

1 Modification 0674: Supplemental Report

Meeting Schedule

Meeting #1	23 August 2021	(High-level governance and relationship with UNCC)
Meeting #2	06 September 2021	(Other governance)
Meeting #3	28 September 2021	(Performance Assurance Objective)
Meeting #4	26 October 2021	(Costs)

Meeting Contents

Meeting Number	Issue Number	Question	Reference Documentation
1	1	Discuss the advantages and disadvantages of greater levels autonomy for PAC with regard to management of its functions and authorship of the PAFD.	16.2.4 Functions - 16.4 PAFD - 16.7 GTB4.3.1
1	2	Provide views on the adoption of GTD-like governance arrangements.	16.3 & 16.6 GTD
1	3	Comment on the role of the UNCC where a Party appeals its referral to Ofgem.	16.8
2	4	Comment on the right for the PAC to raise performance-related Modification proposal.	MR6.1.1(e)
2	5	Discuss business rule 2a and the corresponding legal text.	16.1.1
2	6	Provide views on the facility for PAC to co-opt PAFA personnel to chair & <u>provide secretarial support for</u> PAC meetings.	16.3.3 & 16.3.4
2	7	Identify & clarify any IGT requirements should the mod be directed for implementation.	IGT138
2	8	Provide views on PAC's right to request, and the parties' obligation to provide, performance assurance related information.	16.1.5 & GTB4.4.2
2	9	Clarify the rules with respect to quoracy.	16.6.2
3	10	Comment on the Performance Assurance Objective (PAO) and its effect on Code Parties.	16.1.1(b) & 16.1.2
3	11	Comment on the PAO and its effect on non-Code Parties.	16.1.1(c) & 16.1.2(b) & (d)
3	12	Comment on the interaction, (if any), on the requirements of the PAO and the "Relevant Objectives".	16.1.1(b)
3	13	Comment on the interaction, (if any), on the requirements of the REC Performance Assurance Framework and those set out in this proposal.	REC Schedule 6 & REC Code Manager Performance Assurance Consultation (April 2021)
4	14	Comment on the effect the application of the PAO could have on operating costs.	
4	15	Clarify the CDSP's, (and other parties), implementation costs.	

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1.0 Introduction: Meeting #1

At the first meeting it was confirmed that the purpose of the series of meetings was to discuss a number of issues raised during the consultation stage of the modification process.

The group has been allocated 6 months to discuss issues and, if deemed necessary, refine the modification and the legal text to reflect these further stages of development. Each of the issues has been structured into a question although it is down to the Workgroup as to how their views on a particular matter were debated.

In order to do this, the issues have been grouped into 4 themes, (as shown in the table above), with a view to work through them sequentially and report no later than to the December 2021 Modification Panel.

As can be seen from the discussions at the first meeting, the debate has led to a number of matters being reconsidered to the extent that a Modification Variation Request is likely to be made to Panel, which will need to be factored into the governance process further down the line. For the time being the matters being reconsidered are being recorded as actions and can be found in both the minutes of the meetings and in consolidated form at the end of this Supplemental Report.

2.0 Meeting #1: High-level governance and relationship with UNCC

Good governance is a pre-requisite of all the regulated codes and it's understandable that when it is proposed that the governance of a particular committee should be varied, the matter should receive attention and due consideration.

At the simplest level, for PAC, (the Committee) it is proposed that the CDSP model of governance¹ should be adopted, that is to say, the majority of the PAC arrangements would be set out in the Uniform Network Code (UNC), (principally, the Committee's Terms of Reference, PAC's purpose and other constitutional matters), but in order to remain proactive and agile, the operational detail documented in the Performance Assurance Framework Document (PAFD)², which it is proposed would also include the PARR schedule, would sit within the governance of the PAC itself, and could be amended by a Committee vote.

These supporting documents would also include the Performance Assurance Techniques, (PATs), the tools available for deployment should a shipper's performance be deemed by the Committee to require improvement. Earlier in the FMR, this arrangement has been described as providing more autonomy for the Committee by allowing it to progress changes to documents that previously would have required UNCC approval.

¹ General Terms: Section D

² Proposed Performance Assurance Document v4.5

This ability to amend documents without reference to the UNCC, plus an existing and widely perceived understanding that the Committee had a “closed” status, coupled to some historic tension as to when shippers could attend and how on occasion individual shippers could be required to attend it conducted, has led to some questions relating to the Committee’s accountability. In order to allay these concerns it was noted that the functions of the PAC were defined within section 16.4 of the Legal Text and in the PAFD and specific attention was drawn to the fact that the PAC could not levy direct financial penalties on Code parties. To highlight these concerns, one workgroup attendee cited an instance where PAC and the PAFA had caused some issues, (which subsequently manifested in the Modification 0674 consultation), in relation to the Product Class 4 Read Performance letter that was circulated in late December 2020³, just prior to Christmas. This was further compounded by there being no obvious governance accountability or clear escalation route. Ultimately, given the pressing need to highlight the matter, it was raised at the UNCC, although ideally the matter should have been capable of being contained and resolved within the PAC governance framework.

Another participant noted, (who is a PAC member), the accountability rested with PAC but felt that confusion and oversight was more in relation to timing of the communication, which was released on a working day shortly before Christmas but noted that the issue had been discussed for 6 months previously to get to that stage.

On this point a participant noted that a diagram or process flow showing the required escalation process would have been very helpful and useful. SB said that in essence the PAC operated in a similar way to the Demand Estimation Sub-Committee (DESC) but agreed that maybe the escalation route for the PAC should be made clearer. (Action Point 803)

A further participant commented that if all oversight of governance was removed and making it autonomous then this is what could happen again, and another said that their concern was that although individuals could request to attend a PAC meeting for a specific agenda item, the meetings were closed meetings, unlike DESC meetings that were open meetings, and this limited industry oversight.

To summarise, the previous concerns relating to PAC activities a contributor to the debate suggested that the concern could be expressed as a lack of overall transparency and he felt the Terms of Reference were vague and engagement between the wider industry and PAC could be improved.

The Proposer said this was a valid comment and he said he would look to add reference to open and closed part-meetings into the arrangements to assist with awareness and transparency as they felt there should be no restriction on undertaking these meetings in this way. Although he added that there would still need part of the meeting to be closed for confidentiality purposes owing to the shipper specific subject matter to be discussed on the agenda. (Action Point 801)

The suggestion was well received and it was commented that such a move would be helpful and would enable an individual to bring a concern or issue to the PAC for discussion in an open meeting and that this would have been very advantageous in December 2020, as an extension could have been sought in relation to the timing of the letters being submitted.

In a related point on access to PAC, one participant asked if a single party could speak to the PAC but not in an open meeting. It was noted that this could happen if and would entail the party asking PAC to invite them to a “closed session” to discuss their specific issue in a bi-lateral conversation.

³ Minutes of Performance Assurance Committee 10 November 2020 (where matter was discussed)

To help attendees better understand the activities of PAC, a summary of PAC's functions and its approach to performance issues was conveyed. It was explained that the PAC and PAFA were available to support and guide a party if they were struggling in relation to their read performance, or indeed any other matter, related to settlement. It was commented that PATs were not solely about reprimanding shippers, most were designed to offer interventions using a collaborative and supportive approach to assist a Shipper with their difficulty.

There was some further discussion on the escalation process, which touched on the Appeals process set out in the proposed rules, which clarified the circumstances, the procedure, and the role of the UNCC in the process to act as a reviewer of PAC's actions. It was noted that escalations these could ultimately fall into the appeals arrangements. These could be instigated by a party if it was not satisfied with PAC's action where the party's view was that there had been a procedural mismanagement or information was incomplete or misleading. It was noted that the UNCC could not overturn a PAC decision, but they could discuss the findings. It was commented that it would be remiss for the PAC not to take onboard a UNCC point, especially as the UNCC meetings were open and, from that point there was an optional course of action that Ofgem could become involved in the matter. There was no suggestion that changes to the proposed Appeals mechanism should be included in any Variation Request

On a related point relating to referrals and appeals, a participant enquired if there would be a dedicated contact at Ofgem for managing these and it was further noted that it would be even better if Ofgem could regularly join the PAC meetings to gain awareness of the Committee's business. (Action Point 805)

Moving on to the governance of the PAFD, and as a consequence of the proposed document consolidation, the PARR, it was noted that the PAC would be authorised to amend the document. The document sets out how PAC achieves its objectives and by allowing PAC to amend this document provides for greater agility for operational matters. At this point it was commented that this too could be viewed as an example of a lack transparency, compounded by the perception that PAC is a closed meeting.

Again, this was acknowledged as a valid point, and to resolve that matter it was agreed that all changes to PAFD should be discussed in the open portion of PAC, (which could, obviously, include Panel and UNCC members). As an extension to this point, it was suggested that perhaps all changes to PAFD should be the subject of a consultation.

After some discussion the consensus appeared to be that significant changes may require a PAC instigated consultation but some changes should be managed with in the open session of the PAC, with the PAC voting on the changes following discussion at a Committee meeting. This matter of document governance would be considered proposer and would be considered for inclusion in the Variation Request, (VR). (Action Points 802 & 803)

In summary, AR confirmed that, given today's discussion, a VR would need to be drafted to encompass these changes and he suggested that it might be prudent to wait until all the issues had been discussed and finalised, so that all the proposed changes could be included in a single VR. He also noted that this would make the redrafting of the legal text more straightforward and would ensure all the changes were included in a single iterative step.

It was noted that the single discussion on governance had traversed all aspects highlighted for the first meeting and was that it was encouraging that the discussion had led to further consideration of governance matters and that these would be considered for inclusion in a VR.

Action 0801: ScottishPower (MB) to add into the arrangements the reference to the PAC open, closed, and confidential

Action 0802: ScottishPower (MB) to add into the arrangements that changes to the PAFD should be discussed in an open meeting

Action 0803: ScottishPower (MB) to include in the arrangements that the PAC may be required to consult on any changes requested to the PAFD in an open meeting.

Action 0804: ScottishPower (MB) to produce a process flow/diagram to map the PAFD changes processes

Action 0805: ScottishPower (MB) to contact Ofgem regarding Ofgem representation at the PAC meetings.

3.0 Meeting #2: Other Governance Topics

The meeting discussed issues 4 to 9, listed in the table above, in a structured, sequential manner.

3.1. Issue 4: Comment on the right for the PAC to raise performance-related Modification proposal

This first item discussed was the proposal that the Committee should be able, in specific circumstances, to raise modification proposals. It was noted that there was conditionality around this ability to being aligned with meeting the Performance Assurance Objective. This point was noted and, accordingly, this issue will be further discussed in Meeting #3,

The debate around this provision was the most extensive of Meeting #2, with several reasons cited for the Committee's proposed right to raise modifications in its name, specifically to:

- Avoid any discontinuity that could occur if a modification was raised in the name of a Code Party / Committee Member and that member leaves the committee;
- Ease being able to find a proposer, as finding a Code Party may be difficult if, as the is the potential for some PAC initiatives to introduce new obligations and cost into the industry; and,
- Ensure the proposal is presented to the wider industry as non-partisan

To emphasise the point, the proposer highlighted two historical examples of UIG-related modifications where trying to find a sponsor was quite difficult and these rules had been proposed as a way of avoiding this type of problem.

To the contrary, the reasons for retaining the Code Party-only rule were listed as:

- Allowing a committee to raise a modification could result in the UNCC, other sub-committees and workgroups seeking the right to raise modifications.
- Having the committee with overall responsibility for the proposal may result in specific process difficulties which could be avoided if there was a dedicated proposer that sees the proposal through to the final stages.
- Developing the modification could prove problematic, and it was suggested that have an assigned Code Party, working with PAFA, rather than the whole Committee, would assist progressing proposal amendments.

In order to reconcile these views, a participant suggested that in order to make it easier to find a sponsor, a compromise could be that the Committee ask the PAFA to draft the modification and then assign a Code Party to sponsor it but noting that the sponsor would not have individual responsibility to do any significant development work.

Additionally, there was a widely endorsed view that, (in accordance with the previous meeting's views on open PAC sessions), any development of a modification that Committee endorsed, that would form part of the open session.

There was some discussion regarding the level of support that a modification developed under PAC would require with views ranging from unanimous to a standard PAC vote of support. On this point the proposer noted that PAC decisions do not require unanimity and PAC decisions relating to modifications should adopt a similar protocol. Principally, because despite the modification level of support in the committee, any proposal would be governed by the Modification rules, and as such, as would have the standard protections of workgroup development, panel discussion and authority direction. It was also commented that despite the sponsorship of the modifications, alternatives could still be raised.

In terms of drafting and it was noted that PAFA, or another third party could draft modification and this role could be extended to representing the proposer / proposal at Workgroups and Panel. It was noted that this modification did not extend the right to third parties, such as PAFA, being the proposer, as that would be too far removed from the current UNC arrangements and it was stated that this had never been an intention.

There was support for an arrangement where PAFA drafted the proposal as single-entity authorship would provide continuity, ensuring a modification does not evolve through multiple different versions of the solution because different individuals are responsible for drafting.

It was noted that PAC should remain closely involved in the modification and required regular, (monthly), briefings to see how it is developing, with material amendments requiring committee ratification. This would help ensure continuity and provide consistency as membership of PAC is likely to change over the life-cycle of a modification.

To conclude the debate on the matter, the view of the proposer was that intent of the proposal should essentially remain the same as currently drafted. A "PAC Modification" would carry an endorsement of a Committee vote of support, although the actual sponsor would be a Code Party, and that party would be largely dependent on the PAFA doing most of the authorship and development of the modification.

Any necessary amendments relating to this point would be included in the Variation Request.

3.2. Issue 5: Discuss business rule 2a and the corresponding legal text.

The discussion centred on a minor discrepancy between the Legal Text and the associated Business Rule, (insofar as the Business Rule makes references to: "the Modification Panel, UNCC, and sub-committees). It was agreed that the proposed Legal Text accurately reflected the intent of the proposer and consequently, an amendment to the Business Rule 2a would be referenced in the VR. No revision to the Legal Text would be required. (Action Point 904)

Due to the reference to the Performance Assurance Objective, this discussion would also feature in Meeting #3.

3.3. Issue 6: Provide views on the facility for PAC to co-opt PAFA personnel to chair & provide secretarial support for PAC meetings.

The proposer set out the case for the inclusion of this provision which was due to a number of ad hoc meetings some time ago that Joint Office found difficult to facilitate, due to specific resource constraints.

The debate included a concern that, should PAC meetings be convened without JO facilitation; it could potentially represent the first incremental step of divergence from the recognised governance arrangements for organising and managing committees & workgroups. It was also noted that Joint Office should always be appropriately resourced to meet the reasonable requirements of its customers, thereby rendering this provision superfluous.

Following consideration of these points and noting that the earlier resource issue that triggered this provision appeared to be well in the past, (on which point he would seek reassurances from the JO CEO), the proposer advised he would be willing to accept the views of the Workgroup and stated he is inclined to remove the germane Business Rules from the Modification and make the necessary amendments to the legal text and PAFD. (Action Point 905)

3.4. Issue 7: Identify & clarify any IGT requirements should the mod be directed for implementation.

There was a brief conversation regarding the IGT UNC Modification, (IGT 138), that was being processed in parallel with this modification. It was agreed that IGT modification was complete and would complement this proposal satisfactorily, noting that it had been developed in accordance with the prevailing cross-code governance arrangements.

Also, AR confirmed that the action raised in the consultation response seemed to relate to ensuring PAC related modifications were raised in both the UNC & the IGT UNC and that this should be reflected in the PAFD.

In terms of the modification and the legal text: no further action is required on this issue.

3.5. Issue 8: Provide views on PAC's right to request, and the parties' obligation to provide, performance assurance related information.

It was confirmed that the issue under discussion related to the proposed amendment to UNC GTB4.4.2, which currently states that if a Party does not want to provide the information being requested, it is not obliged to do so. However, in relation to the PAC, this rule has been disapplied for information relating to information requested and being reasonably required to monitor settlement performance.

There was little debate on this matter although it was noted that any requests for information by the PAC should be bounded by the limits of the law and by the limits of the contractual ability of the Party to be able to provide the requested information. It was agreed that this should be the case and that a minor amendment to the relevant Business Rule would be a reasonable along with a corresponding adjustment to the legal text. (Action Point 906)

3.6. Issue 9: Clarify the rules with respect to quoracy.

On the discussion on quoracy, it was confirmed that the intention in the modification was to ensure that the current quoracy requirements for the PAC prevailed.

It was confirmed that a minor correction to the Business Rule should be made and the legal text would also be reviewed to ensure the intention to align with the current arrangements is maintained. (Action Point 907)

Action 0903 (Issue 4): Comment on the right for the PAC to raise performance-related Modification proposal - ScottishPower (MB) to make this more explicit in the report and the Business Rules may need amending slightly. MB to carry out a review of the mod and text.

Action 0904 (Issue 5): Discuss business rule 2a and the corresponding legal text - ScottishPower (MB) to update the Business Rule to reflect the Legal Text.

Action 0905 (Issue 7): Provide views on the facility for PAC to co-opt PAFA personnel to Chair & Secretary PAC meetings: Joint Office (AR) to arrange discussion on this topic with Penny Garner.

Action 0906 (Issue 8): Provide views on PAC's right to request, and the parties' obligation to provide, performance assurance related information - ScottishPower (MB) to confirm wording in the proposed Legal Text (V16.1.5), where it refers to 'own business' (please to refer to the specific consultation response provided by SM for further reference).

Action 0907(Issue 9): Clarify the rules with respect to quoracy - ScottishPower (MB) to review the Business rules and the proposed legal drafting (V16.6.2) and the existing PAC rules and ensure alignment.

4.0 Meeting #3: Performance Assurance Objective, (PAO)

The main purpose of the meeting was to discuss the purpose, relevance and effect of the Performance Assurance Objective. As part of the consultation a number of concerns relating to the introduction of a PAO had been submitted and the purpose of the meeting was to ensure that the concerns could be discussed and resolved. In the main discussion was concise.

4.1. Issue 10: Comment on the Performance Assurance Objective (PAO) and its effect on Code Parties.

It was noted that definition of the PAO was documented in the Legal Text, V16.1.1(b) as: *the "Performance Assurance Objective" is in relation to a Day the objective of achieving accurate and timely Settlement for the Day.*

It was noted that there appeared to some differences between the Legal Text and the way that the PAO was expressed with in the Business Rules (BR). The point was noted and the Proposer agreed to examine the Business Rules and the Legal Text to ensure they are consistent in their intent. Given that the Workgroup appeared comfortable with the Legal Text drafting in relation to the PAO, the Variation Request would only amend the BR.

In relation to this point, it was noted that there did not appear to a 'reasonableness test' associated with parties' performance. A participant suggested that compliance with the PAO should be limited and suggested a caveat that established that compliance with the PAO could be met by a party if they "met their contractual, (UNC), obligations". The Proposer gave an assurance that the wording in the Legal Text would be amended to address this concern. A number of attendees noted that the removal of what appeared to be an 'absolute test', and replacement wording that referenced to contractual obligations, would largely alleviate concerns.

4.2. Question 11: Comment on the PAO and its effect on non-Code Parties.

The matter of the application of the PAO and its effect on non-Code Parties was introduced by confirming that there was no intention in the BR to override the general contractual principle that a contract could only be binding on entities that had signed the agreement and that there was no intention for the UNC to directly reach out and dictate the performance of these organisations.

The obligation in this area was simply for Parties to ensure that their subcontractors are aware that they need to deliver to agreed performance levels to meet their contractual obligations.

It was noted that, in any event, the proposed Legal Text was caveated with a “reasonableness test” on non-Code Party performance, which also served to allay earlier concerns.

4.3. Question 12: Comment on the interaction, (if any), on the requirements of the PAO and the "Relevant Objectives".

A brief discussion confirmed that there was no contractual overreach of the PAO and the relevant objectives would still have primacy on relevant matters of UNC governance. For example, any modifications raised that sought to deliver performance improvements would still ultimately be judged against the relevant objectives, consistently and in accordance with the requirements Modification Rules.

Following discussion at previous meeting and earlier assurances that amendments to BR 2a, (as discussed under Issue 5), would be made, it was agreed that this issue could be concluded without further amendment to either the BR or the Legal Text.

4.4. Question 13: Comment on the interaction, (if any), on the requirements of the Retail Energy Code, (REC), Performance Assurance Framework and those set out in this proposal.

The Workgroup briefly discussed whether or not there was any interaction between REC's performance assurance arrangements and those proposed in this Modification. There was some discussion that referred to the governance of the two regimes vis-a-vis REC's Performance Board arrangements versus the UNC's committee administration but no significant concerns were raised regarding the potential for overlap or interaction between the two regimes. The discussion concluded with an agreement that no changes to the Modification or Legal Text were required and that clarity provided on the roll and functions of the PAC in earlier discussions had negated potential concerns in this area.

5.0 Meeting #4: Rough Order of Magnitude (ROM) and Incremental Costs

The workgroup reviewed the potential cost implications associated with the implementation over the course of two meetings, (Meetings #3 and #4). Of primary concern to the group were two aspects of the proposal that had the potential to generate in additional costs, and below is a summary of the discussion.

5.1. PAFA Operating Costs

The first of these were the costs associated with employing the PAFA to undertake the activities specified in the PAFA Engagement Agreement and how these may change should the proposal be implemented.

Following initial discussion at Meeting #3, the CDSP was asked to engage with Gemser, (the PAFA), and provide ROM-like analysis of the likely base-cost increase of operating under the revised arrangements. For clarity, the CDSP stated that these would be defined as the extra costs associated with providing the new Business as Usual (BAU) operating procedures arising from the implementation of Modification 0674.

Following discussion with PAFA it was stated that the assessment of the annual cost increase was likely to be in the region of £30 - £60k, a year, although it was noted that these may vary as implementation could give rise to a reactive improvement in behaviours and performance, which could potentially lower the incremental cost increase.

There then follow a discussion on these values where the general view expressed was that the amounts were less than those that had been anticipated and the group were, in the main, relieved by the relatively modest incremental costs being suggested.

5.2. CDSP Consequential Costs

The second set of discussions related to costs that could arise from incremental activities by the CDSP, for instance, where the PAC request the deployment of a PAT and the CDSP would be the prime-choice organisation to provide the service.

The principal concern was that where this was the case, (and there was no practical alternative for the shipper to engage with anyone other than the CDSP), how could the shipper be assured that it was receiving value for money. An example of this could be where a shipper might request, or might be instructed by the PAC, to seek help with the submission of certain types of files or conduct a tailored compliance review.

In these circumstances, the question being asked related to the level of confidence a shipper could have that the proposed charges were reasonable and fair to both parties. One participant suggested that the CDSP should effectively publish a "rate card" but this was countered by a requirement for a degree of commercial confidentiality and the difficulty setting precise rates when the exact service required would need to be bespoke to the problem and the level of expertise required by the client.

In the end discussions focussed on the CDSP's Additional Service Request (ASR) DSC service line which is available to DSC customers and affords a degree of commercial confidentiality to both parties, in accordance with the CDSP's standard terms and conditions. A Workgroup participant further expressed the need for transparency and there was general agreement that transparency was in the interest of all parties, including the CDSP, but this should not include a full publication of day-rates for bilaterally procured commercial activities.

In conclusion, it was agreed that the implications arising from the charging of CDSP services was not a part of the remit of this group. While the deployment of a PAT could give rise to a requirement for an ASR, the modification was not responsible for setting and refining the methodology and contacting arrangements that underpinned the provision of ASR services. ASR arrangements are governed through the DSC Contract and it was agreed that the matter should be referred back to the Management Committee, if it was felt that the implementation of this proposal could impose specific requirements.

6.0 Meeting #5: Wrap-up

6.1. Variation Request

6.2. Revised Modification

6.3. Revised Legal Text