

## Representation received by Email

### UNC Independent Panel Chair

**Date:** 09 February 2014

**Organisation:**

Tim Davis

**Abstract:**

1) What criteria do you consider to constitute an independent Chair?

Suggested criteria are financial independence and an independent mind.

If the Chair's financial wellbeing is dependent on one or more UNC related parties, this is likely to create an incentive for the Chair to be other than impartial when dealing with issues that impact the interests of those parties. Irrespective of the reality, it may be difficult to avoid a perception of bias. This would be particularly difficult if the Chair was subject to a performance management regime that bases remuneration, at least in part, on achievement of a particular party's objectives.

Notwithstanding personal views and financial incentives, some individuals are particularly adept at acting impartially - seeing arguments from different sides and being willing to ensure that all party's views are aired and respected. Consultants and lawyers, for example, are used to supporting different clients and managing conflicts of interest, and Civil Servants support politicians irrespective of their own political views. A Chair that has an independent state of mind is likely to gain the confidence of the industry as a whole and so be capable of constituting an independent Chair.

2.) Do you consider that the Joint Office Chief Executive, appointed from a Gas Transporter business, fulfils the Transporter's Licence obligation to appoint an independent chair, and why?

Irrespective of what others may consider to be the case, it is a matter for the Transporter's to ensure they meet their Licence obligations. Part of Ofgem's role is to monitor whether or not they are satisfied that Transporters are compliant and to take enforcement action where they consider this is justified. Given that the consultation sets out Ofgem's view that "independence would be in the best interests of consumers and the industry, as the independent Chair would provide scrutiny over Panel actions and independent oversight of the Code Administrator", it does not seem possible for the JO Chief Executive to fulfil Ofgem's expectation from the Licence obligation – this would not provide independent oversight of the Code Administrator.

In terms of the two criteria suggested above, it is unlikely that the JO Chief Executive would meet the criteria of financial independence while seconded from National Grid, creating the potential for a perception to exist that the Panel Chair may not act independently. These perceptions could be offset through transparency regarding the terms on which the JO Chief Executive is seconded to the Joint Office role, and the requirements and

expectations that are placed on the person in that role, ideally with a clear link showing that a demonstration of independence would lead to increased rather than decreased financial reward.

Whether the JO Chief Executive would meet the criteria of being an independently minded person is dependent on the individual concerned rather than the nature of the role.

3.) Do you have any views on the *process* of appointing the Independent Chair in this way?

Rather than the Transporters simply appointing the JO Chief Executive, it may be appropriate for the Panel to be involved in the appointment process. Panel Members provide a cross section of industry interests, including Consumer and Ofgem Representatives. If, preferably, all or, at least, a significant majority of Panel Members are satisfied that any proposed individual is a suitable Chair, this should be regarded as evidence that the individual has demonstrated to a representative group that they are suitably independent. Obtaining clear Panel endorsement of any candidate put forward by the Transporters would provide reassurance to the industry as a whole that no particular group was expected to benefit from the selected Chair's appointment.

4.) Are there any further examples or evidence you can provide to support the points made?

Independence is not a clear-cut concept and any potential Chair is bound to bring personal experience and so bias to the position of Panel Chair. Being completely new to the gas industry, for example, may be a good measure of independence, but some industry knowledge and experience is also likely to be valuable – inevitably reducing independence to some extent. It is therefore suggested that applying hard and fast rules to the appointment process is not necessarily the best approach. Identifying a candidate who is willing and able to act in the way that he or she believes is best calculated to serve the interests of the industry as a whole, without fear or favour regarding the approach taken to any particular party, is therefore suggested as an appropriate ambition.