

P332 Digital Meeting Etiquette

- Welcome to the P332 Workgroup Meeting 10 – we'll start shortly
- No video please to conserve bandwidth
- Please stay on mute unless you need to talk – use IM if you can't break through
- Talk – pause – talk
- Lots of us are working remotely – be mindful of background noise and connection speeds

ELEXION

P332 Workgroup 10

Revisions to the Supplier Hub Principle

7 December 2020

Meeting Agenda & Objectives

- Review Terms of Reference, including views against the BSC Objectives
- Agree Consultation questions
- Next steps

Agenda Item	Lead
1. Welcome and Meeting objectives	Lawrence Jones (Chair)
2. Recap and Actions	Paul Wheeler (Lead Analyst) and Matthew McKeon (Design Authority)
3. Legal analysis	Nicholas Brown (Lead Lawyer)
4. Settlement Risks	Paul Wheeler
5. Terms of Reference review	Paul Wheeler
6. Assessment Procedure Consultation questions	Paul Wheeler
7. Next steps	Paul Wheeler
8. Meeting close	Lawrence Jones



RECAP OF WORKGROUP MEETING 9

Recap of Workgroup Meeting 9 (1 of 2)

- Workgroup Meeting 9 was held on 22 October 2020
- Elexon provided a verbal update that Ofgem have recently published a consultation on REC v1.1 which will give MEMs the opportunity to voluntarily accede to the REC before it is mandatory in REC v2.0 (September 2021). DCs are not in scope of the REC
- The Ofgem representative explained that they are looking to subsume a side letter to the UNC into the REC so there could be an opportunity to do the same for the BSC side letter
- Elexon explained the revisions to the legal text and side letter. It had been agreed that the side letter would apply to all SVA NHH & HH MOAs and DCs rather than Customer Preferred or Contracted Agents
- The Agent would have 6 months from the Implementation Date of P332 to sign the side letter, or the Removal of Qualification process could be initiated
- The side letter will not refer to specific sections of the BSC or BSCPs in terms of Agent obligations

Recap of Workgroup Meeting 9 (2 of 2)

- Elexon presented the standard and specific Terms of Reference to the Workgroup
- There was recognition that there were mixed views throughout the Workgroups as to whether issues can be attributed to Customer Preferred Agents, the BSC or commercial arrangements
- It had been difficult to establish the materiality of these issues, however there was a lot of anecdotal evidence
- Elexon explained that P332 could be not be Self-Governance as it impacts on BSC Section J, Sub-Section 3.3. and therefore impacts the EBGL Article 18 terms and conditions
- The Proposer believed that, even without Article 18 impact, P332 could not be Self-Governance as it has a material impact on competition
- The Proposer reiterated his view that P332 was positive against c) and d)
- Voting Members gave their initial views against the Applicable BSC Objectives
- The majority of Voting Members were neutral against c) and positive against d)
- The minority of Voting Members were positive against c) and either negative or neutral against d)

Actions from the last Workgroup meeting?

1. Elexon to confirm what is meant by appointed under the BSC
2. Elexon to consider whether Agents right to reject an appointment need to be amended e.g. If Agent rejects appointment then it should not be held to account under the side letter
3. Elexon to confirm that the removal of qualification process dovetails with the P332 solution
4. Elexon to confirm what the requirement would be for Agents coming through the Qualification process or if Qualify in a new role, once you have already signed the letter e.g. if an Agent qualified a day before the letter became effective.
5. Elexon to provide some legal analysis on what the side letter would enable to Supplier to do and on how Agent would get paid.

Action 1 & 2 – Appointments (1 of 2)

- Section J and Section S refer to appointment:

- Section J:

1.2.5 In respect **of Party Agents appointed under the Code**: (a) in the case of a Party Agent appointed by a Party pursuant to paragraph 1.2.1, that Party shall be responsible for every act, breach, omission, neglect and failure of such Party Agent (in relation to that Party) and shall itself comply, and shall procure compliance by such Party Agent, with the relevant provisions of the Code and of Code Subsidiary Documents;

6.1.4 In respect of each SVA Metering System for which a Supplier is or is to be the Registrant, such Supplier **shall register (and ensure that there is registered at all times) in SMRS the identity of the person(s) appointed to act as the following Supplier Agents** (as applicable to such SVA Metering System) with effect from the time when it becomes the Registrant of such SVA Metering System and for so long as it remains the Registrant of such Metering System:

- Section S:

2.1.1 Each Supplier shall, in accordance with Section J, **appoint and register** Supplier Agents in respect of each SVA Metering System for which such Supplier is or is to be the Registrant.

Action 1 & 2 – Appointments (2 of 2)

- We welcome the Workgroup’s view on in which scenarios the terms of the side letter should apply?

Supplier Agent has accepted an appointment notification (D0155)	Identity of Supplier Agent is registered in SMRS	Should the terms of the side letter apply?
Yes	Yes	Yes
No	No	No
Yes	No	?
No	Yes	?

Action 4 - Requirement for Agents in the Qualification process

Qualification status	Month 0	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7
Existing Agents		P332 Implement ation Date						Side letter enters into force for existing Agents
An Agent qualifying before P332 is implemented will be required to sign the letter as an existing Agent i.e. by month 7	Qualify							
An Agent qualifying after P332 has been implemented will be required to sign the letter in order to Qualify					Qualify			



LEGAL ANALYSIS

Legal analysis (1 of 3)

- The purpose of the side letter is to allow Suppliers to enforce, against SVA Meter Operator Agents and Data Collectors, all applicable obligations of SVA Meter Operator Agents and/or Data Collector specified in the BSC and the BSCPs.
- A failure by an agent to comply with these obligations would constitute a breach of contract. As a result, the relevant Supplier will have the right to seek legal remedies for this breach
- The most common remedy would be a breach of contract claim which would, if successful, enable the Supplier to recover losses it had suffered as a result of the breach.
- The quantum of the damages would be calculated so as to put the claimant in the same position as if the contractual obligation(s) had been performed.

Legal analysis (2 of 3)

- There are various factors that the Courts take into account when determining loss. The first factor is whether the breach actually caused the loss being claimed. If/once that is proven, the Courts will look at how remote the loss was from the breach (i.e. losses that are too remote will not be recoverable). The normal test of remoteness is whether the losses would have been reasonably foreseeable. A loss is reasonably foreseeable where it was regarded by the Parties as:
 - (1) not being unlikely to incur in the ordinary course of things; or
 - (2) a loss that arises outside the ordinary course of things but the defendant had actual knowledge of the special circumstances that resulted in the loss
- Most contracts will seek to exclude the second of these – you will have seen clauses in contracts that exclude indirect or consequential losses, which is a reference to the second limb above. Many contracts additionally exclude liability for other types of loss, for example loss of profit, loss of revenue, loss of use, loss of contract, loss of goodwill, or increased cost of working.

Legal analysis (3 of 3)

- The side letter does not include any exclusions or limitations so in theory a Party Agent could be liable to a Supplier for indirect/consequential losses, or loss of profit etc., but only if these losses actually arose as a result of the breach and only if the Agent had (in very high level terms) actual knowledge of the special circumstances that resulted in such losses. It would be possible to include an exclusion of indirect/consequential loss in the side letter if this is what the Proposer wishes.
- Many contracts also include a cap on liability, which is often determined by reference to the value of the contract. In this case, the value of the underlying transactions is unknowable so it would be difficult to set a financial cap.
- A further common remedy for breach of contract is 'specific performance' which in effect is a Court order requiring the defendant to perform the terms of a contract.



SETTLEMENT RISKS

What is the P332 impact on Settlement Risks/Performance Assurance Framework?

- As the P332 solution impacts on Supplier and Agent BSC obligations, Elexon’s initial view is that P332 will impact a number of Settlement Risks
- Where a variety of Settlement Risks are impacted, this is classified as a Risk Event
- Elexon’s initial assessment is that P332 will impact the following Risk Event:

Area	Event	Consequence / risk management impact
001 - Agents	Lack of (strong) commercial contract between Supplier and SMRS-registered Agent, e.g. where the customer has directly appointed agents - Customer Preferred Agents	Could prove harder to resolve issues. Suppliers report it may be harder to influence Settlement performance. Some HHDCs may not undertake manual reads where the meter is unable to remotely dial. Some HHMOAs do not install alternative comms on sites where the cost of doing so is prohibitive. Some HHDCs are not completing HHDC Annual Site visits.

- Risk Event 001 was added to the Risk Evaluation Register 2019/20, added after approval from PAB in January 2019
- The P332 solution will help to mitigate Risk Event 001

Verbal Update to PAB

- Elexon provided a Verbal Update to PAB at its meeting on 26 November 2020
- Elexon explained the issue, the proposed solution and the progression timetable
- The PAB were asked for their views on the impact that P332 would have on the PAF and Settlement Risks
- PAB Members considered what this side letter would mean for PAB. It was noted that some issues with Customer Preferred Agents were not always related to BSC obligations
- The PAB will consider what would happen if a Party was non-compliant but a side letter had been signed by the Agent

Questions for the Workgroup:

- We ask the Workgroup to consider Elexon's analysis on the impact on Settlement Risks
- We invite the Workgroup to comment on the likely impact that P332, if approved, will have on the PAF and Settlement Risks. We will capture your comments in the P332 Modification Reports



TERMS OF REFERENCE REVIEW

Terms of Reference

P332 Specific ToR

- a) What issues are caused by customers choosing Agents?
- b) What is the materiality of the issues?
- c) What means are presently available to address the issues?
- d) What is the best way in principle to address the issues?

Standard ToR

- e) What is the most appropriate Implementation Date?
- f) What changes are needed to BSC documents, systems and processes to support P332 and what are the related costs and lead times?
- g) Are there any Alternative Modifications?
- h) Does P332 better facilitate the Applicable BSC Objectives compared with the current baseline?
- i) Does P332 impact the EBGL provisions held within the BSC, and if so, what is the impact on the EBGL Objectives?

Terms of Reference Summary

Item	Status
P332 Specific Terms of Reference	Complete – subject to WG review today
Costs and impacts	Initial assessment, but require industry assessment via AC
Self-Governance?	Complete – not SG due to EBGL impacts
Any Alternative Modifications?	None raised yet
Views against Applicable BSC Objectives	Initial views provided at last WG
EBGL Article 18 impacts	Yes

Costs and impacts

Costs:

- This is a document only change. No system changes are required for this Modification
- The cost of updating BSC documents will be less than £1k
- Any ongoing operational costs will be identified in the Internal Impact Assessment

Likely impacts:

- BSC Section J 'Party Agents and Qualification Under the Code'
- Qualification side letter: Qualification Deed pursuant to BSC Section J3.3.6
- Suppliers, NHH and HH SVA MOAs and DCs

We will consult with industry to understand the potential costs and impacts on Suppliers and Agents

Implementation date

- The Proposer suggests that the implementation date is **5 WDs** after Ofgem's decision
- The Proposer suggests that Agents would then have **6 months** to sign the side letter
- The Final Modification Report is due to be sent to Ofgem by 19 May 2021, assuming that the Workgroup agree today for P332 to go for Assessment Consultation
- Ofgem's KPI for decision is 25 days, so a decision could be received in June / July 2021 → side letter required to be signed around December 2021 / January 2022

Self-Governance criteria

A proposal that, if implemented

- (a) does not involve any amendments whether in whole or in part to the EBGL Article 18 terms and conditions, except to the extent required to correct an error in the EBGL Article 18 terms and conditions or as a result of a factual change, including but not limited to:
 - (i) correcting minor typographical errors;
 - (ii) correcting formatting and consistency errors, such as paragraph numbering; or
 - (iii) updating out of date references to other documents or paragraphs;
- b) is unlikely to have a material effect on:
 - (i) existing or future electricity consumers; and
 - (ii) competition in the generation, distribution, or supply of electricity or any commercial activities connected with the generation, distribution, or supply of electricity; and
 - (iii) the operation of the national electricity transmission system; and
 - (iv) matters relating to sustainable development, safety or security of supply, or the management of market or network emergencies; and
 - (v) the Code's governance procedures or modification procedures, and
- (b) is unlikely to discriminate between different classes of Parties.

Self-Governance criteria

- At the last Workgroup, Elexon explained that P332 cannot be Self-Governance as it impacts on the EBGL Article 18 terms and conditions
- Section J 3.3 is identified as impacted by P332
- The Proposer believed that, even without Article 18 impact, P332 should go to Ofgem for decision as it materially impacts on competition because it will enable Suppliers to better manage Agents with who they don't have a commercial contract

Self-Governance criteria - EBGL Article 18 terms and conditions of balancing

In addition to the Self-Governance criteria, any Modification that seeks to amend BSC provisions constituting European Balancing Guideline (EBGL) Article 18 terms and conditions related to balancing cannot be progressed as Self-Governance. This is because the EBGL requires any Amendments to those terms and conditions to undergo a separate EBGL Amendment process, requiring the Modification to be approved by Ofgem.

Section J 3.3 is identified as impacted by P332. The relevant EBGL sections are:

- Section J:
 - Sub-Sections: **3.3**, 3.6, 3.7, 3.8
- P332 therefore impacts EBGL Article 18 terms and conditions on balancing



APPLICABLE BSC OBJECTIVES

Applicable BSC Objectives

- a) The efficient discharge by the Transmission Company of the obligations imposed upon it by the Transmission Licence
- b) The efficient, economic and co-ordinated operation of the national electricity transmission system
- c) Promoting effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity
- d) Promoting efficiency in the implementation and administration of the balancing and settlement arrangements
- e) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency [for the Co-operation of Energy Regulators]
- f) Implementing and administering the arrangements for the operation of contracts for difference and arrangements that facilitate the operation of a capacity market pursuant to EMR legislation
- g) Compliance with the Transmission Losses Principle

Proposer Views: Applicable BSC Objectives

The Proposer initially believed that P332 would better facilitate Applicable BSC Objectives c) and d)

c) Promoting effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity

The Proposer contends that this Objective would be better facilitated because the Modification would ensure customers would receive comparable levels of service regardless of whether their Agent is customer appointed or Supplier appointed. In addition, the Proposer contends that P332 would mean that Suppliers are not disadvantaged commercially by the appointment of Agents by customers .

d) Promoting efficiency in the implementation and administration of the balancing and settlement arrangements

The Proposer contends that this Objective would be better facilitated because Agents who have signed the proposed side letter would lead to a more consistent level of performance by Agents.

Initial Views: Applicable BSC Objectives

Member	(c)	(d)
Steven Bradford (Proposer)	+	+
Seth Chapman	N	-
Jonathan Moore	N	+
Dermot Hearty	+	+
Tom Chevalier	N	-
Gavin Somerville	N	+
Derek Weaving	N	+
Jacqui Barton	N	N
Lee Stone	N	+
Mark Bellman	+	+
Nik Wills	N	N
Robert Thomas	N	+
Clare Hannah	N	-



CONSULTATION QUESTIONS

Standard Consultation Questions

- Do you agree with the Workgroup's initial view that P332 [does/does not] better facilitate the Applicable BSC Objectives than the current baseline?
- Do you agree with the Workgroup that the draft legal text delivers the intention of P332?
- Do you agree with the Workgroup's recommended Implementation Date?
- Do you agree with the Workgroup that there are no other potential Alternative Modifications within the scope of P332 which would better facilitate the Applicable BSC Objectives?
- Do you agree with the Workgroup's assessment of the impact on the BSC Settlement Risks?
- Will P332 impact your organisation?
- Will your organisation incur any costs in implementing P332?
- How long (from the point of approval) would you need to implement P332, taking into consideration time given to sign the side letter?
- Do you have any further comments on P332?

Additional Consultation Questions

- What, if any, additional Assessment Consultation questions are needed?
- Do you agree with the Workgroup that the solution should apply to all SVA NHH and HH MOAs and DCs?
- Do you agree with the obligations that the Workgroup are placing on SVA MOAs and DCs in the side letter?
- We invite the Workgroup to suggest any further Consultation Questions



PROGRESSION PLAN & NEXT STEPS

Progression Plan and Next Steps

- Workgroup summary will be issued by 16 December 2020
- Workgroup to review Assessment Consultation w/c 4 January 2021
- Assessment Procedure Consultation 15 WD – from 18 January 2021 to 5 February 2021
- Workgroup meeting to review consultation responses w/c 15 February 2021
- Workgroup to review Assessment Report w/c 1 March 2021
- Assessment Report presented to BSC Panel on 11 March 2021
- Report Phase Consultation from 17 March 2021 to 16 April 2021 (needs to be one month due to EBGL)
- Possible WG within a week or so from end of RPC
- Draft Modification Report present to BSC Panel on 13 May 2021
- Final Modification Report submitted to Ofgem for decision by 19 May 2021

ELEXON

THANK YOU

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7 December 2020