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## P332 Workgroup 8 summary

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### Summary

#### 1. Welcome and Meeting Objectives

1.1 The Chair welcomed attendees and presented the following meeting objectives to WG Members:

- Review proposed side letter and legal text
- Agree items in (and out of) scope

To be discussed at next Workgroup meeting due to time constraints:

- Review Terms of Reference
- Agree Assessment Procedure Consultation questions
- Agree Progression Plan

#### 2. Recap and Actions

2.1 Recap of Workgroup Meeting 7 – Elexon presented a recap of Workgroup Meeting 7, which was held on 6 February 2020. It was noted that there were mixed views on whether the amount of time and effort taken to resolve issues with CPA sites was greater than for non-CPA sites. It was agreed that the comment on the slide doesn't accurately reflect the outcome of the discussion at the previous Workgroup Meeting and the Modification Report will reflect the mixed views. The scope of the P332 solution had been widened to include DCs as well as MOAs. The Proposer's preferred solution would be a side letter as part of the Qualification process, requiring those Agents to agree that all appointments are treated the same regardless of contract status.

2.2 What's happened since the last meeting? – It was noted that Steven Bradford from Smartest Energy was the new Proposer representative, replacing Colin Prestwich. Draft legal text and a side letter have been drafted and reviewed by external lawyers (to ensure legal robustness). At the September 2020 Panel, a three-month extension to the P332 Assessment Procedure was approved and the intention is to present the Assessment Report at the January 2021 Panel meeting, or earlier if possible.

2.3 Meter Operator Governance – Elexon presented an update on Meter Operator Governance, explaining Ofgem's proposals for Metering Governance under the REC. In its June 2019 consultation, Ofgem's proposed scope for moving to the REC was appointments, MEM updates to MPAS/SMRS and the sending of Meter Technical Details. The exact scope has not yet been agreed between REC and BSC. Ofgem proposes that MEMs should be parties to the REC and direct obligations and performance assurance can be placed on MEMs. This would create a clear divide between commercial performance arrangements established in bilateral contracts and the industry wide obligations on MEMs. It was noted that Elexon is liaising with Ofgem.

Elexon explained that P332 will proceed and will be assessed against the current BSC baseline. It could be subsumed into the Retail Consolidation SCR in future if deemed appropriate. The Workgroup asked whether P332 should now be considered under Ofgem's REC SCR. It was noted that the [Panel had written to Ofgem in September 2019](#) to ask whether P332 should be subsumed into the MHHS SCR or paused due to interactions with other significant programmes of work. Elexon explained that P332 could not be subsumed into the Retail Code Consolidation SCR as P332 was raised before the SCR was raised. The Ofgem representative agreed to check with the SCR team. The Proposer continues to believe P332 can proceed. A WG Member noted that if MOAs could become Parties to the REC, this is a significant change and could negate the need for P332. Elexon responded that this was still being consulted on and therefore it could change. In answer to a question as to whether the outcome of the REC consultation suggests there is not a need for this Modification, Elexon explained that the Proposer can withdraw the Modification at any time during the Assessment Procedure. A WG Member pointed out that under [P370 'Allowing non-BSC Parties to raise Modifications'](#), non-BSC Parties can propose Modifications for the Panel to raise. Therefore not being a BSC Party is no longer a barrier to being able to raise changes.

#### 2.4 Review Actions – Elexon explained that all of the Actions from the last Workgroup Meeting had been closed:

- Elexon to share AMO guidance on ‘Process for Lack of Customer/Meter Operator’ Contract
- Elexon to confirm Business Requirements for side letter
- Elexon to draft side letter
- Proposer to review draft side letter
- Elexon to investigate whether any action (e.g. application of a PAT) is required in relation to underperformance or breach of obligations
- Elexon to consider whether any further analysis should be done into the impact of CPAs on Settlement
- WG to be reconvened to review progress and agree consultation questions

A WG Member explained that they had attempted to raise a [BSC Modification](#) which would have required all CT Meters (which are the Meters targeted by P332) to have communications fitted. A new standard could then be introduced for MOAs to monitor this and this could be done using existing data flows. This had been raised at the July 2020 Panel, but following a response from Ofgem, it was withdrawn as Ofgem indicated it would be subsumed under the MHHS SCR if raised.

#### 2.5 Side Letter and Legal Text – Background – Elexon explained the solution approach that had been developed, in conjunction with the Proposer, to require MOAs and DCs to enter into a side letter which would require those Agents to comply with specific BSC/BSCP obligations. The side letter would be a contract between Elexon and Agent, but it would give the Supplier rights under the Contracts (Rights of Third Parties) Act 1999 to enforce the side letter against Customer Preferred Agents. It would effectively create a proxy contract between Supplier and Agent where a contract doesn’t actually exist. However, the Supplier remains responsible for BSC performance and obligations. Elexon had consulted external lawyers to ensure that the side letter was enforceable and the Supplier Hub principle was maintained. The Workgroup discussed that this would give Suppliers a route to hold Agents to account, with whom they don’t hold a contract. The Supplier would be able to use the side letter to enforce BSC requirements.

#### 2.6 Side Letter and Legal Text – key features and scope – the Legal text and Side Letter were presented and explained for discussion. The key points of the discussion were:

- The Workgroup agreed that the solution should apply to SVA MOAs and DCs only
- The Workgroup agreed that the solution should apply to both NHH and HH Agents
- There was discussion as to whether the side letter should apply to all Agents or just those under contract

A Workgroup Member explained the scenario where Agents are appointed by TPIs, so not directly by the Supplier or Customer. Elexon suggested the term “Customer Preferred Agent” could instead be “Customer or Third Party Agent” to cover the scenarios.

There was discussion around whether DAs should be in scope. The Proposer stated that Customer Preferred Agents were usually MOAs and DCs. Elexon stated that the nature of DAs meant it was unlikely there would be selective non-compliance and any significant issues impacting Settlement would likely be picked up by Elexon or the PAF.

There was discussion over whether the side letter would be retrospective or not. A Workgroup Member proposed that the side letter could refer to all Agents, not just Customer Preferred Agents, but would not ‘bite’ where a contract is in place (with the Supplier or Customer). It was noted that in some contracts, the Agent is only specified to perform certain tasks so they shouldn’t be ‘on the hook’ for when they are not contracted to carry out certain tasks. This approach is a simpler approach and would put the emphasis on the contract status (i.e. whether a contract was in operation and had not expired) rather than the Agent relationships. The Workgroup agreed that the redlining should refer to contract status instead of CPAs. A Workgroup Member expressed concern that this might make the side letter difficult and complex to administer and therefore suggested a better approach would be for the letter to apply to all SVA MOAs and DCs.

#### 2.7 Side Letter and Legal Text – Re-Qualification – the draft legal text requires all MOAs and DCs to re-qualify by submitting an executed copy of the side letter. The Workgroup noted that, as currently drafted, the letter is effective from when it is signed. It was felt that this created a disincentive for Agents to sign the side letter until the last

minute. Therefore it would be better if the requirement was to sign within [x] months of the implementation date, but the effective date would be consistent for all Agents.

One issue raised was that the side letter needs to ensure that it does not place an incentive on the Supplier (or Agent) to not renegotiate a contract with an Agent. Careful consideration would be needed for how the Supplier would know a contract is in place between the Agent and the Customer or when this expires.

A Member raised concern with the remuneration reference, as it could be used to request payment. The Workgroup agreed that Agents should get paid for carrying out work. The reference should be updated to make clear that no compensation is payable under the letter instead.

Elxon raised a concern about whether Re-Qualification would require Agents to go through the entire Re-Qualification process or only need to sign the side letter. It was agreed that the signing of the letter was not Re-Qualification, as this had other implications, such as assessing material changes to its Qualified status, which were not appropriate. Instead the signing of the letter would be a requirement in order to maintain Qualification status. If the letter was not signed, the Removal of Qualification process could be initiated by Elxon.

The Chair asked the Workgroup for their views on whether the 3 months timeline to sign the side letter, as suggested by the Proposer, was satisfactory. There was some discussion on this and a Workgroup Member suggested 6 months would give time for contracts to be re-negotiated and signed. The Proposer was happy to amend to 6 months.

- 2.8 Side Letter and Legal Text – BSC and BSCP obligations – the Workgroup discussed which sections of the BSC and BSCPs should be mentioned in the square brackets of the side letter, i.e. what should Agents be 'on the hook' for? Elxon explained that the more specific the hook the easier it should be to enforce and would help to remove any ambiguity. The Proposer had suggested [BSCP514 'SVA Meter Operations for Metering Systems Registered in SMRS'](#) for MOAs. The Workgroup felt the obligations should be at a high level relating to the role. Workgroup Members suggested that existing contracts don't mention specific BSC sections or BSCPs, so this approach would be consistent. The Proposer agreed to reference 'all relevant BSC provisions' or words to that effect.

The side letter also referenced certain BSC Sections that the Agent is asked to sign-up to. The Workgroup asked for further explanation of these at the next meeting.

### 3. Next steps

It was agreed that a new version of the Legal Text and Side Letter would be drafted based on the comments from the Workgroup. A Workgroup Meeting would subsequently be arranged in October to allow the Workgroup to discuss the changes to the Legal Text and Side Letter.