

## **Proposer Ownership** **Strawman Proposal**

### **Background**

Under Ofgem's Code Governance Review (CGR), a Code Administrator Working Group (CAWG) was set up in order to discuss opportunities for the convergence of code modification processes and encourage best practice. Part of the outcome of the CAWG was a recommendation that the Proposer should retain ownership of the solution of any modification that they originate. As part of the CGR, on 3 June 2010 Ofgem published its conclusions on the Code Administration Code of Practice (CACOP) which contained a number of principles for Code Administrators to follow. Principle 6 of the CACOP applies to the concept of Proposer Ownership<sup>1</sup>.

A series of proposals were raised to implement the final proposals of the CGR, one of which was CAP185 – Role of Code Administrator and Code Administration Code Of Practice. CAP185 introduced several changes to the CUSC, namely the establishment of the 'Code Administrator' (CA) and the requirement to recognise the CACOP. CAP185 also amended the CUSC to clarify the point at which the Proposer can withdraw a CUSC Modification Proposal.

### **Defect**

Currently under the CUSC, once the CUSC Panel has referred a CUSC Modification Proposal to a Workgroup for subsequent development, the Proposer effectively loses control of the proposal and the Workgroup take control. Therefore the Proposer has no more influence on the development of the solution than any other Workgroup Member. This can have the effect of the proposal being taken in a direction never intended by the Proposer and/or being amended contrary to the wishes of the Proposer. In order to resolve this and to comply with the CACOP, it is necessary to introduce the concept of Proposer Ownership and to clarify the key points that relate to key points raised under Principle 6. A number of the key points depicted under Principle 6 of the CACOP are already in the CUSC, such as the right of the Proposer to withdraw the proposal and the ability for a user to adopt that withdrawn proposal within a certain timescale. CAP185 clarified that the point at which a proposal could be withdrawn must occur prior to the CUSC Panel Recommendation Vote.

Currently, changes to the legal text cannot be made after the CA Consultation, even if the changes are simple typographical errors that have been identified. This causes inefficiency in the way that a Self-governance change then has to be raised after the proposal has been approved to address the errors. Principle 9 of the CACOP stipulates that the CA should ensure that legal text is produced prior to consultation and that the Panel can agree to minor corrections to the legal text at the time of making its final recommendation. It also specifies that if the changes are not considered to be minor, they may instruct the CA to carry out a further consultation on the revised text.

### **Solution**

By retaining ownership of the proposal, the possibility of a proposal being developed in a way never intended by the Proposer is removed.

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<sup>1</sup> Link to the Code of Practice:

<http://www.ofgem.gov.uk/Licensing/IndCodes/CGR/Documents1/FinalCoP.pdf>

The Proposer can change their proposal by giving notice to the Chair of the Workgroup up to the point of the Workgroup Vote, prior to the CA Consultation. If the Proposer has not given notice of their intent to vary the proposal, the Chair of the Workgroup at the point of the Workgroup vote will give the Proposer a final opportunity to vary the proposal. Where the Proposer makes changes to their proposal prior to the Workgroup Vote, it may be necessary for the Workgroup to request an extension to the timetable from the Panel and carry out a further Workgroup Consultation on the varied proposal.

Where no Workgroup is established, the Proposer's opportunity to change their proposal lapses at the point prior to the CA Consultation.

In line with Principle 9 of the CACOP, the CA now endeavours to provide legal drafting early on in the process and prior to the Workgroup Consultation. This allows for changes to be made to the legal text following the Workgroup consultation, if deemed appropriate. It is therefore less likely that changes will be required further down the line. However, in accordance with the CACOP, CMP19X seeks to allow minor changes that have been agreed by the Panel at the time of the final recommendation vote to be made. The Panel will refer the proposal back to the Workgroup to address the issues raised. If the Panel feel that the changes required cannot reasonably be considered to be minor, then they may instruct the CA to carry out a further consultation on the revised text. The timetable will be adjusted accordingly.

With regard to Workgroup Alternative CUSC Modifications (WACM), the ability to raise an alternative would remain and as currently happens, will be for the Workgroup to develop and progress. Currently, the Workgroup is responsible for the formulation and evaluation of a WACM. The definition in Section 11 allows for the group and/or an individual member of the Workgroup to put forward a WACM and the extent of the support for any WACM should be clearly described in the final Workgroup report to the Panel.

Where the Urgent Process is followed, if no Workgroup is established then the Proposer's right to vary their proposal shall lapse from the time of approval of the timetable by the Authority. Where a Workgroup is allowed for, the Proposer may vary their proposal up until the Workgroup Vote.

The Workgroup Report and final Modification Report must contain the description of and reasons for any variations made during the course of the CUSC Modification Proposal.

CMP19X seeks to make changes to the CUSC Modification process that will closely mirror the BSC process in regard to the ability for the Proposer to change the proposal. This therefore facilitates consistency in the modification process.

## Changes to the CUSC

### Section 8

- add in a clause stating that the Proposer may vary their proposal at anytime prior to the final Workgroup Vote
- Clarify the ability for Panel to agree minor changes to the legal text at the point of the final vote.
- Make clear that where the proposal proceeds directly to Code Administrator Consultation, the right for the Proposer to vary their proposal shall lapse.
- Under final Modification Report, include requirement to detail any variations made by Proposer.

