
P332 Workgroup 9 summary

Summary

1. Welcome and Meeting Objectives

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

- Review revised legal text and side letter
- Review Terms of Reference
- Agree Assessment Procedure Consultation questions
- Agree Progression Plan

2. Recap and Actions

2.1 Recap of Workgroup Meeting 8 – Elexon presented a recap of Workgroup Meeting 8, which was held on 25 September 2020. The WG had discussed the proposed legal text and side letter, which had been developed by Elexon in conjunction with the Proposer, to require MOAs and DCs to comply with specific BSC/BSCP obligations. The side letter would be a contract between BSCCo and the Agent but would give Suppliers rights to enforce the side letter where a contract does not already exist between Supplier and Agent. The Supplier would remain responsible for BSC performance and obligations and therefore the Supplier Hub principle would be maintained. The WG agreed that the solution should apply to both NHH and HH SVA MOAs and DCs and that Agents would have 6 months from the P332 implementation date to sign the side letter. In the event that the side letter was not signed, then the Removal of Qualification process could be initiated. The side letter had been drafted to allow for reference to specific BSC sections or BSCPs, but the WG preferred a high level approach referring to “all relevant BSC obligations” as this was consistent with existing contracts.

2.2 What’s happened since the last meeting? – Elexon prepared revised legal text and side letter incorporating the comments and requested changes from the last Workgroup meeting. A short meeting was held on 14 October 2020 to allow WG Members to provide feedback and questions, or they were able to do so via e-mail if they could not attend the meeting. A revised version of the side letter was drafted following feedback from the WG and was shared in advance of today’s meeting.

2.3 Meter Operator Governance – Elexon provided a verbal update that Ofgem have very 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 v2.0, which is due to be effective from September 2021. A WG Member felt this was a significant development as MEMs will be required to be Parties to 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 with the proposed BSC side letter. The Proposer maintained that P332 should continue to be progressed and not further held up without any certainty that the P332 issue would be resolved. The Chair noted that P332, like all Modifications to the BSC should be assessed against the current baseline. A WG Member explained that the P332 solution refers to MOAs and DCs and that DCs were not in scope to transfer to the REC.

3 Legal Text and Side Letter

3.1 Revised Legal Text and Side Letter – key changes – scope – Elexon explained the changes that had been made to the legal text and side letter. It was agreed that the side letter should apply to all Agents rather than Customer Preferred or Contracted Agents as it would be difficult for Elexon to have sight of whether a contract is in place or not. The WG questioned the term “appointment” and whether this would be based on the appointment status in SMRS, as it was noted that there are scenarios where it does not reflect the situation in practice. ACTION: Elexon will check on the definition of “appointment” in the BSC.

- 3.2 Revised Legal Text – key changes – Qualification – Elexon explained that the legal text had been amended to refer to SVA Meter Operators and Data Collectors and that it would be a requirement of Qualification in those roles to sign the side letter.
- 3.3 Revised Legal Text – Re-Qualification – Elexon explained that the legal text had been amended to refer to SVA Meter Operators and Data Collectors. This would not be a requirement to Re-Qualify, rather a requirement of continuing Qualification. Agents would have 6 months from the implementation date of P332 to sign the side letter. The side letter would become effective at the same time for all DCs/MOAs, six months after implementation. If the side letter was not signed, then the Removal of Qualification process could be initiated. A WG Member asked if Elexon had explored how this would fit with the process within [BSCP537 'Qualification Process for SVA Parties, SVA Party Agents and CVA Meter Operators'](#). ACTION: Elexon will check internally to confirm.
- 3.4 Revised Side Letter – key changes – scope – Elexon explained the revised side letter referred to all SVA MOAs/DCs, rather than Customer Preferred or Contracted Agents. This is because Elexon do not have sight of contract status and Suppliers often do not know the contractual status between the Agent and the Customer. Furthermore, even if it is known, processes would need to be put in place to report change in the relationship, which would not be straightforward to do. In some cases it would not be possible e.g. TPI sites.
- 3.5 Revised Side Letter – key changes – Elexon explained that the revised side letter will not refer to specific sections of the BSC or BSCPs in terms of Agent obligations. The side letter requires the Agent to abide by the terms of Section C5, Sections H4 and H9 of the BSC as if it were a party to the BSC. Elexon explained what those sections meant. A WG Member suggested it would be good to have a specific consultation question on this, to ensure that Agents are comfortable with signing up to these provisions and any impacts of doing so are understood e.g. are they asking Agents to do something that would not be in a direct contract. Elexon commented that these provisions should relate to obligations that Agents are already catering for as an Agent, but would technically be new BSC requirements e.g. Agents should already be catering for confidentiality.
- 3.6 Revised Side Letter – remuneration – the revised side letter has been updated to reference that no remuneration will be payable by BSCCo to Agents.
- 3.7 Revised Side Letter – necessary rights and obligations – a paragraph has been added to require Agents to confirm to the Registrant if they don't have all of the "necessary rights and obligations". This paragraph was added to mitigate potential issues, identified by the Workgroup, with Agents not having access to a site (needing LDSO or customer to grant access) or not able to work on certain equipment. It was not clear what would happen if the Agent informed the Registrant, would the Agent be de-appointed?
- 3.8 Revised Side Letter – direct contracts – Elexon explained that although a paragraph had been added to the side letter to recognise that there are some direct contracts which specify that Agents should only perform certain activities, and therefore shouldn't be 'on the hook' for those they don't perform in this situation, there had been concerns raised during Elexon internal review that the direct contract taking precedence over the side letter could undermine how the PAB and Elexon deliver assurance directly against Agents. The WG asked for clarity to be added to explain that "us" in this situation means the Agent, as this side letter will be signed by the Agent. The Proposer and the WG agreed that the paragraph should remain but it should be made clearer that it refers specifically to a direct contract between the Agent and the Registrant.

4 Terms of Reference review

- 4.1 Specific and Standard ToR - Elexon presented the specific and standard Terms of Reference for P332. There was recognition that there were mixed views throughout the Workgroups as to whether issues can be attributed to Customer Preferred Agents. It had therefore been difficult to establish the materiality, however, there was a lot of anecdotal evidence. It was noted that no Alternative Modifications had been raised at this stage. The Elexon costs for implementation would be negligible and industry would be consulted to understand cost impacts. A WG Member asked what would happen if an Agent was part way through Qualification when P332 was implemented. ACTION: Elexon would check on this. A WG Member asked if an Agent was qualified in both SVA Meter Operator Data Collector roles, would they have to sign twice. Elexon confirmed that it would only need to be signed once, per legal entity. Similarly, Elexon confirmed that if an Agent was going through a change of ownership, the company taking on the old company would need to have already signed the letter (as a Qualified Agent).
- 4.2 Self-Governance - Elexon explained to the WG that P332 could not be Self-Governance as it impacts on BSC Section J, Sub-Section 3.3 and therefore impacts on the EBGL Article 18 terms and conditions. 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. A WG Member on the other hand believed it could have been treated as a Self-Governance Modification, as any impacts on competition were likely to be small.

- 4.3 Further discussion - The WG had some further discussions before considering their views against the Applicable BSC Objectives. There was discussion as to what the solution would change. The Proposer said that, where a direct contract does not exist, it would give the Supplier a route to contact the Agent and ask them to perform the minimum standard and to enable the Supplier to manage the Agent under the Supplier Hub principle. A point was raised that this solution would help new small entrants to the market. A WG Member raised concerns that the side letter did not mention limited liabilities and therefore what would the Supplier be able to claim against the Agent? A WG Member suggested it could be liquidated damages. Concern was raised that the side letter allowed for unlimited liabilities to be claimed. However, in practice, any claim for liquidated damages would need to be evidenced and justified to be approved by a court. There would also be a limitation to damages as a result of BSC obligations. Elexon explained that the side letter is a contract between BSCCo and the Agent, but that BSCCo won't enforce it, which gives the Supplier opportunity to, and to seek legal recourse if needs be. ACTION: The WG asked for some analysis from Elexon to confirm the legal implications of signing the side letter. However, some Members did not believe the side letter would provide anything to Suppliers that they can not already do.
- 4.4 Applicable BSC Objectives – The Chair proposed that the initial views of voting Members against the Applicable BSC Objectives were captured. The Proposer reiterated that his view was that P332 was positive against c) and d). The voting Members provided their initial views and against the Applicable BSC Objectives and these were recorded by the Chair.

5 Progression Plan

Elexon presented the current Progression Plan, but noted that this will need to be reviewed given a further Workgroup meeting is required to consider the legal implications of the side letter on Agents.

6 Next steps

It was agreed that Elexon would provide some analysis on the legal implications of the side letter and investigate the processes around Removal of Qualification. This would need to be carried out before the next Workgroup meeting prior to Assessment Procedure Consultation. Following the completion of the actions the Voting Members views would be re-captured to see if they have changed.

8 Actions

1. Elexon to confirm what is meant by appointed under the BSC
2. Elexon to confirm that the removal of qualification process dovetails with the P332 solution
3. 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.
4. Elexon to provide some legal analysis on what the side letter would enable to Supplier to do and on how Agent would get paid.
5. 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.