



The Consumer Council for Northern Ireland response to the Utility Regulator's SONI Governance – A Call for Evidence

The Consumer Council

1. The Consumer Council is a non-departmental public body (NDPB) established through the General Consumer Council (Northern Ireland) Order 1984. Our principal statutory duty is to promote and safeguard the interests of consumers in Northern Ireland.

Consultation Response

Introduction

2. The Consumer Council acknowledges the role that SONI plays in Northern Ireland's energy market, and the part it played in the development of the Integrated Single Electricity Market, that went live on 1 October 2018.
3. Prior to Eirgrid's acquisition of SONI in 2009, The Consumer Council wrote to the Regulatory Authorities in Northern Ireland and the Republic of Ireland (ROI) to highlight¹ that *"the overriding issue arising from the proposal is to ensure that consumers in Northern Ireland are treated on a fair and equitable basis with their counterparts in the Republic of Ireland."*
4. Since 2009, SONI's role and influence on Northern Ireland's electricity market has grown, taking over the planning of the transmission network in 2014, being central to the design and management of the Single Electricity Market and now helping to inform the energy transition process².
5. The ongoing high level of interconnection between the Northern Ireland and ROI electricity markets (pending the outcome of Brexit) will mean that SONI/Eirgrid will continue to be one of the most influential players in our electricity market. It is therefore critical that the regulatory and governance process surrounding SONI

¹www.consumerCouncil.org.uk/sites/default/files/original/The_proposed_acquisition_of_SONI_Limited_by_Eirgrid_plc.pdf

² <http://www.soni.ltd.uk/about/strategy-2025/>

ensures that the needs of consumers in Northern Ireland are correctly and fairly reflected.

6. The Consumer Council welcomes the Utility Regulator (UR) Call for Evidence and stresses its commitment to work with UR, SONI and other stakeholders to ensure SONI's governance arrangements and requirements are in Northern Ireland consumers' interests and that they allow for the implementation of a Northern Ireland specific energy policy.
7. The Consumer Council believes that it is incumbent on SONI to transparently demonstrate how its governance arrangements with Eirgrid work in the best interests of consumers in Northern Ireland.
8. In the absence of any such evidence, The Consumer Council believes that UR should conclude that SONI's arrangements do not guarantee its independence. Therefore we would support UR implementing Options 4, Managerial independence of SONI from Eirgrid Plc plus strengthened SONI Board, or 5, Majority of Independent Non-executive Directors as set out in Chapter 7 of the UR paper.

Consumer Principles

9. The Consumer Council like many consumer and regulatory organisations (such as; The Consumer Council for Water, The Institute for Chartered Accountants in England and Wales, CAA, Citizens Advice Scotland, Scottish Legal Complaints, Legal Services Consumer Panel, Consumer Finance, Healthwatch), uses a set of eight principles to help assess where the consumer interest lies, and then to develop and communicate our policies.
10. The principles are:
 - Access – can people get the goods and services they need or want?
 - Choice – is there any?
 - Safety – are the goods or services dangerous to health or welfare?
 - Information – is it available, accurate and useful?
 - Fairness – are some or all consumers unfairly discriminated against?
 - Representation – do consumers have a say in how goods or services are provided?
 - Redress – if things go wrong, is there a system for putting them right?
 - Education – are consumers aware of their rights and responsibilities?
11. The eight principles were then adopted by the United Nations in the 1970s in its Guidelines for Consumer Protection as “eight consumer rights”. In April 2013,

The United Nations Conference on Trade and Development (UNCTAD) stated that, “the Guidelines remain a valid and relevant document for consumer protection policy and have inspired a significant number of national consumer protection laws”.

12. All aspects of our work are assessed against the above principles to consider the impact on consumers. The Consumer Council believes that the Consumer Principles framework can be an effective tool to help inform UR’s analysis and decision making throughout this project to ensure SONI’s governance arrangements are fit for the purpose of safeguarding the interests of Northern Ireland consumers.

Current Consumer Landscape in Northern Ireland

13. The importance that SONI’s governance mechanisms ensure that consumers in Northern Ireland are treated on a fair and equitable basis is supported by research³ undertaken by The Consumer Council’s in 2019. This shows that:

- Half of Northern Ireland adults have £300 or less to spend after essential outgoings each month;
- 13% of consumers say that their biggest household bill concern is paying for home energy;
- More than half of consumers (56%) struggle all of the time or some of the time to pay household bills, including energy;
- Nearly one in five consumers (19%) could not power their home in the last 12 months because they could not afford to top up;
- A third (32%) of consumers struggle at times to pay for their electricity; and
- A third (33%) of natural gas consumers using a prepayment meter struggle at times to pay for their gas and around 20% of them could not heat their homes in the last 12 months because they could not afford to top up⁴.

14. In addition, ASDA’s research on discretionary incomes, which is a good barometer of consumer resilience shows that the average weekly discretionary income in Northern Ireland (£113) is £100 less than the average for Great Britain (£213).

15. This evidence shows that incomes in Northern Ireland are stretched, especially for the most vulnerable, and that energy costs remain the biggest concern for consumers. It is important that the energy industry in Northern Ireland places a central focus on building consumer trust. The electricity market in Northern

³ Source: The Consumer Council Consumer Insight Survey, February 2019.

⁴ Source: The Consumer Council Research on the Consumer Experiences of Electricity & Gas Prepayment Meters, July 2019.

Ireland is complex and consumers need to receive information and reassurances that the market is working in their interest.

Call for Evidence questions

Q1: Stakeholder views on decision making in SONI:

- The extent to which the SONI board should have the ability to set strategy and policies for SONI;
- Whether the SONI board should hold the SONI senior management team to account;
- Whether the appointment of independent non-executives would be beneficial, including in respect of holding the senior management team to account and in setting SONI strategy and policies;
- The matters that stakeholders consider should be within the scope of the SONI Board’s decision making responsibility and why;
- The matters that it would be appropriate to be reserved for the Eirgrid plc Board, and why; and
- The extent to which reinforcing the independence of the SONI Board and ensuring transparency around the scope of delegated and reserved matters would allay any perception that the SONI TSO is less than independent from Eirgrid TSO.

16. The Consumer Council agrees with UR’s assessment in point 8.4 of the Call for Evidence paper. A critical point to consider is that while Conditions 3 and 4 of Eirgrid’s licence require the company to have regard to the interests of consumers of electricity in Northern Ireland as well as Ireland, UR has no monitoring or enforcement powers over Eirgrid in respect of these obligations. Therefore it is important that UR considers what safeguards ought to be introduced to SONI’s governance to ensure the interests of Northern Ireland consumers are protected effectively when operating and designing the electricity transmission system in the island of Ireland.

17. The Consumer Council notes that as per Companies House records, the current SONI Board comprises of:

Name	Role
Jo Aston	Managing Director, SONI
Robin McCormick	Director, Eirgrid
Aidan Skelly	Director, Eirgrid

18. The Financial Reporting Council (FRC) has highlighted the importance of the Board’s role in establishing the ‘tone from the top’ of the company in terms of its

culture and values. In addition the FRC emphasised that dialogue which is both constructive and challenging is essential to the effective functioning of any board. One of the ways in which this can be promoted is by having greater diversity on the Board; hence Board composition is critical for good governance and great performance.

19. With the current structure of the SONI Board, we struggle to see how an independent voice that protects Northern Ireland consumers can be fairly achieved. The Consumer Council would therefore suggest a change in the SONI Board's composition is needed with the appointment of independent non-executives who can provide expertise and adopt a challenge function in respect of the following:

- Helping SONI set Northern Ireland specific strategies and policies without undue influence from Eirgrid;
- Highlighting the specific needs of Northern Ireland consumers; and
- Exerting control over SONI's senior management team.

20. The Consumer Council believes that the Board of SONI needs to prove how it:

- Demonstrates its objective judgement and operational independence to Eirgrid;
- Effectively promotes the long-term sustainable success of the electricity network in Northern Ireland;
- Generates value for Northern Ireland consumers (domestic and business) and contributes to wider society; and
- Develops a culture of openness and debate.

Question 2. UK Corporate Governance Code

- Whether it is appropriate to apply the principles in the Code to SONI, in whole or in part;
- The extent to which SONI could already be said to meet the principles contained in the Code; and
- Whether the principles, to the extent respondents consider they should apply, should be codified in the licence or could be implemented on a voluntary basis by SONI.

21. The Consumer Council recognises that the UK Corporate Governance Code (UKCGC) is not law, therefore compliance is not compulsory. However, UKCGC sets out good governance principles and standards of good practice for companies on board composition and development, remuneration, shareholder relations, accountability and audit.

22. The FRC, which publishes the code, asks companies to ‘*comply or explain*’, therefore they should either follow the Code or explain why they do not. Therefore, it should be for SONI to explain why it is in Northern Ireland consumers’ best interests, if they are choosing not to follow UKCGC.
23. UK Corporate Governance Code principles for the division of board responsibilities sets out that, “*The board should include an appropriate combination of executive and non-executive (and, in particular, independent non-executive) directors, such that no one individual or small group of individuals dominates the board’s decision-making. There should be a clear division of responsibilities between the leadership of the board and the executive leadership of the company’s business.*” Under the current governance arrangements, we do not see how SONI is complying in structure, or in spirit, with this element of the UKCGC.
24. The Consumer Council fully supports the proposal that SONI fully adopts the UKCGC. In particular the following points need to be addressed:
- The chair should be independent on appointment. The roles of chair and chief executive should not be exercised by the same individual. A chief executive should not become chair of the same company;
 - At least half the board, excluding the chair, should be non-executive directors whom the board considers to be independent;
 - The responsibilities of the chair, chief executive, senior independent director, board and committees should be clear, set out in writing, agreed by the board and made publicly available;
 - There should be a formal and rigorous annual evaluation of the performance of the board, its committees, the chair and individual directors;
 - There should be a means for the workforce to raise concerns in confidence and – if they wish – anonymously; and
 - The board should assess and monitor culture. Where it is not satisfied that policy, practices or behaviour throughout the business are aligned with the company’s purpose, values and strategy, it should seek assurance that management has taken corrective action.

Question 3. Transparency and accountability

- Whether stakeholders believe transparency in SONI’s governance procedures be improved, and if so how; and
- Whether there are specific areas where information flow could be improved.

25. The Consumer Council believes that one of the objectives and outcomes of the review is to increase the level of trust that consumers, businesses and the energy industry in Northern Ireland has in SONI. In addition to adoption of the UKCGC, we suggest the following:

- Requiring SONI to publish the minutes of its Board meetings; and
- Maintaining a public register where SONI staff and board members declare any interests, or income, from Eirgrid, outside their SONI role.

26. As a regulated company, SONI is ultimately accountable to the citizens of Northern Ireland. This accountability must be underpinned by transparency in respect of its activities, its staff and board activities. Therefore, information must be published publicly and in a timely manner, so that assurances and confidence can be gained that SONI is operating in the public interest of Northern Ireland.

Question 4. Flexibility for Future Arrangements

- What enablers stakeholders consider will be important for SONI's role in the energy transition, and what barriers to these enablers might exist;
- What resources, including SONI personnel and systems will be necessary for the energy transition; and
- Whether local knowledge needs to be retained in SONI or whether this can be contracted in, and the extent to which such knowledge is important now and will be in future.

27. The Consumer Council recognises the role SONI can play to help inform Northern Ireland transition to a low carbon economy. However, this advice role must look to support the needs of Northern Ireland's consumers (domestic and business), and therefore needs to be independent from Eirgrid. The energy transition in Northern Ireland must reflect the specific features, needs and interests of our energy market, the Northern Ireland economy and consumers.

28. As the UKCGC sets out, a key aim of good governance is "contributing to wider society". There is therefore no reason why good and independent governance processes would affect SONI's ability to support Northern Ireland's energy transition.

Call for Evidence Options

29. Only Options 3, 4 and 5 of UR's paper would satisfy the requirements of our consumers, businesses and industry. We are mindful that any such changes could have cost implications. We are content that UR would efficiently examine these costs, and only deem what is appropriate.

Conclusion

30. The Consumer Council supports UR's review of SONI's governance. Northern Ireland consumers need robust governance arrangements that ensure that SONI's projects, policies and strategies are focused on Northern Ireland consumers and business independently of Eirgrid. We look forward to continuing our engagement with UR, SONI and the energy industry throughout this review.

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