

PUBLIC

Breach, Default and Error & Failure Resolution

PAF Review Recommendations

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BREACH, DEFAULT AND EFR PAF REVIEW RECOMMENDATIONS

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BREACH, DEFAULT AND EFR PAF REVIEW RECOMMENDATIONS

EXECUTIVE SUMMARY

The Performance Assurance Framework (PAF) review project team has worked closely with operational teams and stakeholders in order to identify the strengths and weaknesses of the Error and Failure Resolution (EFR) technique while also considering how Breach and Default can be applied as an incentive supporting the EFR process. EFR has proven to be an effective tool for managing the resolution of issues which contribute to Settlement Risks.

Whilst Breach and Default has in the past primarily been applied in respect of insolvency, credit and payment defaults, the mechanism contains the flexibility to incentivise the resolution of other issues which materially contribute to Settlement Risks.

The PAF review has considered the suite of Performance Assurance Techniques holistically and has sought to maximise the flexibility and efficiency with which both EFR and Breach and Default are deployed and how they could be effectively coordinated. This has been done in line with the [PAF review's objectives](#).

Recommendations

Our recommendations intend to improve the effectiveness of EFR in resolving material issues and sharpen the focus of our resource on the material issues which impact industry the most. We also intend to introduce more straight forward and agile mechanisms for the escalation and de-escalation of issues against which EFR has been deployed, achieving this by harnessing the potential of Breach and Default to incentivise the resolution of issues.

Our recommendations are:

1. [Board sign off needed from Party for plan following escalation](#) (M)
2. [More severe consequences for repeat EFR Issues](#) (M)
3. [Rules limiting the duration of EFR plans](#) (M)
4. [Linking EFR to risk 'events'](#) (M)
5. [Letter sent to a director at the outset of the EFR process](#) (L)
6. [Streamlining customers' experience in EFR](#) (L)
7. [Introducing new working practices for EFR escalation](#) (M)
8. [Revising the process for the application of Breach and Default](#) (M)
9. [New working practices for EFR de-escalation](#) (M)
10. ['EFR Avoidance' applied prior to EFR](#) (M)
11. [Increase focus on PAB precedent register](#) (L)

Next Steps

Recommendations approved by the PAB will be translated into requirements by the operational team. These requirements will be implemented by the operational team.

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INTRODUCTION

Technique Background

EFR

EFR can be applied against all Settlement Risks where an associated issue has been identified. EFR is used to assist Performance Assurance Parties (PAPs) to understand and rectify performance issues and non-compliances. When applying EFR against a Settlement Risk, we take into account the net significance of the risk and the PAP's contribution to the issue identified. The PAB can define specific escalation criteria for specific Settlement Risks or net significance values.

Breach and Default

Breach and Default is an incentive technique in Elexon's Performance Assurance Framework and defines the process of recording and managing breaches and defaults under the Code. Elexon will work with companies to ensure that any breach is resolved as soon as possible to avoid escalation.

Formal notification may be provided to a BSC Party of persistent or material breach of the BSC. A failure to address this breach in all material respects with all reasonable diligence and so far as reasonably practicable may constitute a 'Default'.

The BSC Panel may apply specific provisions to Defaulting Parties including (but not limited to):

- a) Notifying each other Party of such Default
- b) Suspending the right of the Party to submit:
 - i) Energy Contract Volume Notifications
 - ii) Metered Volume Reallocation Notifications
 - iii) Bid-Offer Pairs
- c) With the prior approval of the Authority, the right to register further Metering Systems and BM Units
- d) Expelling the Party from the BSC in accordance with Section A5

The BSC provides for Breach and Default to be deployed where Error and Failure Resolution (EFR) has been applied and has failed to address the area of concern; however this facility has rarely been deployed in practice due to the lack of clarity around the mechanism by which issues should be escalated and subsequently de-escalated where appropriate. Due to existing case history these vires have never been tested and therefore a nervousness exists amongst decision makers over interpretation and precedent.

TECHNIQUE REVIEW APPROACH

PAF Review Scope – Error and Failure Resolution (EFR):

"Review the current methods for evidencing EFR (including PARMS and MEM), the entire escalation path and the working practices surrounding its use. Specific focus will be given to how we engage with participants, i.e. purpose over process."

- Achieved through PARMS review contained within the data paper also being presented at the [July 2020 PAB meeting](#). Party and User experience key to recommendations within this paper. New escalation and de-escalation process detailed within this paper.

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Our approach to the review of EFR

We reviewed:

- i) The current methods for evidencing PAP performance while subject to EFR;
- ii) The entire escalation path; and
- iii) The working practices surrounding its use.

In line with the PAF review objectives, specific focus has been given to how we engage with participants.

During the initial industry engagement undertaken as part of the PAF review project, stakeholders noted that the PAB and Elexon have done a good job of late clearing long running non-compliances and Audit Issues. Many stakeholders however felt that EFR isn't currently as effective as it could be, but noted that this is in large part due to its reliance on Performance Assurance Reporting and Monitoring System (PARMS), Material Error Monitoring (MEM) and the BSC Audit. Issues cited include:

- i) The escalation continuum (starting with EFR and culminating in Removal of Qualification/Breach & Default) lacks 'teeth' and is unclear;
- ii) Evidencing the materiality of issues is challenging;
- iii) Participants often remain in EFR for far longer than one would expect if the issues are material to Settlement;
- iv) It is too procedural in the way it is executed; and
- v) Where participants comply with the process they do so to avoid 'hassle' rather than because they have considered whether the criteria used correct for their business.

EFR as with the PAF as a whole, should be risk based. This can cause challenges in respect of perception and fairness. For example a large Supplier may be just under the 97% target but because of their market share the potential financial impact to Settlement is far greater than a small Supplier whose performance is far below the 97% target.

Where EFR has been turned on for BSC Audit issues we are unable to turn EFR off again until the BSC Auditor reviews the relevant process; which means EFR could only be turned off in the following audit year at the earliest. This is the currently the case even where Elexon has received evidence confirming that the issue has resolved.

Our review of EFR has focussed in particular on ensuring that appropriate levels of escalation and de-escalation are available and that there are clear guidelines in place for when an issue in EFR should be escalated or de-escalated. We consider these measures will increase the efficiency and effectiveness of the entire process both for Elexon processing costs and also provide clearer signals to Parties, reducing effort and cost.

In practical terms, we first set out the key issues we hoped to mitigate against, namely:

- i) EFR plans not resolved in a timely manner;
- ii) Lack of effective options for further escalation;
- iii) Lack of options for de-escalation;
- iv) EFR resource spent addressing lower priority issues, thereby being taken away from high impact/priority issues; and
- v) Criticism in respect of the consistency of PAB decision making.

Next we considered various options that would help us to combat issues highlighted by stakeholders. These options were discussed by internal stakeholders and subject matter experts and rated independently in terms of anticipated efficacy and cost to implement. Following the submission of these ratings, the options were once again reviewed in respect of their efficiency and practicality which determined their final priority ratings.

BREACH, DEFAULT AND EFR PAF REVIEW RECOMMENDATIONS

PAF Review Scope – Breach and Default

“Full review of the techniques that provide evidence for escalation, with the aim of putting it on a firmer risk-based footing.

The working practices around escalation will also be reviewed. Much like the observations made in relation to PAF procedures, this includes the relationship between the Performance Assurance Administrator (PAA) and the PAB, and the extent to which PAB decision making is appropriately directed by PAA input.

The Balancing and Settlement Code (BSC) provisions will be reviewed, and if changes are needed to give effect to the recommendations made on the above two points, the project will assist in raising any necessary Mods/CPs.”

Our approach to the review of Breach and Default

Breach and Default has been considered as part of this review only in so far as it relates to the application of Error and Failure resolution. Use of this technique as part of escalation where the deployment of EFR has not resolved the relevant issue(s) would be a useful tool, where the materiality of the impact is significant enough to warrant such action being taken.

We consider that following the implementation of Elexon’s new Target Operating Model (the second implementation phase of which went live on 20 July 2020) which includes a restructure of our Assurance function and the introduction of dedicated Risk Owner resource, will be the best opportunity to answer the biggest questions around Breach and Default:

- i) How can Elexon most effectively monitor Breach and Default as a PAT?
- ii) What is the best way to record breaches of obligations/BSCP timescales?
- iii) What would be the most effective way to consolidate and report on this data?

It is also anticipated that progressing significant changes to the way we apply Breach and Default in respect of Code compliance at this critical juncture for the industry (the impacts and implications of: COVID-19, the introduction of the Retail Energy Code and the looming transition to MHHS) may have undesirable impacts on market participants.

As a further consideration, the biggest risk relating to Breach and Default is the ability for the industry to cope with high volumes of Credit Defaults. The most critical sticking points for which sit with Ofgem’s own processes in respect of operating the Supplier of Last Resort process, which the BSC has limited scope to influence. Improvements to Elexon’s role the Supplier of Last Resort process are being investigated by Elexon in line with proposed changes to Supplier licencing arrangements being reviewed by Ofgem.

Prioritisation of Recommendations

Recommendations have been assigned a priority rating (High, Medium or Low) based on the value they are expected to deliver upon implementation in respect of efficiency, time/cost saving and improvements to the level of assurance delivered. Rationale for these ratings is provided under ‘Implementation’ along with an outline of the approach the PAF review team envisages Operational teams taking to implement the recommendations.

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PAT REVIEW RECOMMENDATIONS

Recommendations have been grouped by the issue they are primarily intended to mitigate.

Issue 01 - EFR plans not resolved in a timely manner

1. Board sign off needed from Party for plan following escalation (M)

- 1.1 Following escalation to the PAB, sign off by a director or executive within the escalated PAP should be required prior to the updated EFR plan being approved.
- 1.2 This solution would require clear consequences for non-compliance. Therefore a requirement to comply would need to be enshrined within the Code and therefore would require a CP to amend BSCP538. This change should increase focus on issues in EFR at a corporate level. This should result in more resource within PAPs being devoted to EFR issues which would therefore be resolved more quickly.

2. More severe consequences for repeat EFR Issues (M)

- 2.1 We recommend that this change is only applied in respect of new EFR plans. Where a PAP enters EFR for an issue which it has already been in EFR for within the preceding 18 months this should result in:
 - a) Immediate escalation to the PAB; and
 - b) Less leniency in consideration of further escalation to Breach (in the case of BSC Parties) or industry notification of issues and impacts (in the case of Party Agents).
- 2.2 No BSC change would be required, as this recommendation can be delivered through guidance and working practices being updated.
- 2.3 This change would incentivise PAPs to avoid repeat offences. Repeat issues highlight systemic issues with maintaining good business processes or the right skill levels within an organisation which should be addressed as a priority. This change would also encourage longer term, more systemic improvements therefore lowering systemic Settlement Risk impacts over time.
- 2.4 In order to ensure that this new approach is effective, Elexon will need to set clear expectations for PAPs through clear and detailed communications and engagement.

3. Rules limiting the duration of EFR plans (M)

- 3.1 We recommend that this change is only applied in respect of new EFR plans. The EFR arrangements within BSCP538 should be updated to reflect that unless an extended timescale is agreed at the outset of the plan, where an EFR plan remains open for more than 2 years a PAP will be subject to further escalation (as per recommendation 3 within this report "Introducing new working practices for EFR escalation").
- 3.2 This approach would incentivise early resolution of issues. It is noted that one size would not fit all in terms of timescales for resolution and that Elexon would therefore need to work with PAPs at the initiation of an EFR plan to determine a reasonable timeframe for resolution.
- 3.3 As part of this change it is recommended that EFR guidance and working practices are updated such that at the outset of the plan, the PAP is only required to submit a detailed milestones for the first three months of its plan (the PAP would still be required to set out the eventual objective of the plan and a target date). The milestones for the first three months should include root cause analysis where the root causes for the issue are not already apparent. The detailed milestones would then be required to be extended for a further month, each month (thus maintaining a set of detailed milestones for another three month period). It is Elexon's view that this approach would result in more effective EFR plans and a more realistic set of milestones which the PAP is able to put greater focus on achieving.
- 3.4 A CP amending BSCP538 would be required to include this as a trigger for further escalation.

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4. Linking EFR to risk 'events' (M)

- 4.1 Where appropriate EFR plans should be linked to risk 'events' rather than Settlement Risks. A new definition would be required for 'risk events' at a PAP or organisation level (Multiple risks being managed together within one EFR plan).
- 4.2 This change recognises the fact that issues can mutate. E.g. a Supplier which originally had EFR turned on for poor performance related to a specific Settlement Risk may find that the root cause of the impact in fact relates to a number of other Settlement Risks relating to their management of their Party Agents.
- 4.3 Aligning an EFR plan to an 'event' covering multiple risks rather than a specific Settlement Risk where appropriate, could mitigate ambiguity in instances where an EFR plan is raised against a specific Settlement Risk and the issue later evolves into another risk.
- 4.4 There is a risk that this approach could result in less focussed EFR plans being produced to address issues. This could however be mitigated by careful review and a clear focus on identifying/identified root causes.
- 4.5 No change to the BSC would be required to implement this recommendation. Working practices would be updated and should include flexibility and discussions with the party with the aim of identifying root to be included within the plan.

5. Letter sent to a director at the outset of the EFR process (L)

- 5.1 We recommend that EFR letters issued at the outset of an EFR plan are copied to a relevant director within the PAP's organisation as standard practice.
- 5.2 This change would only apply to new plans, and would need to be formally built into the EFR process.
- 5.3 Some Parties believe this would focus attention on the issue earlier (Feedback from Performance Assurance Day 4 March 2020) as it would alert Board level management of compliance risks and the steps necessary to mitigate these.

6. Streamlining customers' experience in EFR (L)

- 6.1 Stakeholder feedback has indicated that the process of setting up an EFR plan based on the forms provided within BSCP538 can be confusing and tedious for many customers. This may well contribute to the challenges often faced by operational teams in getting an EFR plan baselined.
- 6.2 The PAF review recommends that examples of high quality plans received in the past should be anonymised and made generic (to avoid any potential dispute over intellectual property or commercial advantage). These example templates should then be provided to PAPs against which EFR has been deployed, to act as a guide and support their production of their own plan.

Issue 02 - Lack of effective options for further escalation

7. Introducing new working practices for EFR escalation (M)

- 7.1 Feedback from stakeholders and Elexon's experience in operating the process indicates a need for clearer and more significant consequences where a PAP fails to address identified errors/failures in a reasonable timeframe. These consequences should of course, be clearly communicated at the outset of the EFR process.
- 7.2 While all EFR plans are already actively monitored and closely managed; it is our recommendation that all EFR plans should be subject to routine checkpoints with the explicit purpose of reviewing the status of the plan and determining whether escalation or indeed de-escalation may be appropriate. These checkpoints should take place at intervals agreed with the PAP but no less frequent than once every three months.

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EFR Escalation

- 7.3 At each review checkpoint for an active EFR plan, should BSCCo determine (based on its professional judgement and the evidence provided by the relevant PAP) that:
- a) The materiality of the Error/Failure the plan was put in place to address remains significant; and
 - b) The PAP fails to demonstrate to the satisfaction of BSCCo that it understands how it contributes to the Settlement Risk; or
 - c) The PAP breaches or fails to undertake or complete a requirement of its action plan; or
 - d) Progress has not been made towards resolution of the Error/Failure within a reasonable timeframe.
- 7.4 The relevant EFR plan should be escalated.
- 7.5 At the first checkpoint where BSCCo reviews an EFR plan and determines escalation is warranted, the BSCCo should determine whether the plan is to be escalated either to the Risk Manager and PAB Chair or to the next available PAB meeting. This determination should be informed by the materiality of the Error/Failure in question and the degree of the BSCCo's concern over the risk presented by the PAP.
- 7.6 The implementation of a formal escalation step (while not needing to be enshrined in the Code) whereby an EFR plan can be escalated to the Chair of the PAB and Elexon's Risk Manager in the first instance (prior to formal PAB escalation) where appropriate will make significant improvements to address the lack of an intermediary form of escalation prior to being escalated to the PAB and has already proven effective in practice.
- 7.7 Where at a review checkpoint following the PAP's prior escalation to the PAB, the BSCCo determines based on the same criteria that the plan warrants escalation, rather than repeating the cycle of escalation to the PAB, the BSCCo should either:
- a) Serve notice to the relevant PAP that they meet the criteria for Breach of the Code and invite immediate response, (where the PAP is a BSC Party); or
 - b) Serve notice to the relevant PAP that a notice will be issued to the industry notifying of their failure to resolve their EFR plan and detailing their impact on relevant Settlement Risks unless immediate resolution or new evidence is presented, (where the PAP is a Party Agent).
- 7.8 Clear expectations will need to be set for the PAP in respect of these potential consequences prior to their initial escalation to the PAB.
- 7.9 In the event of either 'a' or 'b' in 7.7 above, the BSCCo should agree a timeframe for resolution of the Error/Failure with the PAP, which informed by benchmarking and based on BSCCo's professional judgement is deemed reasonable. Failure to resolve the Error/Failure within this agreed timeframe would result in either:
- i) A recommendation to the Panel from the PAB that Section H 3.2.1(a) should be exercised, whereby each other Party is notified of the PAP's Default. And that this notice should include the estimated materiality of its impact on Settlement accuracy and, where relevant, the associated impact on other market participants' operations. (where the PAP is a BSC Party); or
 - ii) The PAB shall issue a notice to the industry of the PAP's failure to resolve their EFR plan and detailing their impact on relevant Settlement Risks, including the estimated materiality of its impact on Settlement accuracy and, where relevant, the associated impact on other market participants' operations (where the PAP is a Party Agent).
- 7.10 While not as significant a sanction as those which can be issued with approval from the Authority, we believe that this will provide for a meaningful incentive to resolve issues in a timely way in order to mitigate the associated risk to a PAP's reputation and commercial interests. While better defining the mechanism and

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justification for doing so and thereby hopefully making the decision to take this action more palatable to the BSC Panel.

- 7.11 In order to ensure clarity in respect of what constitutes grounds for escalation through Breach and Default it is our recommendation that the wording within Section H 3.1.1.1 (d) "breach of any material provision of the Code" should be defined more clearly. Currently this is considered overly subjective and open to interpretation by the PAB and BSC Panel. Revising this wording to improve its clarity will help to ensure that any escalation can be clearly justified. Clarification would reduce the risk of challenge and give decision makers increased confidence in deployment.
- 7.12 The wording within H 3.1.1.1 (d) will be subject to a Modification with the suggested legal text of "breach of any material provision of the Code **which risks or has resulted in a significant material impact on: the accuracy of Settlement volumes; the compliant operations of other market participants; or security of supply.**"

Further Escalation of a BSC Party

- 7.13 Following the notice issued to industry, the BSCCo should agree a new timeframe for resolution with the BSC Party. In the event the PAP fails to resolve the Error/Failure within the agreed timeframe, the PAB should recommend to the BSC Panel that it should consider whether additional sanctions provided for under BSC Section H 3.2 'Consequences of Default' might be appropriate. With consideration to be given to the PAP's failure to resolve the Error/Failure in spite of the notice issued to the industry.

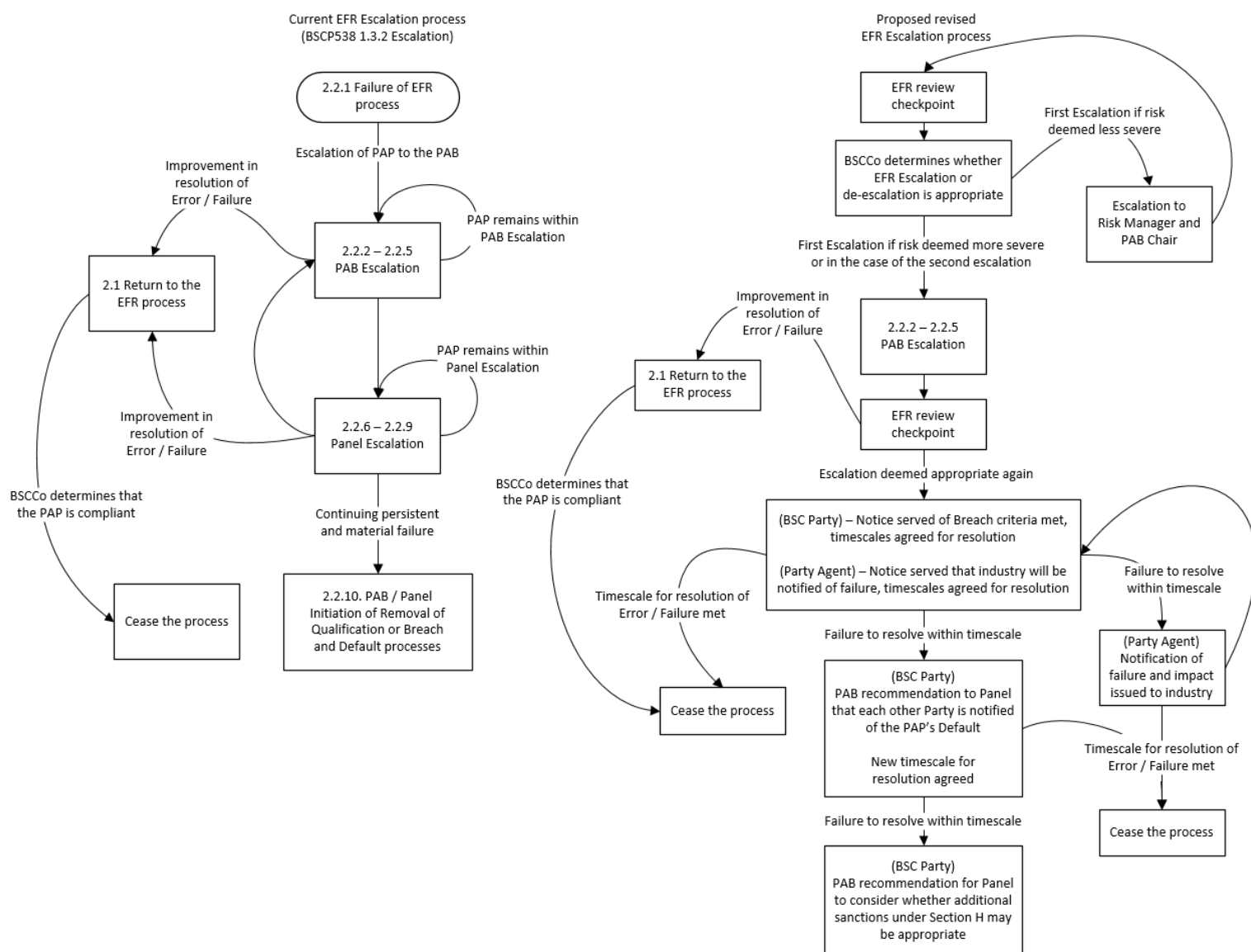
Further Escalation of a BSC Party Agent

- 7.14 Following the notice being issued to industry, the BSCCo should agree a timeframe for resolution with the Party Agent, which based on BSCCo's professional judgement is deemed reasonable. The Party Agent should be made aware that its failure to address this breach in all material respects with all reasonable diligence and so far as reasonably practicable, within the agreed timeframe, will result in further notifications being issued.

Notes on Approach and BSC Change

- 7.15 In order for this approach to be effective, the PAB would need to be mindful that utilising notifications to industry of PAP's failure to resolve an EFR plan too frequently or too widely would weaken its effectiveness. This action should therefore only be applied in extreme cases.
- 7.16 Delivery of this change would require a Modification to BSC Section Z in respect of PAB confidentiality. A CP amending BSCP538 would also be required, along with updates to guidance.
- 7.17 The existing and proposed revised EFR escalation process is illustrated below for clarity:

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8. Revising the process for the application of Breach and Default (M)

- 8.1 In order to provide clarity around the application of Breach and Default following EFR we recommend that the Code is amended to specify that the plan provided following a PAP being placed in Breach needs to be reasonable and that it must be assessed and agreed by BSCCo, providing the opportunity for the plan to be rejected by the BSCCo and for the PAB to be notified where the plan isn't reasonable. This clarification will need to be included within BSC Section H 3.1.1(d)(iv).
- 8.2 Under the current arrangements the PAP in Breach has to submit a plan but there is no associated information about the ramifications nor mitigations if the plan is not deemed satisfactory (e.g. in terms of timescales). Where applied at the end of the EFR process, this could lead to undesirable delays in respect of issue resolution.
- 8.3 This Recommendation will require a BSC Modification and is subject to current COVID-19 prioritization guidelines.

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Issue 03 - Lack of options for de-escalation

9. Introducing new working practices for EFR de-escalation (M)

- 9.1 As with recommendation 3 above, this change would introduce review checkpoints where a plan is reviewed and slated for either escalation or de-escalation.

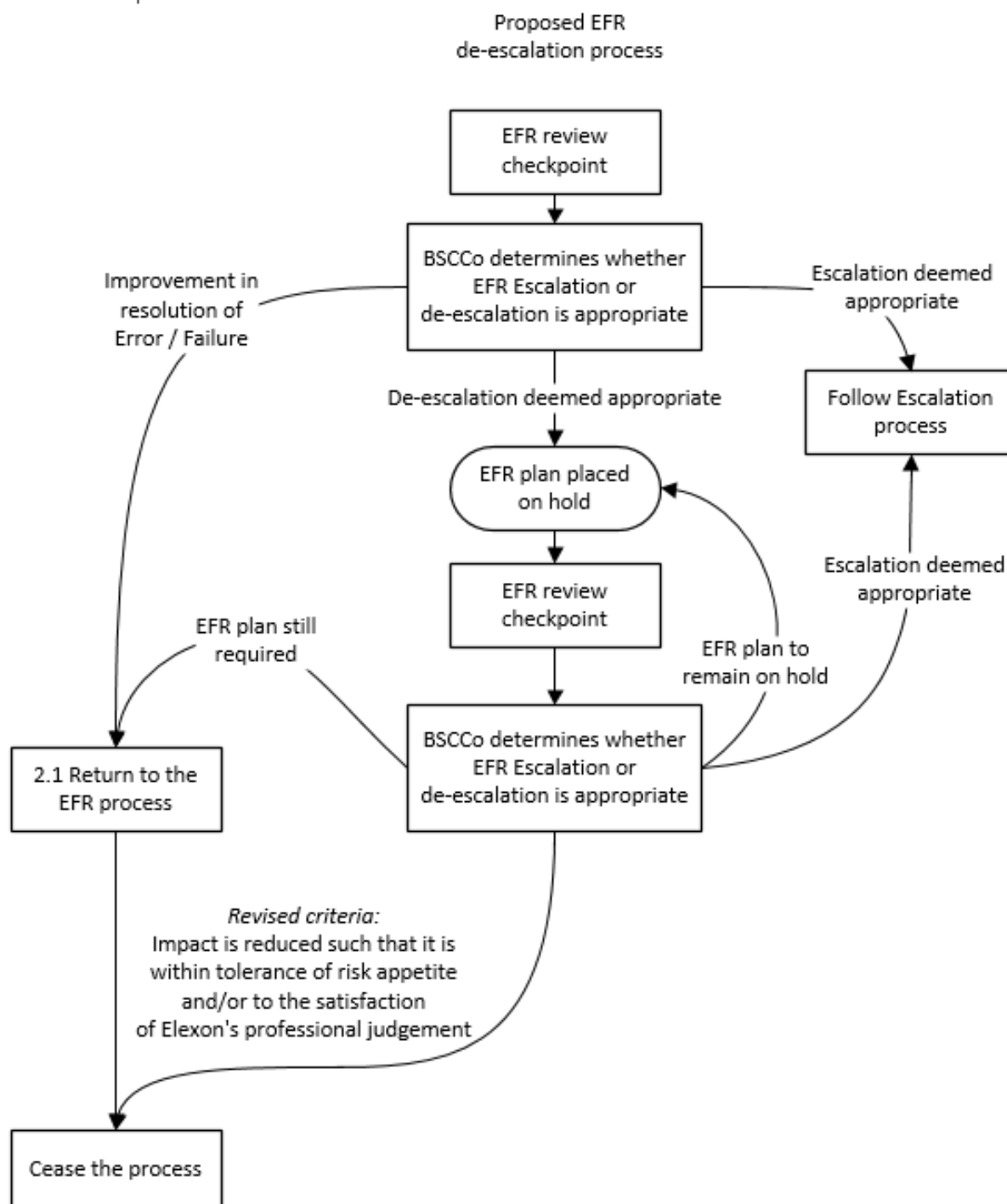
EFR de-escalation

- 9.2 At each review checkpoint for an active EFR plan should BSCCo determine (based on its professional judgement and the evidence provided by the relevant PAP) that:
- a) The materiality of the Error/Failure the plan was put in place to address is no longer significant;
 - b) The PAP has provided evidence sufficient to demonstrate to the satisfaction of BSCCo that the Error/Failure has been resolved; or
 - c) The risk appetite agreed by the PAB within the Risk Operating Plan (ROP) for the associated Settlement Risk renders the materiality of the contribution of the relevant PAP to the risk well within the agreed tolerance (proportional to the PAP's market share).
- 9.3 The relevant EFR plan should be de-escalated. De-escalation should in the first instance result in the EFR plan being placed on hold and a further checkpoint being scheduled when the plan will be reviewed again. At the next checkpoint the BSCCo will again (based on its professional judgement and the evidence provided by the relevant PAP) determine whether to:
- a) Close the EFR plan outright;
 - b) Schedule a further review checkpoint and request any additional evidence which is required; or
 - c) Re-instate the EFR plan and resume standard monitoring and management of the plan until the next escalation review checkpoint.
- 9.4 With respect to the closure of de-escalated EFR plans, currently under the provisions of Section Z the PAB is required to pass a decision over the cessation of an EFR plan. It is our recommendation that the PAB delegates this authority to the BSCCo on an enduring basis in order to streamline the process of EFR de-escalation by allowing BSCCo to take the decision to close an open EFR plan where the criteria above have (in BSCCo's professional judgement) been met. This delegated authority could be revoked by the PAB should it feel that this authority was not being exercised in line with the PAB's expectations. Summaries of all ongoing processes and decisions will be presented to PAB monthly as per current practice.
- 9.5 This approach would also require the following changes to BSCP538:
- i) Introduction of a provision whereby BSCCo can choose to put an EFR plan on hold following a review; and
 - ii) Introduction of a provision whereby an EFR plan which is currently on hold could be reinstated or closed.
- 9.6 Provided the resource is made available Elexon would be able to review evidence and remotely complete the same testing undertaken at the time by the BSC Auditor. Elexon has access to all of the BSC Audit testing work papers and employs staff with the relevant experience. This would satisfy the sub-script within BSCP538 2.1.7 which currently reads "If the Error/Failure was raised as the result of an audit, then it can only be closed following another audit".
- 9.7 This revised approach will help to ensure that EFR resource is not focused on low impact issues.
- 9.8 In addition to the changes above we recommend a CP amending BSCP538 to recognise the imperfect incumbent systems and processes. The existing arrangements take a black and white stance to issue resolution, where an issue must be resolved completely "BSCCo decides the PAP is compliant then cease the

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process” which is often impossible in respect of high volume processes. This wording should be updated to “impact is reduced such that it is within tolerance of risk appetite and/or to the satisfaction of Elexon’s professional judgment.”

9.9 This proposed EFR de-escalation process is illustrated below for clarity:



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Issue 04 - EFR resource spent addressing lower priority issues

10. 'EFR Avoidance' applied prior to EFR (M)

- 10.1 We recommend that a formal process should be put in place for Elexon to work with PAPs in order to avoid EFR where:
- a) A PAP's performance against key measures at early Settlement Runs indicates that a PAP will fail to achieve performance standards; or
 - b) A PAP is trending towards significant impact in respect of a given settlement risk.
- 10.2 If PAPs have not worked proactively to support this process, this should result in a different EFR pathway when an issue manifests. E.g. less leniency given around escalation.
- 10.3 Likewise cooperation in resolving issues in this 'EFR avoidance' process should result in a better EFR pathway E.g. more leniency given around escalation.
- 10.4 This would encourage PAPs to work to resolve issues earlier. Elexon would need to consider which measures would be most appropriate as indicators that this EFR avoidance process is required.
- 10.5 It is considered that this approach could reduce the overall number of plans by encouraging PAPs to address issues proactively. This approach would also be more risk focussed, providing Elexon with a formal opportunity to work with PAPs to resolve issues before they become systemic. Ultimately this approach could also help to save PAPs money as early identification usually means it is easier to resolve issues.

Issue 05 - Criticism in respect of the consistency of PAB decision making

11. Increase focus on PAB precedent register (L)

- 11.1 Consistency in PAB decision making is essential. Although root causes can be complex, as can resolution plans, it should be possible to develop basic guidelines and benchmarks around PAB decision making.
- 11.2 Some work has been done in this space already through the establishment of a precedent register whereby rationale for a PAB decision is recorded and can be referenced where a decision needs to be made under a similar context.
- 11.3 We recommend that this precedent register is brought more into focus as part of PAB meetings where EFR escalations are being considered. A requirement should be introduced to Elexon's working practices whereby previous PAB decisions for similar issues should be included within EFR escalation PAB papers. The PAB shouldn't be required to be rigidly consistent but should be able to explain why a different decision has been taken and that nuance should be recorded in the precedent register.
- 11.4 This approach should support the PAB in considering precedent in its decision making and allow for the elimination of competition issues and unconscious bias within the PAB or Elexon. We consider this recommendation is in keeping with the principles of good governance and provides all stakeholders with enhanced understanding and protections.

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IMPLEMENTATION

Operational

Should the PAB approve our recommendations, we will develop a plan for implementing at an appropriate time. This plan will be shared with the PAB.

Transition to new EFR processes

Existing rectification plans should be updated where possible and new processes and changes should be applied to existing plans under Elexon's professional judgement and pragmatism.

Priority ratings rationale

1. Board sign off needed from Party for plan following escalation (M)
- 11.5 This change is expected to deliver significant benefit in respect of focusing PAPs' resources on the resolution of material issues.
2. More severe consequences for repeat EFR Issues (M)
- 11.6 This change is expected to deliver significant benefit in respect of focusing PAPs' resources on the resolution of material issues.
3. Rules limiting the duration of EFR plans (M)
- 11.7 This change is expected to deliver significant benefit in respect of reducing the time taken to resolve material issues.
4. Linking EFR to risk 'events' (M)
- 11.8 It is anticipated that this change will help to ensure that EFR plans are more effective at driving the resolution of issues.
5. Letter sent to a director at the outset of the EFR process (L)
- 11.9 This change is expected to deliver some benefit in respect of focusing PAPs' resources on the resolution of material issues.
6. Streamlining customers' experience in EFR (L)
- 11.10 While implementation of this recommendation would deliver a clear benefit, this benefit is not significant. Therefore in spite of the minimal resource required to deliver, it has been assigned a low priority.
7. Introducing new working practices for EFR escalation (M)
- 11.11 One of the most common criticisms of the PAF as a whole is the lack of meaningful incentives for PAPs to improve performance, this recommendation therefore has the opportunity to deliver significant value in respect of issue resolution.
8. Revising the process for the application of Breach and Default (M)
- 11.12 While the lack of clarity with respect to the current provisions has not resulted in issues to date, the change will help to ensure that a PAP's entry into Breach and Default (for a material non-compliance with a Code provision rather than a Credit Default) does not result in time being wasted. This would be particularly important in respect of a highly material Error/Failure.
9. Introducing new working practices for EFR de-escalation (M)
- 11.13 Clearer options in respect of de-escalation will help to avoid resource being wasted on low impact issues and should therefore deliver a significant benefit.

BREACH, DEFAULT AND EFR PAF REVIEW RECOMMENDATIONS

10. 'EFR Avoidance' applied prior to EFR (M)

11.14 While proactive risk mitigation is a key objective of the PAF. Risk is already managed through Risk Owners in respect of individual risks. Therefore while there is clear benefit to be achieved in mitigating risks prior to errors/failures occurring which result in the deployment of EFR the steps recommended alone would not be the only avenue to achieve this and would not be sufficient in isolation.

11. Increase focus on PAB precedent register (L)

11.15 It is important to both Elexon and the PAB's reputation and the level of trust the industry has in their good governance that the PAB is consistent in its decisions. This recommendation will be comparatively challenging to implement however and cannot guarantee consistency is achieved on its own.

Suggested Approach

Where BSC Change is not required, working practices and guidance should be updated to reflect the revised approach. Where BSC Change is required, operational teams should follow the standard BSC Change process to implement.

Potential Dependencies

Implementation of the recommendations within this paper is contingent on the provision and availability of required resource. Likewise on the delivery and implementation of BSC Modifications where required.

In particular, the implementation of an escalation step prior to formal PAB escalation is contingent on the availability of the Risk Manager and PAB Chair. See recommendation 3 'Introducing new working practices for EFR escalation (M)'.

Modifications and Change Proposals

Recommendation 1 – 'Board sign off needed from Party for plan following escalation'

A Change Proposal would be required to amend BSCP538.

Recommendation 3 – 'Rules limiting the duration of EFR plans'

A Change Proposal would be required to amend BSCP538.

Recommendation 7 – 'Introducing new working practices for EFR escalation'

A Modification to BSC Section Z would be required in respect of PAB confidentiality. A CP amending BSCP538 would also be required, along with updates to guidance.

Recommendation 8 – 'Revising the process for the application of Breach and Default'

A Modification would be required to deliver the change to Section H 3.1.1.1 (d)(iv)

Recommendation 9 – 'Introducing new working practices for EFR de-escalation'

A Change Proposal would be required to make multiple amendments to BSCP538.

Recommendation 2, 4, 5, 6, 10 and 11

No BSC Changes required.

BREACH, DEFAULT AND EFR PAF REVIEW RECOMMENDATIONS

APPENDIX 1 – SUGGESTED FOR FUTURE CONSIDERATION

Quantitative risk based approach to EFR

- 11.16 EFR should be made more quantitatively risk based. The addition of a financial impact against individual issues should be used to inform EFR on which performance to prioritise.
- 11.17 Applying materiality to the new Risk Evaluation Register was in part intended to give a view of where to apply EFR and highlight what can be tolerated.
- 11.18 EFR should be focused on the issues with the highest impact on Settlement accuracy.
- 11.19 This approach would help to ensure that the issues in EFR are worthy of the time and effort of everyone involved and that we are clear on benefits of addressing the relevant Error/Failure.
- 11.20 It is noted that this approach can be contentious in practice. E.g. where a large supplier may be just under the 97% target but because of their market share the potential financial impact to Settlement is far greater than a small Supplier whose performance is far below the 97% target.
- 11.21 Currently this approach cannot be implemented in all cases as Elexon does not yet have the data to accurately estimate the material impact in respect of all Settlement Risks. We need to be able to quantify risk more broadly and accurately before we fundamentally link materiality to EFR in this way.
- 11.22 In the future where this approach is more feasible a CP would be required to amend BSCP538 in order to formalise the consideration of financial impact of issues in decisions being made on EFR.