provided pursuant to the code - a narrow definition risks fragmenting governance and downgrading essential services by categorising them as "Permitted Business." The licence should encompass all services delivered pursuant to the code; while Permitted Business should cover those that are not an inherent part of the licensable activities or required by the relevant code, but would otherwise be legitimate and contribute to efficiencies, and can be undertaken without detriment to the core activities.

Regulatory role in budget setting - We strongly support the continuation of budget appeal rights but urge removal of Ofgem's unilateral power to direct budget amendments. Retaining both mechanisms risks duplicative oversight, delays, and regulatory uncertainty, undermining the efficiency gains sought through reform. This would also undermine the key role of the Board that is itself a focus of Code Reform proposals. The proposed prescriptive timetable is also problematic, requiring the initial budget setting to be completed earlier in the year when less robust information will be available, and triggering an operationally unrealistic consultation and review cycle that concludes over the Christmas holidays.

Management of Conflicts of Interest - While we support strong safeguards against conflicts of interest, we recommend allowing flexibility for Code Managers to enter contracts where robust governance and mitigation measures are in place. A rigid prohibition could restrict access to high-quality, cost-effective providers in specialised markets.

Performance and Remuneration - We support the principle of linking remuneration to organisational performance but caution against including references to individual performance or involving the Stakeholder Advisory Forum in pay decisions. Remuneration oversight should remain the responsibility of the Board, within a well-established governance framework.

Retail Energy Code Company Ltd
27 Old Gloucester Street
London, WC1N 3AX

Charging Arrangements and Terminology - We support the intent behind usage-based charging for discretionary services. However, the term “optional charging” is misleading and the drafting overly prescriptive. We recommend adopting clearer terminology and allowing discretion in applying cost-reflective charges.

Regulatory Accountability and Timeliness - For the new governance framework to be effective, Ofgem must be subject to the same expectations on timeliness and transparency as Code Managers. The absence of decision-making KPIs for Ofgem is a significant gap. Reintroducing performance benchmarks would help ensure consistency, confidence, and timely delivery of market change.

If you would like to discuss our response in more detail, please do not hesitate to contact me.

Yours sincerely,

Jon Dixon,
Director, Strategy and Development

Retail Energy Code Company Ltd
27 Old Gloucester Street
London, WC1N 3AX

Annex: Response to Consultation Questions

Q1: To what extent do you agree with the draft end-to-end code manager licence? For example, do you think there any licence conditions missing, or whether there any inconsistencies or duplication?

We broadly support the intent behind the draft licence framework; however, we have several significant concerns regarding its construction, scope, and practical operability. While it is vital to ensure consistency across the Code Manager landscape, the current drafting does not adequately account for the differentiated roles that each code and Code Manager play within the wider energy governance framework.

In particular, the Retail Energy Code (REC) has a distinct focus on consumer outcomes and retail market efficiency. This consumer-facing role goes well beyond the administrative duties traditionally associated with code management and includes the delivery of a range of operational services — including Switching and Enquiry Services, and Energy Theft Reduction. It is therefore essential that the licence not only continues to allow Code Managers to continue such roles, but also facilitates the delivery of ongoing improvements and efficiencies to those and future services consistent with the objectives of each code.

We are especially concerned that the current narrow definition of "Code Manager Business" excludes many of these REC-critical services, which were an integral part of what RECCo was established to deliver. While we appreciate that a common definition across all licences may aid consistency, the restrictive scope risks undermining effective delivery by creating an artificial separation between licensable and “permitted” activities. This has practical and structural consequences, as follows:

Planning and budget timelines: We support the proposal for Code Managers to develop delivery plans aligned with Ofgem’s Strategic Direction Statement (SDS), with clear articulation of how each priority will be delivered, monitored, and reported. This should be supported by a consistent and proportionate reporting framework to promote transparency and comparability.

The proposed 1 November deadline is achievable—assuming the SDS is published no later than 31 March and does not introduce new in-year priorities not previously consulted upon. However, this timeline and subsequent milestones would compress the budget-setting process and limits stakeholder engagement. To meet it, Code Managers would need to begin planning and budgeting by early Q2, increasing reliance on assumptions and reducing forecast accuracy (see our response to Q8).

The requirement to publish the final work plan and budget by 1 January—a public holiday—would, in practice, require publication before the Christmas break. This leaves limited time to consider and incorporate stakeholder feedback from the consultation and risks the appeals window closing—or at least partially elapsed—before many stakeholders return to work in the New Year. Such rigid deadlines appear operationally impractical and of limited value. We recommend revisiting the timeline to support more effective governance, improve forecast accuracy, and ensure meaningful engagement—particularly for complex, service-based Codes such as the REC.

Ofgem Direction powers: We are concerned about the continued inclusion of the Authority’s power to unilaterally direct changes to the Code Manager’s budget (Condition 20). This is not only unnecessary — given the presence of an appeals mechanism — but also risks destabilising planning processes if exercised late in the financial year. It also diverges from established precedent across other sectors, where such direction powers are typically reserved for exceptional circumstances.

Appeals Framework: The split between “Code Manager Business” and “Permitted Business” risks introducing a dual-track approach to budget scrutiny, with appeals applying only to a subset of the REC’s

cost base. This undermines transparency and proportionality, as stakeholders fund the entirety of the budget and expect a single, coherent governance process.

Business Handover Plans (BHPs): Consistent with our position that the scope of Code Manager activities should extend beyond those expressly defined in the licence to include all services delivered pursuant to the code, we believe the BHP should explicitly encompass these broader activities. In practice, these functions would need to be novated or otherwise transferred to any incoming licensee to ensure continuity. Excluding them from the handover requirements undermines the effectiveness of the transition framework and jeopardises the stable operation of the retail energy market during periods of change.

In summary, while we believe that the draft licence provides a valuable foundation, it should better reflect the diversity of Code Manager roles, ensure consistency and proportionality in governance, and seek to enable rather than inhibit the delivery of efficient and consumer-focused market services. These concerns are echoed throughout our responses to subsequent questions and should be considered collectively in finalising the licence framework. However, we consider that these could be addressed by extending the definition of "Code Manager Business" and associated defined terms, to mean the business carried out by the Licensee in performance of the Licensed Activity or pursuant to the Relevant Code.

Q2: To what extent do you agree with our proposal that the Code Manager licence will include a mechanism for code parties, Citizens Advice and Consumer Scotland to appeal Code Managers' budgets to Ofgem? Should this also include Citizens Advice Scotland?

As set out in our response to Ofgem's January 2024 consultation on the implementation of code reform, code parties should retain the right to appeal the Code Manager's budget to Ofgem, given that they bear the costs. This right is currently embedded in the REC and is available not only to parties, but also to interested stakeholders. We are therefore pleased to see that the appeal mechanism is included within the current proposals.

We fully support the inclusion of the appeals mechanism under Option 1, which enables code parties, Citizens Advice, and Consumer Scotland to challenge elements of the Code Manager's budget through a structured and proportionate process. This model mirrors the existing REC arrangements, which have proven to be robust and effective in enabling meaningful scrutiny while discouraging vexatious or trivial appeals. By providing clear appeal grounds and a defined process, Option 1 promotes accountability and financial discipline, thereby strengthening the integrity of the budgeting process.

However, we have strong reservations about the inclusion of a separate provision for Authority directions in the budget process, as set out in Part D of standard condition 20 of the draft licence. The consultation acknowledges that the existence of an appeals process significantly reduces the need for direct intervention by Ofgem. We agree with this assessment. Retaining parallel powers of direction risks duplicating regulatory functions and undermining the independence of the Code Manager.

There is also ambiguity around how such directions are expected to operate; for instance, it is unclear whether Ofgem's interventions would lead to amendments to the published budget or prompt a further round of consultation. These uncertainties, compounded by the possibility of requiring independent audit input, raise practical concerns. The potential for late-stage intervention, particularly if a direction was issued as late as 31 January, could result in extensive rework, procedural duplication, and material delay. There is a risk of the Code Manager entering a new financial year without a settled and approved budget, undermining its ability to deliver its licensable functions and meet its obligations under the Strategic Direction Statement.

Allowing Ofgem to amend budget lines unilaterally could blur governance boundaries and create uncertainty, particularly as the Licensee is expected to independently certify its financial adequacy (via the Certificate of Adequacy under condition 11). This proposed intervention power also appears to be disproportionate given the wider obligations of not-for-profit operation (condition 10), transparency and fairness in cost recovery (conditions 22–23), and the Code Manager's obligation to avoid uneconomical or inefficient expenditure (condition 20.2). These conditions, in combination with external audit and published regulatory accounts, already offer a high degree of assurance over prudent financial management.

The current policy position proposes limiting the right of appeal to 'recoverable costs', defined narrowly as those associated solely with Code Manager business. In contrast, the existing REC appeals framework encompasses the full range of services delivered under the REC. This policy would introduce an artificial separation of activities, inadvertently undermining the inclusive and integrated nature of the REC's current appeals process. Stakeholders will reasonably expect a single, streamlined appeals process that reflects the full range of services they fund, rather than a fragmented approach that introduces unnecessary duplication.

We therefore urge a reconsideration of this aspect of the policy to ensure that the appeals framework remains cohesive, proportionate, and aligned with the operational and financial realities of REC delivery.

Q3: To what extent do you agree the licence drafting provided in condition 21 of Annex A delivers the intent of our proposed policy on budget appeals? Do you have any other views or comments on the licence drafting?

We broadly support the proposed drafting of Condition 21, which reflects the intended framework for budget-setting and appeals. However, as noted in our response to Q2, this could be undermined by the continued inclusion of a separate power of Authority Direction. We recommend removing Ofgem's unilateral power to intervene in the budget process, as it introduces duplication, uncertainty, and weakens accountability. Eliminating this provision would streamline the process and reinforce the appeals mechanism as the appropriate and transparent safeguard for resolving disputes.

We also recommend that the drafting of the budget appeal provisions be more closely aligned with the well-established and operationally effective model currently used under the REC. Under the REC, the entire RECCo budget — irrespective of internal cost categorisation — is subject to a single, transparent consultation process and associated right of appeal. To restrict appeal rights only to licence-prescribed activities would be a retrograde step that weakens financial oversight and stakeholder participation.

The annual budget-setting process includes clear, timebound steps. However, while the draft licence sets a 31 January deadline for Ofgem to issue a Direction, no equivalent expectation applies in the context of appeals. We support timely and transparent budget-setting and consider it inconsistent—and potentially destabilising—that Ofgem is not subject to similar obligations.

Ofgem should be required to issue decisions in time for any necessary revisions to be made before the start of the financial year. This would align with regulatory practice in other sectors—for example, electricity transmission and distribution licences, where Ofgem must consider and, if necessary, veto changes to charging methodologies within a defined 28-day period. Adopting a similar precedent here would provide greater predictability and operational clarity for Code Managers and stakeholders. If Ofgem is comfortable issuing a Direction by 31 January on a budget published 1 January, it is reasonable to expect a decision on the narrower scope of cost items subject to appeal within a comparable timeframe. We would welcome a commitment for Ofgem to determine any appeal within six weeks of its submission or not later than circa 1 March.

We welcome the inclusion of clear, structured grounds for appeal. While we believe the right of appeal should apply across the budget, certain costs associated with activities necessary to meet legal or regulatory obligations may need to continue to be recovered irrespective of the appeal process, ensuring operational continuity and legal compliance. Recognition of this would be consistent with the process set out in the REC today.

Q4: To what extent do you agree with the proposals set out above on conflicts of interest, including the proposals to include exceptions in the licence?

Conflicts of interest

We support strong safeguards of independence and the management of any actual conflict of interest. We also recognise that there may be instances where a perceived conflict of interest could arise, where for example, a Code Manager's organisational interests are seen to outweigh those of stakeholders and consumers, and there would need to be appropriate mechanisms in place address them. Requirements such as, operating as a not-for-profit organisation, independence from parties, 50% sufficiently independent directors and restrictions on investment will aid in the management of potential conflicts. RECCo operates a procure and manage model so that we oversee and hold our service providers to account without risk of self-interest. Ensuring Code Manager models are established on the basis that they are impartial, with no external ownership or commercial drivers, will strongly support the management of conflicts of interest.

Restriction on activities

We are concerned that the current definition of "Code Manager Business" is too narrow and does not reflect the full scope of the Code Manager's role. It should encompass not only code administration but also all activities and services necessary for effective code delivery. As drafted, the definition excludes services provided under the Code that are not deemed strictly "necessary" to licensable activities. This overlooks the essential nature of many REC services, which are fundamental to the retail energy market's effective operation, as outlined below.

RECCo was established by Ofgem to serve as the Code Manager for the REC, consolidating legacy retail codes and delivering cost-effective services in support of the Code. Through our service providers, we deliver a range of market-critical services that extend beyond the narrow definition of governance, administration, and assurance—if that is taken as the sole scope of "Code Manager Business". These include the Electricity and Gas Enquiry Services, Centralised Registration Service (CRS) Secure Data Exchange Portal (SDEP), Energy Theft Reduction, and Green Deal Arrangements. All are fundamental to the effective functioning of the retail market and were explicitly envisaged within RECCo's remit.

Classifying these as merely "Permitted Business" risks diminishing their strategic importance, weakening focus, and creating a two-tier regulatory approach. For example, there is a risk that costs for essential REC services may fall outside of the defined costs allowed under the default tariff cap, or be subject to a separate, burdensome budget development and appeal process. This could distort investment decisions, reduce system performance and ultimately harm consumer outcomes. Ensuring these services are on equal footing within the licence framework is critical to maintaining alignment with the objectives and ambitions of Code Manager licensing.

Restriction on investment and related undertaking

We agree with the provisions and policy position in this regard and understand how they can contribute to the management of conflicts.

Q5: To what extent do you agree that the revised licence drafting in conditions 15-19 of Annex A delivers the intent of our proposed policy on conflicts of interest? Do you have any other views or comments on the licence drafting?

We broadly agree that the redrafting of conditions 15-19 delivers the intent of the policy on conflicts of interest. However, we have concerns around the policy position both in relation to conflicts of interest and the restriction on activities as detailed in our response to question 4 above.

Designating central services as Permitted Business outside the scope of the licence risks diluting their importance, creating operational complexity, and introducing unintended consequences. These include:

- Segmentation of budget and consultation processes across multiple regimes
- Unequal treatment of costs in regulatory assessments (e.g., REC service costs excluded from policy cost considerations within the supplier default tariff cap allowance)
- Disincentives for investment in core market infrastructure, potentially degrading service delivery

We strongly recommend that services fundamental to the efficient operation of the market and provided pursuant to the code be explicitly recognised as part of the Code Manager Business within the licence framework. Permitted Business and the restrictions around it would more appropriately be limited to truly ancillary activities or services that would not ordinarily form part of the relevant code and/or which the Code Manager is not uniquely placed to deliver. For instance, the renting out of office should be Permitted Business as it could contribute to the financial efficiency of the Code Manager but would not appropriately fit within the normal charging arrangements or necessarily be offered exclusively to code parties. Nor would it be a requirement of the licence or code to have such office facilities available as part of the core Code Manager business. Condition 3.4 should ensure that core Code Manager activities take precedence.

This will ensure alignment with the strategic objectives of Code Manager licensing and safeguard continuity and accountability in service delivery.

Q6: To what extent do you agree with the proposed objectives? Are there other objectives you think should be included?

We believe these draft objectives support a proactive, transparent, and consumer-focused code management model. RECCo particularly supports the inclusion of consumer outcomes and innovation as core objectives as these also reflect the REC objectives and the RECCo mission statement.

Q7: To what extent do you agree that the draft Code Manager licence condition in condition 3 of Annex A delivers the intent of our proposed policy on Code Manager objectives? Do you have any other views or comments on the licence drafting?

The draft licence broadly meets expectations; however, we note that the proposed objectives are not prioritised or weighted. This creates the potential for conflict between objectives, particularly in scenarios where not all can be pursued equally or simultaneously. In such cases, Code Managers may be left to make subjective judgments about which objectives take precedence, potentially leading to inconsistent or suboptimal outcomes.

We would welcome greater clarity on how Code Managers should balance competing objectives, whether through a hierarchy, guiding principles, or case-by-case direction from Ofgem. Clear guidance would support more consistent decision-making and enhance accountability.

Additionally, we recommend strengthening the requirement for Code Managers to conduct consumer impact assessments for key decisions and strategic projects. This would help ensure that consumer interests,

particularly affordability, accessibility, and long-term benefit, remain central to the governance of the retail energy market and the evolution of codes.

Q8: To what extent do you agree with the policy proposals on delivery plans set out above, including the timing, contents and requirement to execute the plan?

We broadly support the proposal for Code Managers to develop delivery plans aligned with Ofgem's Strategic Direction Statement (SDS). Clear articulation of how each SDS priority will be delivered, monitored, and reported is essential for transparency and effective oversight. This would be further strengthened by a consistent and proportionate reporting framework to support comparability and stakeholder confidence.

We consider the proposed 1 November deadline for SDS delivery plans achievable—provided the SDS is published by 31 March and does not introduce new priorities requiring delivery in the same financial year without prior consultation. However, we remain concerned about the timetable's impact on the subsequent budget-setting process and the opportunity for meaningful stakeholder engagement. In practice, meeting the 1 November deadline for the draft budget and work plan—incorporating the SDS delivery plan—would require Code Managers to begin internal planning and budgeting in early Q2. This significantly compresses the process and risks reducing forecast accuracy. This poses several challenges, including:

- **Reliance on contingency:** In the absence of more complete data that would be available later in the year, there may be a greater need to include contingency in budgets to mitigate the risk of underestimation, potentially leading to inefficiencies or misalignment with actual delivery needs.
- **Stakeholder burden:** Supporting inputs such as requests for information, required to inform delivery planning and budgeting, would need to be issued and completed within compressed Q1 timelines—shortly after publication of the SDS—placing pressure on stakeholders. This will be particularly acute if all the code bodies issue their requests for information and consultations at the same time, in accordance with the timetable prescribed in licence. While this could enable parties to get a better idea of their total code funding commitments, it could impact the level of engagement and reducing the quality of response and analysis.

To enable a more robust and evidence-based planning process, we recommend shifting the deadline for publication of the SDS delivery plan and associated budget to later in the year—ideally Q4, i.e. January – March. This adjustment would:

- Align the budgeting process with a fuller evidence base
- Improve accuracy and efficiency in planning
- Reduce unnecessary contingency and the risk of misallocation
- Support clearer communication with stakeholders and more informed consultation

Q9: To what extent do you agree that the licence drafting in condition 29 of Annex A deliver the intent of our proposed policy on delivery plans? Do you have any other views or comments on the licence drafting?

We consider that the drafting of Condition 29 broadly delivers the intended policy objectives regarding delivery plans, particularly in ensuring alignment with Ofgem's Strategic Direction Statement (SDS) and the promotion of transparency and accountability in Code Manager planning.

However, as highlighted in our response to Question 8, the proposed timeline for publication of the SDS and delivery plans, targeted for Q3, places considerable pressure on the budgeting and forecasting process. In practice, RECCo must commence its budgeting activities significantly earlier in the year (around Q2), at a point when limited data is available on in-year delivery and performance against SDS priorities. This

misalignment increases forecasting uncertainty and forces the inclusion of contingency in plans, which may compromise accuracy and efficiency.

We would welcome further clarification or refinement in the licence condition or associated guidance to recognise this operational reality.

Q10: To what extent do you agree with the proposals set out above on controls of the business?

RECCo supports the proposals on controls of the business, which we consider to be proportionate and aligned with good regulatory practice. Such controls help ensure that Code Managers operate with integrity, stability, and transparency, reflecting the public interest and consumer protection objectives underpinning the code reform programme.

We support the following elements of the proposed controls:

Fit and Proper Requirements

We agree with the introduction of an ongoing "fit and proper" requirement for individuals in positions of Significant Managerial Responsibility or Influence (SMRI), aligned with similar requirements in supply licences. This is a sensible and proportionate measure that will help safeguard the integrity of decision-making within the Code Manager's organisation.

Corporate Governance and UK Corporate Governance Code Compliance

The requirement to comply with the main principles of the UK Corporate Governance Code and publish an annual governance statement supports transparency and promotes high standards of board accountability and stakeholder oversight. Requiring all Code Managers to abide by these principles will promote standardisation and consistency.

Operational Capability

RECCo agrees that Code Managers must retain effective oversight and have sufficient control over material assets to fulfil their licence obligations.

Financial Transparency and Reporting

We support this measure as a means to build trust with stakeholders and to ensure rigorous financial management in the not-for-profit context in which Code Managers will operate.

Board Structure, Chair Independence, and NED Term Limits

We support the requirement for the board chair to meet the "Sufficiently Independent Director" criteria. Independence at board level is crucial to reinforcing objectivity and impartiality, particularly given the central role of Code Managers in facilitating modification decisions and managing multi-stakeholder engagement.

We also agree with the preferred approach to Non-Executive Director (NED) term limits, i.e., fixed terms with the option for reappointment. This balances the benefits of board refreshment with the need for continuity and retention of institutional knowledge. We believe this approach is already working well under existing codes like the REC and BSC and supports performance accountability.

No Prescriptive Requirements on Board Appointment Process or Additional Expertise Conditions

RECCo agrees with the decision not to impose additional prescriptive requirements on board appointment processes or expertise definitions beyond what is covered by existing provisions on "sufficiently independent directors." The flexibility for these matters to be determined within the code or governance framework allows for proportionate and adaptive implementation.

Q11: To what extent do you agree that the licence drafting in conditions 4-6 and 8-9 of Annex A delivers the intent of our proposed policy on controls on the business? Do you have any other views or comments on the licence drafting?

We consider that the drafting of Conditions 4 to 6 and 8 to 9 of the licence largely delivers the policy intent in relation to business controls. The proposed licence conditions appropriately reflect the underlying policy aims of integrity, transparency, operational resilience, and financial accountability, which are all critical to the success of the new code governance model.

The licence conditions could benefit from accompanying guidance or illustrative examples to support consistent interpretation, particularly regarding what constitutes "sufficient operational capability" and "significant managerial responsibility."

We also recommend periodic review of these conditions post-implementation to ensure they remain proportionate and fit-for-purpose as market conditions and regulatory expectations evolve.

Q12: To what extent do you agree with the proposals set out above on procurement of services?

RECCo broadly supports the proposals on procurement of services and welcomes the shift towards a principles-based approach that grants Code Managers the flexibility to adopt sourcing strategies best suited to their operational needs, while maintaining appropriate safeguards to ensure integrity, continuity, and accountability.

We endorse the inclusion of core requirements — such as ensuring that contracted third parties are reputable, that agreements contain provisions relating to continuity of service, liability, and intellectual property rights, and that conflicts of interest are appropriately managed. These elements reflect best practice and align closely with RECCo's existing procurement framework, which already applies these principles in the selection and oversight of third-party service providers.

However, we have reservations about the proposed blanket prohibition on entering into contracts where a "Relevant Conflict of Interest" exists. While we fully understand and support the intention to preserve the objectivity and independence of Code Managers, there may be circumstances in which well-established mitigation strategies — such as robust governance arrangements, independent oversight, or the use of internal controls (e.g., "Chinese walls") — can effectively address any actual or perceived conflicts without compromising procurement outcomes.

This is especially relevant in markets where the pool of qualified service providers is limited, and where certain vendors (e.g., specialist auditors or IT firms) operate across a wide range of public sector and regulated entities with established protocols for managing conflicts of interest.

We therefore strongly recommend that the decision to engage a service provider in situations where a "Relevant Conflict of Interest" may exist remain within the remit of a fully independent board. This is consistent with the overarching principles-based framework underpinning the licence and strengthens confidence in impartial governance. An independent board is best placed to consider the full context of a proposed engagement — weighing the potential conflict against capability, value for money, and the strength of any mitigation measures — and to make a transparent, balanced decision in the interest of the

market, stakeholders, and consumers. Retaining this discretion enables proportionate and effective risk management while avoiding unnecessarily limiting access to high-quality and cost-efficient suppliers.

Q13: To what extent do you agree that the licence drafting in condition 7 of Annex A delivers the intent of our proposed policy on procurement of services? Do you have any other views or comments on the licence drafting?

We consider that the licence drafting in Condition 7 largely reflects the intent of the proposed procurement policy. It establishes a principles-based framework that supports good governance while preserving the flexibility needed for practical and proportionate implementation by Code Managers.

However, we believe there are areas where further clarification would enhance understanding and support consistent application across licensees:

- **Clarification of the exception process**: Greater detail is needed regarding the criteria and procedure for seeking an exception to the prohibition on entering into contracts involving a "Relevant Conflict of Interest." This would assist Code Managers in identifying and managing such situations transparently and in line with regulatory expectations.
- **Definition of 'sufficiently mitigated risk'**: Further guidance is recommended to clarify what constitutes adequate mitigation in the context of conflicts of interest. This would help Code Managers to assess, implement, and document appropriate controls at an early stage in the procurement process, and ensure alignment with Ofgem's expectations.

For the reasons outlined in our response to Question 12, we believe that the current drafting of clause 7.5 — which imposes an absolute prohibition — should be revised. Specifically, we propose replacing it with a requirement that:

> "Where a Relevant Conflict of Interest exists, the Code Manager must not enter into a contract unless appropriate mitigation measures are in place, and those measures have been formally assessed and approved by the Code Manager's Board."

This approach maintains the integrity of the procurement process while enabling proportionate and transparent risk management. It also reinforces the role of independent governance and ensures that decisions are made in a way that protects stakeholder confidence and promotes efficient service delivery.

Q14: To what extent do you agree with the proposals set out above on optional charging?

RECCo supports the proposed policy on optional charging, with a caveat around terminology as set out in our response to Q15. The REC operates pay-to-use services, which better facilitates cost reflective charging and offers flexibility to stakeholders, allowing code users to access additional or enhanced services without impacting the wider funding base.

We agree that optional charges should be limited to genuinely discretionary services — that is, services which fall clearly outside the essential functions of the code and do not impact a party's ability to participate meaningfully in governance, assurance, or the modification process. It is critical that core participation rights remain accessible to all parties, regardless of size or resource levels.

For example, while it may be appropriate to recover costs arising from the implementation of a modification proposal, particularly where it results in bespoke or enhanced services, it would be inappropriate to impose an upfront fee simply to raise a change proposal, despite that action being the driver of subsequent administration and development costs. Doing so could be inhibitive for smaller or less well-resourced

stakeholders, potentially deterring engagement and stifling innovation. Such an approach would undermine the inclusive and collaborative ethos of code governance and could be detrimental to the efficient operation of the market as a whole.

In principle we support the intent of Option 1—a high-level charging principles within the licence – as we acknowledge that this would ensure a greater degree of consistency across current and future industry codes. The REC already contains very similar principles as set out in Clause 10.3 which requires that such charges be non-discriminatory and cost reflective. These principles have been successful to date and could be adopted more widely.

However, we note that again the proposals make an unnecessary distinction between the activities traditionally associated with code administration and those services that are provided pursuant to the code. For instance, in the case of the REC the optional charges refer to the following REC Services:

- Electricity Enquiry Service (EES)
- Gas Enquiry Service (GES)
- Metering Accreditation and Audit
- Secure Data Exchange Service (SDES)
- Energy Theft Tip-Off Service (ETTOS)

Given the limitations in the use of transactional changes in relation to governance functions, it is not immediately obvious to us what licensed activities they could appropriately be applied to (noting that the provided example of bespoke training is not itself a licensable activity). However, we remain of the view that the changing arrangements should apply equally to those activities provided pursuant to the code as well as those prescribed in licence, and – subject to the comments provided in response to Q15 - therefore support the inclusion of key principles within the Code Manager licence as set out in Option 1.

Q15: To what extent do you agree that the licence drafting in condition 24 of Annex A delivers the intent of our proposed policy on optional charging? Do you have any other views or comments on the licence drafting?

We support the principle of 'Optional' charging in line with the proposed policy intent, we have several concerns with the drafting of Condition 24. Most fundamentally, the consultation and associated drafting appear to overlook the primary purpose of a charging methodology — namely, to ensure that the licensee is able to fund its licensable activities. This obligation reflects the Authority's statutory duty, as recognised in the licensing regime for other regulated entities, to have regard to the need to secure that licensees can finance the activities authorised or required by their licence. However, the current drafting places disproportionate emphasis on the secondary consideration of how those costs should be allocated across different parties.

While we agree that the overall structure of Condition 24 broadly reflects the intended policy on optional charging — establishing a framework that supports flexibility while embedding principles such as transparency, fairness, and non-discrimination — we believe there are a number of areas where drafting improvements are necessary to align it more closely with both the underlying statutory duties and the practical realities of implementation. Our specific comments are as follows:

- **The heading "Part A: Funding the Code Manager Business"** appears superfluous given there is Part B, etc. Unless further subsections are intended, we suggest removing this label for clarity and simplicity.

- **Paragraph 24.3(c)** is, in our view, both unnecessary and potentially confusing. Optional charging is not introduced to *facilitate* proportionality. On the contrary, the administrative burden associated with designing, consulting on, and implementing optional charging frameworks often acts as a limiting factor — not a justification — for their use. Including 24.3(c) risks misleading stakeholders by implying that proportionality supports the application of optional charges, when it may in fact argue against them. We therefore recommend that paragraph 24.3(c) be deleted. The Code Manager will be best placed to determine, on a case-by-case basis, whether optional charging is proportionate, applying the general charging principles already set out in the licence. If it is retained, we suggest that the clause is re-worded to suggest that the introduction of Optional charges will be *subject to* it being proportionate to do so, rather than an aim.

- **Paragraph 24.4 a)** is unlikely to be workable in its current form. It seems to presume that the Code will explicitly identify the funding route for each specific activity undertaken by the Code Manager, which is neither practical nor desirable. A more realistic approach — and one consistent with current arrangements under the REC — would be for the Code to specify that all activities are funded via Core Charges unless explicitly designated as subject to Optional Charges. Requiring an activity-by-activity breakdown would introduce unnecessary rigidity and complexity, while offering limited benefit. We therefore recommend amending paragraph 24.4(a) to reflect this practical reality.

- **Paragraph 24.4 b)** imposes an unnecessary restriction on the Code Manager's ability to apply differentiated charging where there are reasonable and objective grounds to do so — for example, between user groups with materially distinct characteristics, roles, or licence obligations. It appears to assume that charging differentiation should be exercised solely at the discretion of individual users, rather than being applied to defined market segments where appropriate. This limitation could undermine the flexibility needed to design cost-reflective and equitable charging arrangements. While RECCo currently does not segment Code Manager Business costs between groups of parties, we strongly believe that maintaining flexibility to do so in future is important. The rationale for introducing user-pays charging — as outlined in our response to Question 14 — was rooted in the recognition that code users are not homogenous and have diverse requirements. This principle already underpins several REC services. For instance, cost recovery arrangements differ for gas and electricity enquiry services due to historic design, contractual models, and the specific licence and operational obligations of different users.

It is also conceivable that segmentation may be appropriate even for core services — for example, where certain obligations apply only to domestic suppliers or non-domestic suppliers, or where different types of users drive different volumes of cost. In such cases, it may be both equitable and efficient to apportion charges based on relevance and usage. We therefore recommend the removal of the restrictions proposed in paragraph 24.4 and instead support a model that enables the Code Manager to exercise discretion — within the broader charging methodology principles — to differentiate charges where appropriate, transparent, and justified.

Finally, we would suggested that the licence refers to "Usage based charging" or another cognate expression as *"optional charging"* can misleadingly suggest that parties may choose whether or not to pay — implying discretionary payment — or indeed that Code Managers could choose whether or not to charge, when in fact the obligation to pay is triggered by use of the service and must attract cost-reflective charges in order to satisfy obligation elsewhere, should as the avoidance of cross-subsidy (condition 14) and non-discrimination (condition 15). *Usage-based charging* more accurately conveys that charges arise only if the service is used.

Retail Energy Code Company Ltd
27 Old Gloucester Street
London, WC1N 3AX

Q16: To what extent do you agree with our proposal to introduce a "minimum acceptable performance standard" in the Code Manager licence?

RECCo understands that the introduction of a "minimum acceptable performance standard" as a means of reinforcing accountability and safeguarding service quality. It could help to close a gap whereby Code Managers may meet their technical obligations but fall short of stakeholder expectations or deliver poor-quality outcomes. A clear baseline standard will assist Ofgem and stakeholders in holding Code Managers to consistent and reasonable levels of performance.

There are areas where additional clarity or safeguards would be beneficial in promoting the ability of licensees and stakeholders to better measure performance:

- The standard is intentionally principles-based, but this leaves room for differing interpretations of what constitutes "minimum acceptable" performance. Inconsistent application could lead to uncertainty or disputes. It would be helpful for Ofgem to commit to issuing supporting guidance or illustrative case studies to aid interpretation.

- The current policy position permits each Code Manager to develop performance measures independently, potentially resulting in variations and interpretations of what constitutes 'minimum acceptable' performance. This fully independent approach could undermine comparability by removing alignment on performance measures that should, by their nature, be consistent across codes. While it is appropriate for code-specific measures to be developed to reflect the unique responsibilities of each code, a baseline level of consistency should be mandated where commonalities exist, to ensure fairness, transparency, and the ability to benchmark performance across Code Managers.

- We appreciate the assurance that minor or one-off issues will not lead to enforcement action, and that the condition is primarily a safeguard against sustained underperformance. We recommend that this be reinforced in formal guidance or compliance protocols, to prevent disproportionate regulatory responses and ensure that engagement and remediation are prioritised over enforcement.

Q17: To what extent do you agree with our proposals regarding remuneration, including introducing a licence requirement for the Code Manager to implement a remuneration policy, linking bonus remuneration of Senior Staff to performance and compliance and whether the sufficiently independent directors and/or SAF should have a role in reviewing the remuneration policy?

RECCo is broadly supportive of the policy intent behind the requirement for a remuneration policy that links variable remuneration of senior staff to the overall performance of the Code Manager. We agree that embedding clear accountability mechanisms in remuneration frameworks can reinforce good governance and drive performance outcomes across all licensees.

RECCo already operates under a governance framework that incorporates performance-based remuneration oversight, aligned with principles of transparency and accountability. We therefore recognise the benefit of codifying such expectations consistently across the market. However, we believe that further clarity and appropriate safeguards are needed to ensure this licence condition is applied in a fair, proportionate, and operationally effective manner.

We do not support the proposal for the Authority or Stakeholder Advisory Forum (SAF) to have a role in staff remuneration. Decisions relating to remuneration are properly the responsibility of the company Board, which is already subject to extensive requirements under the licence — including provisions on independence, transparency, and compliance with the UK Corporate Governance Code. Introducing additional oversight from the SAF or Ofgem risks duplicating the functions of the Board, creating inefficiencies, and undermining established lines of accountability and fiduciary responsibility.

It is important to preserve appropriate discretion for Boards in interpreting and applying performance assessments. Remuneration decisions should consider the broader context in which delivery occurs —i.e. a 'balanced scorecard' approach - including evolving stakeholder priorities, reliance on shared service models, and external dependencies that may materially affect performance but fall outside the direct control of the Code Manager. An overly rigid or prescriptive approach to performance-linked pay risks constraining the Board's ability to exercise informed and fair judgment. It may also lead to unintended consequences, such as an excessive focus on pre-defined metrics at the expense of responding flexibly to emerging challenges and shifting strategic priorities.

Q18: To what extent do you agree that the licence drafting in conditions 25 and 26 of Annex A delivers the intent of our proposed policy on Performance? Do you have any other views or comments on the licence drafting?

We broadly agree that the licence drafting in Conditions 25 and 26 reflects the intended policy objectives—specifically, enhancing performance management and establishing a clear link between performance and senior staff remuneration. However, we consider that the drafting could more effectively reflect the principles of a proportionate and context-sensitive performance framework. In particular, it should safeguard the discretion of the Board in making remuneration decisions, recognising the legitimate and lawful authority of the company's governance structures—especially the Remuneration Committee. The Board and its sub-committees are already subject to a comprehensive set of obligations, including those established in company law, the best practice standards of the UK Corporate Governance Code, and, as proposed, obligations set out elsewhere within the Code Manager licence. This would allow sufficient flexibility for boards to assess performance holistically and take into account contextual factors. A narrowly prescriptive interpretation of licence-defined performance risks undermining fair and informed governance.

<u>Reference to the individual</u>

We strongly disagree with the inclusion of any references within the remuneration provisions — including Condition 26.3(b)(ii) — to the performance of individual employees, rather than the performance of the licensee as a whole. This approach is inappropriate both in principle and in practice.

The inclusion of such provisions raises significant concerns regarding data privacy and the management of personal information. Individual performance assessments are, and should remain, an internal matter for line management and the Board's Remuneration Committee. These are governed by employment law and good governance practices and should not be subject to external influence or scrutiny by stakeholders or the regulator.

It is not appropriate — or practicable — to link individual performance to licence compliance or to use it as a mitigating factor in assessing organisational performance. Many of the factors that influence performance against key objectives are external, multifaceted, and not reasonably attributable to a single person. They often involve complex stakeholder dynamics, shared service models, and operational interdependencies. Such matters could not be appropriately visible to, or assessed by, stakeholders or Ofgem in the context of an individual's role.

The success or failure of a licensee in meeting its obligations is the result of collective endeavour. Our current remuneration policy reflects this, and is aligned to a balanced scorecard framework, applied to the organisation as a whole. Performance incentives are determined by the company's overall delivery against strategic objectives, not the contribution of any one individual. This approach reflects our core values and culture, fostering collaboration, shared responsibility, and team success. Introducing references to individual performance into the licence framework could unintentionally undermine these principles and detract from the long-term success and integrity of the Code Manager function.

The focus of performance-related remuneration provisions should remain firmly on the achievement of organisational objectives and the delivery of outcomes at the licensee level. This will better support consistency, fairness, and appropriate accountability across all Code Managers.

Reference to "minimum acceptable performance standards"

The drafting should more clearly reflect that the standard is intended as a safeguard against sustained underperformance, rather than a tool for penalising minor or isolated issues. Placing greater importance on proportionality, stakeholder engagement, and a principles-based interpretation in any associated guidance would help ensure consistency and fairness in its application.

While we acknowledge that the licence drafting must necessarily remain general to apply across all Code Manager licensees, the imposition of timebound obligations will, in the case of the REC and BSC, take effect partway through a financial year. This creates practical challenges in transitioning from existing governance and remuneration arrangements. These impacts could be mitigated if the licence were granted with effect from 1 April—coinciding with the start of the financial year—though we recognise that this is unlikely, with the grant expected no earlier than summer 2026.

RECCo already operates under an established remuneration policy and is confident in its ability to comply with Condition 26.2. However, it is important to acknowledge that a pre-existing policy will be in force at the point of licence grant. We would therefore welcome further engagement with Ofgem to explore the most appropriate approach. Specifically, whether it would be preferable for RECCo to develop and adopt its 2026/27 remuneration policy in advance—anticipating the licence grant and associated obligations—or alternatively utilise the flexibility provided under Condition 26.2 to agree an alternative effective date.

Should the latter approach be preferred, we propose that the current remuneration policy remains in place for the remainder of 2026/27, with a new, licence-aligned policy introduced from 1 April 2027. This would support a smoother transition, maintain governance continuity, and avoid disruption by circumventing mid-cycle revisions to key governance frameworks.

Condition 26.4 is unnecessarily prescriptive and inconsistent with existing governance expectations. Condition 4 already mandates compliance with the UK Corporate Governance Code, which includes detailed remuneration provisions under Section 5—such as the requirement for a Remuneration Committee with appropriate independence and expertise. Against this backdrop, Condition 26.4, which assigns a narrower remuneration oversight role solely to Sufficiently Independent Directors, appears redundant and potentially contradictory. It diverges from best practice and risks undermining the broader remit of an established Remuneration Committee. We therefore recommend removing Condition 26.4 to eliminate duplication and ensure alignment with recognised governance standards.

Q19: To what extent do you agree with our proposals regarding the provision of information, and co-operation with, the Authority?

We agree with the proposals regarding the provision of information and co-operation with the Authority. It is essential that Code Managers maintain a constructive and transparent relationship with Ofgem to enable effective regulatory oversight. We are pleased to see recognition of instances where it is not appropriate to provide information that may be requested.

Q20: To what extent do you agree that the licence drafting in condition 30 of Annex A captures the intent of our proposed policy on Provision of information, and co-operation with, the Authority? Do you have any other views or comments on the licence drafting?

We agree that the licence drafting in Condition 30 of Annex A adequately captures the intent of the proposed policy. The balance between specific obligations (such as the requirement to provide information upon request) and the more general principles of openness and cooperation appear appropriate.

Q21: To what extent do you agree with our preferred option 1 (principles-based licence condition)?

We are broadly supportive of the proposal to apply a principles-based licence condition aimed at improving the ease of use of the code. This approach allows Code Managers the flexibility to develop and maintain their respective codes in a manner that reflects each code's unique priorities and requirements, while still operating within a clear framework of overarching expectations.

However, we believe a more effective means of ensuring all codes consistently meet the desired usability standards would be to adopt a hybrid approach. Specifically, the licence should set out certain minimum, outcome-based requirements — such as mandating that the code be fully digital — alongside principles that guide how these outcomes are achieved. This combination of prescriptive baselines and enabling principles would help ensure greater consistency across codes while preserving flexibility in implementation.

That said, we also recognise that stakeholder expectations, particularly where they inform the performance metrics of the Code Manager, will serve as an ongoing driver for improvement. In this context, the influence of stakeholder input and performance oversight should provide a strong incentive for Code Managers to continuously adopt and maintain best practices in code usability.

Q22: To what extent do you agree that the licence drafting in condition 28 of Annex A delivers our policy intent for Ease of use of the code option 1? Do you have any other views or comments on the licence drafting?

We agree that the licence drafting of Condition 28 captures the policy intent for ease of use of the code option 1. However, we would recommend that a blended approach of the options is considered to better deliver minimum standards across industry, as described in our answer to question 28.

Q23: To what extent do you agree with the policy proposals set out above on end of licence arrangements, including the proposals relating to IPR? Are there any other assets you consider should be addressed in handover plans?

RECCo largely agrees with the policy proposals on end-of-licence arrangements. We support the introduction of a structured and transparent Business Handover Plan (BHP) process as a means of ensuring service continuity, regulatory certainty, and a smooth transition between Code Managers. However, consistent with our position that the scope of Code Manager activities should extend beyond those expressly defined in the licence to include all services delivered pursuant to the Code, we believe the BHP should explicitly encompass these broader activities, rather than the uncertainty of only potentially being covered as part of Permitted Business, where appropriate.

Retail Energy Code Company Ltd
27 Old Gloucester Street
London, WC1N 3AX

Q24: To what extent do you agree that the licence drafting in conditions 31 and 32 in Annex A capture the intent of our proposed policy on End of licence? Do you have any other views or comments on the licence drafting?

We agree that the licence drafting of Condition 28 captures the policy intent on the End of licence.

Q25: To what extent do you agree with the proposals set out above on code maintenance and modification, including the proposals to update existing licence obligations and for new arrangements?

RECCo broadly supports the proposals set out on code maintenance and modification and welcomes the effort to modernise the licence framework in line with wider energy sector reform. We believe these proposals could help build a more consumer-focused and strategically aligned code governance regime.

Role of the Code Manager

The current drafting defines the role of the Code Manager too narrowly on the tradition functions associated with code administration, such as the modification process. To achieve the full intent of energy code reform, the role of the Code Manager should be positioned more broadly to reflect its wider contribution to delivering change, supporting innovation, enabling decarbonisation, and delivering positive consumer outcomes. A wider remit would better align with the broader set of objectives proposed in Condition 3 of the licence.

This policy needs to ensure that it's narrow focus does not hinder innovation which will be fundamental to delivering the changes required to meet the UKs decarbonisation ambitions by taking a very narrow view of the role of Code Managers.

Assessment of Modifications

We support the requirement for Code Managers to have due regard to the views of the Stakeholder Advisory Forum (SAF) during the assessment of code modifications. The SAF has a valuable role to play in providing expert input and constructive challenge. We agree that both the Code Manager's and the SAF's views should be made transparent and available to stakeholders, reinforcing the integrity and accountability of the modification process.

Significant Code Review (SCR)

We support the proposal that Code Managers should assist Ofgem during the SCR phase. Code Managers are well-placed to coordinate engagement, consolidate stakeholder views, and provide technical support that can improve the quality and inclusiveness of the review. However, we would also expect that with the introduction of the SDS and improved cross-code collaboration between Code Managers, the need for an Ofgem-led SCR would be extremely rare.

Send Back Provisions

We agree that the proposed updates to the send back mechanism are useful. However, to ensure changes are well managed, it is equally important that Ofgem sets clear and timely expectations for its own decision-making processes. We suggest incorporating a timeframe for Ofgem's assessment of modification reports to avoid delays that may hinder necessary change. We would also encourage open and transparent dialogue with Ofgem. Early engagement — for example, meetings between Ofgem and the Code Manager to clarify concerns during the assessment of a change proposal could also reduce the need for formal send backs. This would contribute to the speed in which change is implemented as well as resource and cost management.

We do not support the proposal for Ofgem to be able to consent to parts of a proposal and should continue to accept or reject the proposals as a whole. Accepting only some elements of a proposals would in effect create a new proposal that has not itself been subject to analysis and consultation. It risks undermining the proposer's intent and could lead to unintended consequences, particularly if the wider the operational impacts of change upon code parties' businesses are not fully assessed and considered. As above, earlier engagement from Ofgem would allow it to influence the development of a proposals and potentially exclude any problematic elements before submission of a final proposal.

Self-Governance

We agree that the self-governance and fast-track modification routes should be retained. These mechanisms support efficient decision-making and reduce unnecessary regulatory burden for lower-impact changes.

Cross-Code Working

We strongly support the inclusion of a cross-code working obligation. This is fundamental to achieving the integrated system change required to support decarbonisation, digitalisation, and whole-system outcomes. It also reinforces our view that the Code Manager must play a more expansive role in enabling strategic coordination across market arrangements. Ensuring collaboration through regular cross code meetings designed to address priorities and interdependencies, particularly those related to the delivery of strategic direction priorities, will be critical to the success of this obligation. It may further support the effective functioning of the Cross Code Steering Group or any successor to it, if Ofgem also participated, particularly when cross code collaboration may be required in delivery the requirements of the SDS.

Consumer Impact

RECCo already embeds consumer impact assessment within the REC and its associated processes, and we strongly support formalising this requirement in the licence. Considering both positive and negative consumer impacts is essential to fostering innovation and ensuring the codes serve the evolving needs of consumers. Again, this speaks to the importance of enabling Code Managers to initiate and lead on change where it benefits consumers.

Direct Code Change

We agree that Ofgem having the ability to raise direct code changes is appropriate in clearly defined and limited circumstances. While this should remain an exceptional power, it can play a valuable role where urgency or conflicts of interest would otherwise hinder timely and necessary reform. This mechanism could also reduce the reliance on the Significant Code Review (SCR) process. If, over time, the SCR process is deemed redundant—with Ofgem-led changes instead progressing through the standard modification route as enhanced by these reforms—it could pave the way for removing the complex and lengthy procedural rules currently embedded in many licence conditions.

Stakeholder Advisory Forum

We are broadly supportive of the proposed SAF requirements, particularly the emphasis on independence and expertise. However, the constitution of the SAF should not be prescribed and instead allow the Code Manager a reasonable degree of discretion on what is required to meet the needs of their particular code. It is vital that SAF membership reflects a strong understanding of the technical, policy, and consumer dimensions of the code. A well-constituted SAF can significantly strengthen the modification process through balanced, informed input.

Retail Energy Code Company Ltd
27 Old Gloucester Street
London, WC1N 3AX

Q26: To what extent do you agree that the licence drafting in condition 27 of Annex A capture the intent of our proposed policy on Code maintenance and modification? Do you have any other views or comments on the licence drafting?

RECCo broadly agrees that the licence drafting in Condition 27 captures the intent of the proposed policy on code maintenance and modification. However, we believe the effectiveness of the policy intent would be enhanced by a few key refinements in the drafting in the following areas:

The Role of the Code Manager

The current drafting places emphasis on the Code Manager's administrative and procedural duties. However, we believe it should go further in recognising the strategic role that Code Managers play in driving positive change. The drafting should better reflect the broader objectives set out in Condition 3, such as enabling innovation, supporting decarbonisation, and delivering consumer benefits. The Code Manager should be empowered not only to facilitate change, but also to initiate and shape it where this is in the interests of consumers and the system.

The Role of Ofgem

While we support the emphasis in the proposed Code Manager framework on enhancing the timeliness, quality, and transparency of code decision-making, it is essential to recognise that Ofgem remains a critical actor in that process. In many cases, Ofgem is not merely a regulatory backstop but an integral decision-maker—particularly where modifications are escalated to the Authority for final determination. In this context, it would be anomalous to hold the Code Manager (and stakeholders engaging with the code) to clear and timebound expectations, while the regulator itself is not subject to any corresponding standards.

Historically, Ofgem operated under a self-imposed Key Performance Indicator (KPI) for modification decisions, aiming to issue a decision on 90% of such proposals within 25 working days. This standard was met consistently for several years, contributing to stakeholder confidence and enabling predictable planning across the market. However, during the COVID-19 pandemic, the KPI was formally suspended and ultimately removed.

We consider this a significant gap in the proposed framework. If the objective is to create a more accountable and efficient governance regime, then all key actors—including Ofgem—must be seen to adhere to consistent expectations. Reintroducing performance commitments for the regulator risks would mitigate the risk of delay and increase confidence in the end-to-end process. We therefore recommend that Ofgem re-establish a KPI for decision timeliness—if not explicitly in the licence, then at a minimum as part of formal regulatory guidance or an associated performance framework. Options could include a tiered performance metric, distinguishing between straightforward and complex modifications or a rebalanced target (e.g., 75% within 25 working days), with accompanying transparency on decisions exceeding that threshold and the reasons for doing so.

Q27: To what extent do you agree that legislation should be updated, bringing the REC into scope to reflect its creation as the successor of the MRA and SPAA?

We agree that legislation should be updated to bring the REC into scope for appeals on Authority decisions to the CMA, reflecting its status as successor to the MRA and SPAA which were subject to that right of appeal.

Q28: To what extent do you agree with our preference to maintain the status quo by preserving the CMA appeal route for 'commercial' codes and keeping 'technical' codes out of scope?

When the appeals mechanism was introduced through the Energy Act 2004, it was designed to apply to a defined set of the most commercially significant industry codes, such as the BSC, UNC, and CUSC. At the time, this targeting was a practical and proportionate approach, reflecting the direct commercial implications associated with decisions under those codes. However, we do not believe it was the government's intention to permanently exclude other codes in principle; rather, the scope of the original implementation was deliberately limited to focus on the highest-impact areas.

While we understand the rationale for excluding technical codes from the appeals regime based on their perceived lower commercial significance, that rationale now appears less convincing. In the two decades since the regime was introduced, appeals have proven to be extremely rare, with only a handful of cases having proceeded to the CMA for determination. This minimal use suggests that the concerns originally expressed about appeals obstructing or delaying industry change have not materialised in practice.

Furthermore, the technical codes currently proposed for consolidation into a single Electricity Technical Code — such as the Grid Code, Distribution Code, and SQSS — are, like the commercial codes, regulatory instruments governed by licence obligations and overseen by Ofgem. These codes can have a substantial impact on the structure and operation of the energy system. An inappropriate or poorly considered change to such a code could adversely affect market participants and distort competition. This risk is reflected in the fact that material changes to these codes are often reserved for Ofgem's decision, and that codes such as the SQSS explicitly include the promotion of effective competition as one of their key objectives.

On that basis, we consider that where a proposed modification to a technical code is deemed sufficiently material to require escalation to Ofgem for approval — rather than being determined by a Code Manager — it should logically fall within the scope of the appeals mechanism. This would promote consistency in regulatory governance, reinforce accountability, and support confidence in the broader code framework.

We further note that the inclusion of these codes within the appeals designation would future proof the regime with minimal downside risk. The existing framework already includes appropriate safeguards: Ofgem may exempt a decision from appeal on the grounds of urgency or security of supply, and the CMA may refuse permission for appeals that are trivial, vexatious, or lacking merit. These targeted mitigations provide a more proportionate means of preventing abuse than outright exclusion of whole categories of code.

In light of these considerations, we encourage the government to revisit the current designation of eligible codes and consider extending appeal rights to material decisions relating to technical codes where appropriate. This would align the regime with modern governance expectations while preserving the flexibility and efficiency of the code modification process.

Q29: To what extent do you agree with our position that the current eligibility criteria for who can bring an appeal to the CMA should remain unchanged?

We agree that the current eligibility criteria for who can bring an appeal to the CMA sufficiently covers a range of stakeholders who may be affected. Importantly this includes bodies or associations whose functions are or include representing consumers or other stakeholders. We are not aware of any concerns with the current criteria and therefore agree that they should remain unchanged.

Q30: To what extent do you agree with our preferred option that appeals should be triggered when Ofgem disagree with the Code Manager's recommendation?

We support the proposal that appeals to the CMA should be permitted where Ofgem reaches a decision that diverges from the recommendation of the Code Manager.

The original policy rationale for excluding appeals of Ofgem's code modification decisions that aligned with the recommendation of the relevant code panel was to streamline the regulatory process and avoid unnecessary delays. This principle was formalised in the Electricity and Gas Appeals (Designation and Exclusion) Order 2005, which excluded decisions from appeal where Ofgem agreed with the panel's recommendation—on the basis that such alignment reflected a consensus across informed industry participants.

Under the proposed new governance framework, the traditional role of the code panel will be replaced either by the Code Manager making a final decision (in the case of self-governance proposals), or by the Code Manager providing a formal recommendation to Ofgem (in cases requiring Authority consent). In both cases, the Code Manager's assessment will be informed by structured engagement with the Stakeholder Advisory Forum (SAF), which is expected to comprise a broad and diverse group of independent industry experts and consumer advocates. This ensures that a wide range of perspectives is meaningfully considered in the modification process.

Crucially, the Code Manager's independence is a foundational element of the reformed governance model. In reaching a recommendation or decision, the Code Manager will not only need to demonstrate alignment with the relevant code objectives but must also clearly articulate how input from the SAF has been incorporated into their assessment. These requirements provide a robust set of checks and balances, fostering transparent, evidence-led decision-making.

In this context, we consider the Code Manager's recommendation to be the most appropriate gateway for determining whether an appeal right should be available. It provides the closest proxy for stakeholder consensus, or at least the balanced output of those views. Limiting appeals to instances where Ofgem formally disagrees with this recommendation ensures that such appeals will be grounded in meaningful regulatory divergence, rather than in procedural or subjective dissatisfaction, and helps maintain the integrity and focus of the appeals regime.

Q31: To what extent do you agree that, subject to feedback and consultation, these exclusion criteria should be embedded in a new statutory instrument?

We support the proposal to embed the exclusion criteria within the new statutory instrument and agree that it is appropriate to retain the two existing grounds for exclusion: where Ofgem's decision aligns with the recommendation of the relevant body (which, under the new framework, will transition from the Panel to the Code Manager), and where an appeal would risk causing an adverse impact on the availability of supply. These exclusions have functioned effectively over the two decades since the introduction of appeals on industry code decisions. Retaining them within the revised legislation will ensure continuity and regulatory certainty, while providing a clear and consistent framework for stakeholders. This approach reinforces transparency and safeguards the right of appeal in a proportionate and targeted way.

Q32: To what extent do you agree with our proposal to take forward option 3 which gives the Code Manager the discretion to recommend more than one modification for approval?

Under the proposed arrangements, it is anticipated that one or more alternative proposals may be developed as part of the modification process. In some cases, each of these options may represent an improvement over the status quo, albeit to varying degrees. Under existing governance frameworks, code panels have typically taken the view that multiple options should be recommended for approval where each is considered to better facilitate the relevant code objectives, while also expressing a preferred option. We expect a similar approach would apply under the new model: namely, that the Code Manager assesses all

relevant proposals, identifies which (if any) satisfy the modification hurdle, and indicates a preferred option where a clear judgement can be made.

In practice, the differences between competing viable proposals may be marginal when compared to the difference between those options and maintaining the status quo. This underscores the need for clear and transparent reasoning from the Code Manager when assessing competing options. In such cases, an appeal brought solely on the basis that Ofgem selected one viable option over another could appear disproportionate and may rightly be dismissed by the CMA as trivial or vexatious. It is also unlikely that a party will pursue an appeal if the implemented modification achieves substantially the same outcome as their preferred alternative. That said, this risk may be more pronounced in the context of changes to charging methodologies, where even small differences can result in significant commercial impacts — though we do not anticipate this to be a material concern under the Retail Energy Code.

We consider all three options presented in the consultation to be workable. However, for the sake of clarity and to promote disciplined and comparative analysis of competing proposals, we marginally favour Option 1. This option requires the Code Manager to recommend a single modification for approval, thereby encouraging a clear evaluation of the relative merits of each proposal — not simply whether each option is better than the baseline. Such an approach supports the principles of independent and objective governance and avoids placing full responsibility on Ofgem to make judgments that are better informed by the Code Manager's area of expertise. Ofgem, of course, retains the discretion to reject the recommended option and approve an alternative if it determines this to be more appropriate.