RETAIL ENERGY CODE

REC PERFORMANCE ASSURANCE BOARD

TERMS OF REFERENCE

This Category 2 document may be revised in accordance with the REC Change Management Schedule, following consultation with the RECCo Board and relevant stakeholders. The following table sets out the history of changes made to this document.

Version	Status	Publication Date	Reason for Change
0.1	Draft	12 October 2020	Initial draft of document for inclusion in Ofgem REC V1.1 consultation
1.0	Live	5 January 2021	Approval by RECCo and Ofgem and shared with interim PAB
1.1	Draft	25 May 2021	Updated in readiness for the enduring PAB
2.0	Live	22 June 2021	Approval by RECCo and Ofgem and published for member nominations
2.1	Draft	x March 2022	Updated in readiness for REC V3

1 ESTABLISHMENT AND ROLE

1.1 **The RECCo Board shall establish the REC Performance Assurance Board (the PAB) as required by the Performance Assurance Schedule of the Retail Energy Code (REC).**

1.2 **The PAB shall discharge the functions and responsibilities assigned to it by the REC, in particular the Performance Assurance Schedule, or otherwise required by the RECCo Board. This includes:**

- **contributing to the development of, and where relevant deciding upon REC Change Proposals;**
- **assessing and determining Performance Assurance risks and issues relating to REC Parties and REC Service Providers and make Risk Management Determinations in accordance with the Performance Assurance Framework and Performance Assurance Techniques, as may be appropriate;**
- **determining appeals or disputes against outcomes of qualification and Maintenance of Qualification process (or escalate to the RECCo Board), based on an organisation's performance during the Entry Assessment process; and**
- **responsibility for specifying REC Party, Non-Party REC Service User and REC Service Provider security and data protection requirements under the REC and determine action to take following notification of a data protection or security breach in relation to any of the above organisations.**

1.3 **To enable the PAB to fulfil its functions and responsibilities, the RECCo Board shall delegate certain of its own powers, rights or responsibilities assigned to it by the REC, as further described in these Terms of Reference and the PAB Procedures.**

~~3~~2 COMPOSITION OF THE PAB AND APPOINTMENT OF MEMBERS

MEMBERS

~~3.1~~2.1 **PAB members who are REC Party nominees shall be appointed by the Code Manager following a nomination and selection process. The Code Manager will give regard to the guidance of the RECCo Nominations Committee with respect to management of appointments.**

~~3.2~~2.2 **Each member must have relevant experience and expertise either of the energy industry or of applying performance management techniques to a customer facing organisation in another sector.**

~~3.3~~2.3 **The PAB members to be so appointed will be made up of the following voting members:**

REC Parties

- **Three member(s) nominated by Parties who are Gas Suppliers and/or Electricity Suppliers;**
- **One member nominated by Gas Transporters;**
- **One member nominated by Distribution Network Operators; and**
- **One member nominated by Meter Equipment Managers.**

Other Voting Members

- **One member nominated by the BSC Performance Assurance Administrator;**
- **One member nominated by the UNC Performance Assurance Framework Administrator;**
- **One consumer representative, being either an employee or a nominee of Citizen's Advice or Citizen's Advice Scotland; and**
- **Three independent performance management experts who shall be appointed by RECCo for this purpose.**

Non-Voting Members

- **The PAB Chair;**
- **The Code Manager; and**
- **The PAB Secretary.**

~~3.4~~2.4 **Any PAB member appointed as a REC Party nominee shall act impartially and independently of the interests of their employer and of any person or class of persons, when exercising the functions assigned to it under the REC.**

~~3.5~~2.5 **Each PAB member shall provide a member confirmation to the Code Manager that they agree to be a PAB member, and that they agree to remove themselves from any consideration of relevant matters that relates to its own employer or any affiliate.**

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~~3.6~~2.6 **PAB members shall acknowledge that in carrying out their duties and functions they may be in receipt of confidential information. For the avoidance of doubt, each PAB member shall not disclose any confidential information (PAB meeting papers, meeting minutes, passwords, data etc.) received in their capacity as PAB member to any person except where required under the REC or these Terms of Reference.**

~~3.7~~2.7 **Any PAB member appointed as an REC Party nominee, BSC representative, UNC Performance Assurance Framework Administrator or consumer representative shall remain in office until their resignation has been submitted in writing to the PAB Chair; they have reached the end of their tenure, being no longer than three years from initial appointment; or, they are removed by the RECCo Board in accordance with 2.10. A PAB member coming to the end of their tenure will not be precluded from standing for nomination for a further term, but is limited to two consecutive terms.**

~~3.8~~2.8 **The PAB Chair will endeavour to stagger the tenure of REC Party nominees and RECCo appointments so that as far as practicable no more than half of the PAB will be replaced in a given calendar year.**

~~3.9~~2.9 **For the avoidance of doubt, the time limited membership of the PAB as set out in Paragraph 2.7 shall not apply to the consumer representative.**

~~3.10~~2.10 **Without prejudice to paragraph 2.7 above, the RECCo Board may remove and seek the replacement of such PAB members from time to time if in the RECCo Board's opinion they are unwilling, unable, unfit or otherwise are incapable for any reason to carry out their duties as a member in accordance with the REC or these Terms of Reference.**

PAB CHAIR

~~3.11~~2.11 **The PAB Chair will be appointed by RECCo from time to time, being either an existing employee of or contractor to the RECCo, or recruited specifically for this purpose.**

~~3.12~~2.12 **The PAB Chair will hold only a casting vote in the event that a majority cannot be reached.**

~~3.13~~2.13 **If the PAB Chair is unable to be present at a meeting, depending on the nature of the meeting agenda, he or she may appoint a member of the PAB or RECCo executive to act as Chair of that meeting, or postpone the meeting if needed.**

PAB SECRETARY

~~3.14~~2.14 **Unless otherwise determined by the RECCo Board, the Code Manager shall act as secretary to the PAB.**

ALTERNATES

~~3.15~~2.15 **Any member nominated to the PAB shall be entitled but not required to nominate an Alternate in the event that they are unable to attend any meeting of the PAB during the term of their appointment. The PAB member will be expected to nominate their Alternate to the PAB Secretary upon, or as soon as reasonably practicable after, their own appointment. Alternates of REC Party PAB members must not be employed by the same organisation as the REC Party PAB member.**

~~3.16~~2.16 **If a PAB member will be absent from a meeting, whether by reason of paragraph 3 or some other circumstance, the PAB Secretary will invite their Alternate to attend in their stead.**

~~3.17~~2.17 **All aspects of these Terms of Reference will apply to the Alternate as if they were a PAB member until such time as the original PAB member becomes available to resume their position.**

INDEMNITY AND LIABILITY

~~3.18~~2.18 **RECCo shall indemnify all PAB members in accordance with Clause 8 of the REC.**

EXPENSES

~~3.19~~2.19 **The reasonable costs and expenses incurred by PAB members and for which a claim is duly submitted to the PAB Secretary, and all other amounts incurred on behalf of the PAB in association with its functions and responsibilities, shall be paid by RECCo and considered to be RECCo operational costs.**

~~3.20~~2.20 **Any query or dispute over the validity of an expenses claim under Paragraph 2.19 shall be determined by the PAB Chair and this decision shall be final and binding.**

~~4~~3 CONFLICT OF INTEREST

~~4.1~~3.1 **It shall be each PAB member's responsibility to disclose to the PAB Chair from time to time any interests of such member which constitute, in such member's reasonable opinion, an actual or perceived conflict of interest with their functions as a member. The PAB Secretary shall record these disclosures in a Conflicts of Interest Register, including but not limited to, PAB member disclosure of their employment, principal financial and business interests and significant personal relationships in any REC Party.**

~~4.2~~3.2 **In the circumstances described in Paragraph 3.1 such PAB member may absent themselves from the meeting and from voting.**

~~4.3~~3.3 **If at any time the PAB Chair decides (after consultation with other PAB members if necessary, including but not limited to circumstances where a member does not volunteer to absent themselves from voting on such matters) that a member has an actual or perceived conflict of interest, and whether that actual or perceived conflict of interest was raised by the member themselves or otherwise, then the PAB Chair may determine whether the member in question should be required to absent themselves from particular PAB business, including the receipt of relevant PAB papers.**

~~4.4~~3.4 **Any decision of the PAB Chair taken pursuant to paragraph 3.3 above shall be final and binding.**

~~5~~4 POWERS AND FUNCTIONS OF THE PAB ~~COMMITTEE~~

~~5.1~~4.1 **The PAB shall act in accordance with the REC, any subsidiary document of the REC or maintained by RECCo in accordance with the REC, and with these Terms of Reference.**

~~5.2~~4.2 **In addition to the above, the PAB shall be responsible for supporting the RECCo Board through discharging any powers, functions and responsibilities which the RECCo Board may delegate to it.**

~~6~~5 PROCEEDINGS OF THE PAB

MEETINGS

~~6.1~~5.1 **Meetings of the PAB shall be held at least once a month, whether in person or by video/teleconference.**

~~6.2~~5.2 **All face to face meetings will be held at such time and place as may be notified to members at the start of each reporting year. Other PAB meetings will be convened at such time and via such means as may be notified to the PAB members by the PAB Secretary.**

~~6.3~~5.3 **If a matter arises requiring the immediate attention of the PAB which cannot reasonably await the next scheduled meeting of the PAB, an extraordinary PAB meeting may be convened by the PAB Chair. Such meeting would be held by video/teleconference at not less than 5 working days' notice.**

5.4 **Any matter decided pursuant to Paragraph 5.3 shall be decided by a majority of those PAB members who voted.**

5.5 **In the case of emergency operational change appeal and derogation decisions escalated from the Switching Change Advisory Board (CAB), the five Working Day notice period may be waived.**

~~6.4~~5.6 **The PAB Secretary will notify PAB members by email and/or telephone as soon as reasonably practical prior to the calling of an extraordinary meeting.**

ATTENDANCE BY NON-PAB MEMBERS

~~6.5~~5.7 **In addition to the PAB members, the following will be entitled to attend any meeting of the PAB and fully participate in any discussion, but not vote:**

- **the RECCo Board Chair or other director with RECCo Board responsibility for the PAB;**
- **the RECCo Company Secretary;**
- **a representative of the Authority;**
- **proposers of Change Proposals that are to be decided upon by the PAB acting as the responsible committee; and**
- **such other external experts, including legal advisors to RECCo, as may be considered necessary and upon invitation of the PAB Chair.**

~~6.6~~5.8 **Attendance is subject to the PAB Chair being satisfied that suitable confidentiality agreements are in place.**

QUORUM

~~6.7~~5.9 **Subject to Paragraphs 5.3 – 5.6, the PAB shall not make any determinations at a meeting that is not quorate, and including at least three REC Party members, Citizen's Advice or Citizen's Advice Scotland nominee and/or one independent members appointed by RECCo.**

5.10 **Notwithstanding that a quorum is present, the PAB Chair may exercise discretion to defer one or more agenda items to a later meeting at which more PAB members are expected to attend.**

5.11 In the case of an extraordinary PAB meeting called under the circumstances outlined in paragraph 5.5, where:

a) the PAB Chair reasonably considers that it will not be possible to achieve a quorum; or

b) at the time of an extraordinary meeting it becomes apparent that the meeting is not quorate, and the PAB Chair considers that there is insufficient time to re-arrange the meeting

any matter to be decided shall be decided by a simple majority of those PAB members who cast a vote (which would require a minimum of three PAB members). In line with normal PAB business, the PAB Chair would have a casting vote in the event of a tiebreak.

VOTING

~~6.8~~5.12 **In deciding any matter which requires determination at a quorate meeting of the PAB, each voting PAB members shall cast one vote. All matters will be decided by a simple majority of those who cast a vote.**

~~6.9~~5.13 **Before putting any matter to the vote, the PAB Chair will confirm that all PAB members have enough information on which to base a vote and that any abstention would therefore not be due to their being insufficient information on which to base a decision. If any PAB member indicates that further information would allow them to cast a vote rather than abstain, the PAB Chair may at their sole discretion delay the vote to a later time or date if they consider that the requested information would reasonably be available within that time. Should the matter proceed to a vote, any subsequent abstentions shall not be counted as votes and will therefore not prevent a majority being reached, whether directly or following the exercise of a casting vote.**

MINUTES

~~6.10~~5.14 **The PAB Secretary shall ensure that within five working days of each meeting that all discussions are minuted (including any determinations and failure to make any determinations) and that such draft minutes are to be distributed to only PAB members and relevant excerpts to those persons who were entitled to attend the meeting (or part thereof) for confirmation of factual accuracy. Any comments on the accuracy of the draft minutes shall be returned to the PAB Secretary no less than five working days before the next scheduled meeting of the PAB, at which they will be formally approved. In the absence of any further meeting taking place within five calendar weeks of the minuted meeting, the minutes may be accepted as final by the PAB Chair, having taken into account any comments received by the PAB Secretary and passed onto the PAB Chair.**

~~6.11~~5.15 **To the extent that the minutes relate to matters of a confidential nature, no person other than those who were entitled to attend the meeting (or part thereof) shall be entitled to receive a copy of the minutes (or part thereof).**

~~6.12~~5.16 **The PAB Secretary shall also prepare a headline report detailing key decisions and such other non-confidential information so agreed by the members that can be publicised. Any such headline report once agreed by the PAB Chair is to be made available on the RECCo website as soon as practical after the relevant meeting, but in any case, being no later than five working days after the meeting.**

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6.135.17 **Any actions that are assigned to PAB members, the PAB Chair, the PAB Secretary or any other stakeholder will be captured both in the meeting minutes and in the Actions Log on the REC Portal. The PAB Secretary will ensure that the Actions Log is updated within three working days of the meeting.**

76 CHANGE PROPOSALS

7.16.1 **The PAB members, whether collectively or individually, will be entitled to raise any Change Proposal to the REC, including but not limited to those which they consider would further the REC objectives or to action any recommendations of a Sandbox trial as set out in the Performance Assurance Schedule.**

7.26.2 **PAB members may on occasion be asked by the Code Manager to review and provide expert advice or other commentary on any Change Proposal, particularly those which are proposed to have mandatory status. In such cases the PAB review would include, but not be limited to an assessment of how effectively the proposed process could be monitored and what other Performance Assurance Techniques might suitably be applied to it.**

7.36.3 **PAB members may on occasion be asked by the Code Manager, to review the Final Change Report, consider the recommendation of the Code Manager and vote on whether to approve or reject the Change Proposal (or recommend approval of rejection to the Authority, where relevant).**

7.46.4 **In the event that the PAB is asked to assess or vote on a Change Proposal as set out above, PAB members will use reasonable endeavours to respond to the Code Manager within the requested timescale. Should further time, or more information on the nature or background of the proposal be required, the PAB may direct these queries to the Code Manager via the PAB Secretary.**

87 APPEALS OF PAB DECISIONS

8.17.1 **Decisions made by the PAB may be appealed to the RECCo Board and/or Authority, whose decision on whether to uphold or overturn the PAB decision shall be final. Further detail on the escalation routes of appeals to PAB decisions is described in the Appeals and Escalation Process document.**

98 CONDUCT

9.18.1 **PAB members and other attendees will be expected to conduct themselves in a professional manner, refraining from any comments or behaviour that could be considered unreasonable or hinder the proper functioning of the PAB.**

9.28.2 **If any unreasonable or disruptive behaviour persists, the PAB Chair may at their sole discretion ask that individual to leave the meeting and/or take steps to restrict their future attendance.**

109 AUTHORITY OF THE RECCO BOARD

10.19.1 **Nothing in these Terms of Reference will:**

a) preclude the RECCo Board from assuming any of the PAB's duties or responsibilities if it becomes necessary to do so; or

b) inhibit the RECCo Board and/or any sub-committee from fulfilling any of roles and responsibilities assigned to them by the REC.