

**Phase**

Initial Written Assessment

Definition Procedure

Assessment Procedure

Report Phase

Implementation

## P416 'Introducing a route of appeal for the Annual Budget in line with the proposals for the Retail Energy Code'

This Modification seeks to amend the BSC to include a new appeals mechanism that BSC Parties could use to challenge items in the Annual Budget.



The BSC Panel initially recommends **rejection** of P416



The BSC Panel **does not** believe P416 impacts the European Electricity Balancing Guideline (EBGL) Article 18 terms and conditions held within the BSC

This Modification is expected to impact:

- All BSC Parties
- Elexon as the Balancing and Settlement Code Company (BSCCo)
- Ofgem as the GB Authority

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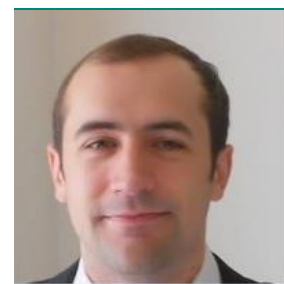
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## About This Document



Not sure where to start? We suggest reading the following sections:

- Have 5 mins? Read section 1
- Have 15 mins? Read sections 1, 8 and 9
- Have 30 mins? Read all except section 6
- Have longer? Read all sections and the annexes and attachments

This is the P416 Draft Modification Report, which Elexon will present to the Panel at its meeting on 10 June 2021. It includes the responses received to the Report Phase Consultation on the Panel's initial recommendations. The Panel will consider all responses, and will agree a final recommendation to the Authority on whether the change should be made.

There are five parts to this document:

- This is the main document. It provides details of the solution, impacts, costs, benefits/drawbacks and proposed implementation approach. It also summarises the Workgroup's key views on the areas set by the Panel in its Terms of Reference, and contains details of the Workgroup's membership and full Terms of Reference.
- Attachment A contains the P416 Proposal Form
- Attachment B contains the draft redlined changes to the BSC for P416.
- Attachment C contains the full responses received to the Workgroup's Assessment Procedure Consultation.
- Attachment D contains the full responses received to the Panel's Report Phase Consultation.

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### Why Change?

If Parties' concerns over the Balancing and Settlement Code Company (BSCCo) Annual Budget are not being satisfactorily addressed by the BSCCo Board, the mechanism for further contesting them would be by raising a Resolution to the BSCCo Board. If that Resolution does not reach a satisfactory conclusion, the Party could raise further Resolutions to remove Board members.

The Proposer contends that these are inefficient and disproportionate processes for Parties to address their concerns with the BSCCo budget.

### Solution

This Modification seeks to amend the BSC to include an additional appeal mechanism to Ofgem that BSC Parties could use to challenge items in the Annual Budget.

The Proposed Solution contains the following:

- A set of requirements that must be met for the appeal to be valid (as set out in Section 3 of this report).
- A 10 Working Day (WD) appeal window from the point at which the Board communicates their approval of the Annual Budget to BSC Parties to ensure that challenges are promptly raised.
- Provisions to allow the Authority to respond to appeals by referring individual items back to the Board for reconsideration, powers to change costings or remove individual items from the Annual Budget, and powers to dismiss appeals that are trivial or vexatious or has no reasonable prospect of success.
- Confirmation that the appeal mechanism cannot be used against spending related to the BSC Change process as detailed in Section F (except in cases where the correct process for budget approval has not been followed) or spending directed by the Authority or the Secretary of State pursuant to powers conferred on them by a Legal Requirement.
- Any BSC Party can appeal an Annual Budget line item.
- To stop spend against an Annual Budget line item the following conditions must be met:
  - The aggregate Actual Voting Share of all Party Groups supporting the appeal must be greater than or equal to 5% Voting Share;
  - Ten Party Groups must also support an appeal; and
  - The appealing Parties must explicitly request when raising an appeal that spending should be suspended against the whole or part of an Annual Budget line item.

If the above conditions are met then spending against that Annual Budget line item (or appealed proportion of it) is stopped until the Authority makes a determination on the appeal. If the above conditions are not met then spending

against that Annual Budget line item can continue until the Authority makes a determination on the appeal.

## Impacts & Costs

We expect P416 to potentially impact **all BSC Parties** as it will grant them an additional route under the BSC to raise appeals against the Annual Budget.

Please note that the Modification will only directly impact BSC Parties who choose to use the appeals process; all BSC Parties will also be impacted to the extent of any effect on Elexon's budget and operations.

If this Modification is implemented, BSC Parties will be eligible to contest items on the Annual Budget through a defined appeals procedure and Elexon may be required to adapt to changes to budget values or de-scope work as a result of a successful appeal. It will also impact Ofgem, as it will need to consider any appeals that are raised and respond to them in a timely fashion.

The costs for Elexon and industry to implement are expected to be **<£1k** as this is a document only change.

Costs Estimates			
Organisation	Implementation (£)	On-going (£k)	Impacts
Elexon	<1k	0 or Variable	Costs associated with drafting and implementing changes to Section C of the BSC  There may be on-going cost implications associated with the uncertainty of funding of projects associated with appealed Annual Budget cost items, the size and nature of these costs would be dependent on the budget line item appealed.
NGESO	0	0 or Variable	As a BSC Party the NETSO would gain the right to appeal Annual Budget line items under P416.
Industry	0	0 or Variable	Industry costs will be limited to the staff time involved in formulating an appeal and are expected to be relatively low.
Ofgem	0	Variable	Ofgem will be expected to make determinations on any appeals raised in a timely fashion. The costs associated with considering these changes would be highly variable depending on the nature of the appeal.
<b>Total</b>	<1k	0 or Variable	

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## Implementation

As this Modification Proposal is a document-only change, the Panel recommends that P416 should be implemented prior to the 2022/2023 Annual Budget approval process which is expected to begin around July 2021.

To ensure this deadline is met, the Workgroup recommends an Implementation Date of **five WDs** after Authority approval.

## Recommendation

The Panel agrees **by majority** that the P416 Proposed Modification **would not** better facilitate the achievement of Applicable BSC Objective (d) 'Promoting efficiency in the implementation and administration of the balancing and settlement arrangements' and should therefore be **rejected**.

The Panel recommends that P416 **should not** be a Self-Governance Modification on the basis that the proposed changes in P416 will likely have a material effect on the Code's Governance procedures.

The Panel agrees that P416 **does not** impact or expand upon the EBGL Article 18 terms and conditions as the proposed legal text does not impact the existing EBGL/BSC mapping (in section F Annex F-2).

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## 2 Why Change?

### What is the issue?

The Proposer contends that Stakeholders expect code bodies to be cost-efficient and to actively manage their finances. This is to minimise their burden, while also ensuring the organisation has sufficient resources to meet their operational requirements. The Proposer believes that appeals are an important tool to ensure plans are cost-efficient and fully justified.

In 2016, [P324 'Review of BSCCo's governance: introducing improved accountability to BSC Parties'](#) introduced major changes to the governance of BSCCo which, amongst other things removed the involvement of BSC Panel in approving the Budget, and set out a general appeals process between BSC Parties and the Board.

The Proposer contends that circumstances could arise in the process of drafting the Annual Budget whereby a BSC Party believes that their comments or concerns have not been sufficiently considered or addressed by the Board prior to budget approval, examples include but are not limited to:

- Lack of consultation with Parties on the draft Annual Budget;
- An item is not considered a legitimate item of expenditure; and
- The item could cause one or more Parties to be in breach of the BSC, Licences or Legal Requirements.

The full list of valid circumstances are detailed in Section 3 of this report. The Proposer believes that a suitable, limited and proportionate process should be developed to address this process gap for use as a last resort option to allow Parties to challenge the Annual Budget.

In the Modification Proposal Form (Attachment A), the Proposer recognises that there are currently means by which BSC Parties can contest items contained within the Annual Budget. This involves lobbying other BSC Parties and gaining sufficient support to raise a Resolution to the BSCCo Board. In the event of such a Resolution not achieving satisfactory outcomes, further Resolutions to appoint or remove BSCCo Board members could be envisaged. The Proposer believes that, in the majority of cases, this approach is disproportionate and inefficient, and an alternative mechanism is needed.

### Business Strategy and Annual Budget Process

Under BSC Section C '[BSCCo and its subsidiaries](#)' there is a requirement for BSCCo to have a Business Strategy which sets out amongst other requirements the principle activities to be undertaken by BSCCo for the upcoming year and the following two years, and an Annual Budget for the Plan Year which sets out the expenditure that BSCCo considers reasonably necessary to carry out the activities listed in the Business Strategy. For [2020/2021 both the Business Strategy and the Annual Budget](#) are presented by Elexon in the Elexon Business Plan.

The timeline below details the current process that is used to develop the Business Strategy and Annual Budget.

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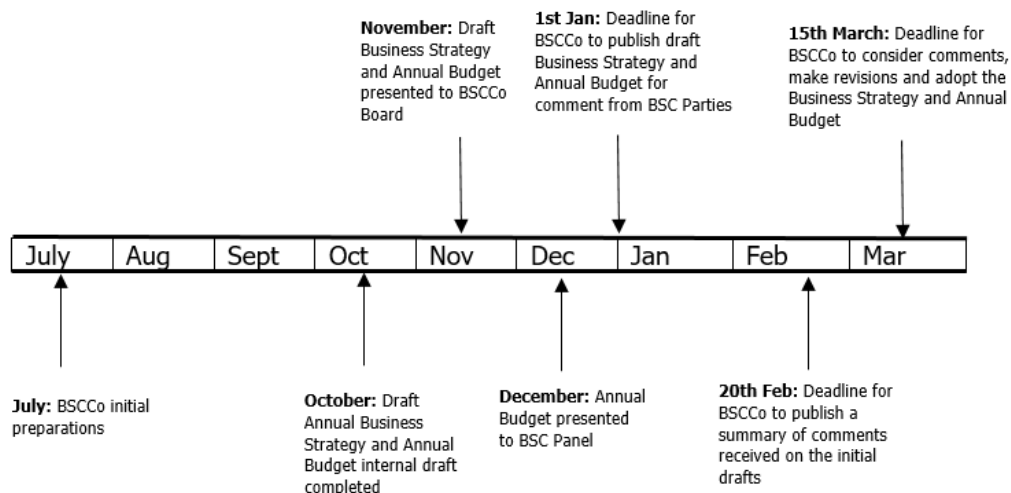
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*Figure 1: Business Strategy and Annual Budget Timeline*

The deadlines for 1st Jan, 20th Feb and 15th March in Figure 1 are the latest dates by which the detailed activities have to be carried out under the BSC. BSC Section C does allow Elexon to carry out these activities earlier than these specified deadlines (and Elexon usually does so). The activities detailed in September, October, November and December are internal deadlines developed by Elexon to ensure compliance with the BSC and to ensure that the Business Strategy and Annual Budget are both in place before the start of the next BSC Year that runs from 1<sup>st</sup> April to 31<sup>st</sup> March.

The above process ensures appropriate oversight by the BSCCo Board and Panel (which formally has only an advisory role in the formulation of the Budget rather than an authorising one) and that all BSC Parties can, but do not have the obligation to, comment on both the Business Strategy and the Annual Budget before they come into effect at the start of the relevant BSC Year on 1 April. These comments can be considered by the Board to help shape the relevant Business Strategy and Annual Budget.

Although not required by the BSC, Elexon also publish indicative budget figures for the two years beyond the plan year to accompany the BSCCo Strategy.

As highlighted in the 'what is the issue' section, circumstances could arise in which BSC Parties would wish to appeal individual items in the Annual Budget. The electricity and gas codes have different approaches to allowing Annual Budget appeals to Ofgem, for example the Smart Energy Code (SEC) and Supply Point Administration Agreement (SPAA) do include such appeals while the Connection Use of System Code (CUSC) and Distribution Connection and Use of System Agreement (DCUSA) have no such arrangements. The Proposer has based this Modification Proposal on the drafting related to budget appeals in the Retail Energy Code (REC) v1.1.

## Desired outcomes

This Modification seeks to introduce a proportionate and efficient mechanism by which BSC Parties can appeal or contest items within the Annual Budget.

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### Proposed solution

[P416 'Introducing a route of appeal for the Annual Budget in line with the proposals for the Retail Energy Code'](#) was raised by British Gas on 5 November 2020.

The P416 Proposed solution has the following key features:

- The Modification seeks to amend the BSC to include a new appeals mechanism that BSC Parties could use to challenge items in the Annual Budget.
- The Modification includes a set of criteria for an appeal to be valid, if any single criterion is met then the appeal would be valid. The criteria are:
  - The budget item was not submitted to Parties for comment in the drafting process;
  - The Board has failed to take reasonable regard to the comments submitted;
  - It is not a legitimate item of expenditure for the BSCCo;
  - It is a manifestly inappropriate provision for the activity in question, and there are insufficient safeguards in place to ensure that the actual costs incurred will be efficient; and
  - The item will, or is likely to, prejudice unfairly the interests of one or more Parties, or cause them to be in breach of the BSC, the Licences and/or Legal Requirements.
- Any BSC Party may appeal an item directly to Ofgem within 10 WDs of Board approval of the Annual Budget being notified to Parties.
- The Modification allows Ofgem to respond to the appeals by:
  - Referring the item back to the Board for further consideration;
  - Revising the provision for that Annual Budget cost item to a figure which it reasonably considers to be a better forecast of the cost likely to be incurred, whether that is higher or lower than the originally budgeted figure; and
  - Directing the Board to remove that cost item entirely, and make suitable revision to its annual budget and strategy.
- Additionally, the Modification includes requirements that any appeal must satisfy if the BSC Party wants the appeal to prevent expenditure on the relevant line item whilst the appeal is being considered:
  - The aggregate Actual Voting Share of all Parties supporting the appeal must be greater than or equal to 5%;
  - Ten Party Groups must support the appeal; and
  - The appealing Party must explicitly request when raising an appeal that spending should be suspended against the whole or part of an Annual Budget line item.
- The Modification will not allow the appeal mechanism to be used against spending related to the BSC Change processes detailed in [Section F 'Modification Procedures'](#) (except in cases where the correct process for budget approval has

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not been followed) or spending directed by the Authority or the Secretary of State pursuant to powers conferred on them by a Legal Requirement.

The Workgroup agreed not to raise an Alternative Modification for P416, but did consider different solution options, which are detailed in section 6.

### Assessment Procedure Consultation Responses

Do you agree with the Workgroup that there are no potential Alternative Modifications within the scope of P416 which would better facilitate the Applicable BSC Objectives?			
Yes	No	Neutral/No Comment	Other
2	0	0	0

Two respondents agreed that there are no potential Alternative Modifications within scope of P416 which could better facilitate the Applicable BSC Objectives.

A respondent suggested that the Resolutions process should be used prior to raising an appeal under P416. This is was not adopted by the Workgroup, the rationale is detailed in section 6 of this report.

### Legal text

The P416 proposed draft redlined text is available in Attachment B. Further discussions had by the Workgroup on the proposed redlining can be found in section 6.

### Assessment Procedure Consultation Responses

Do you agree with the Workgroup that the draft legal text in Attachment B delivers the intention of P416?			
Yes	No	Neutral/No Comment	Other
2	0	0	0

Both respondents agreed that the draft legal text in Attachment B delivers the intention of P416.

## 4 Impacts & Costs

### Estimated implementation costs of P416

P416 is a document-only change. We therefore anticipate the central implementation costs to be **less than £1k** for the Proposed Solution. Below is a detailed summary of the expected impacts and costs of the Modification for both the implementation phase and on-going.

Implementation cost estimates			
Organisation	Item	Implementation (£)	Comment
Elxon	Systems	0	Document only change
	Documents	<1k	Costs associated with drafting and implementing changes to Section C of the BSC
	Other	0	No impact identified
NGESO	Systems	0	No impact identified
	Other	0	No impact identified
Industry	Systems & processes	0	No impact identified
Ofgem	Other	0	No impact identified
<b>Total</b>		<1k	

### Estimated on-going costs of P416

On-going cost estimates		
Organisation	On-going costs (£)	Comment
Elxon	0 or Variable	There may be on-going cost implications associated with the uncertainty of funding of projects associated with appealed Annual Budget cost items, the size and nature of these costs would be dependent on the budget line item appealed.
NGESO	0	-
Industry	0 or Variable	We expect P416 to impact all BSC Parties as it will grant them an additional right under the BSC to raise appeals against the Annual Budget. We note that the Modification will only impact BSC Parties who choose to use the appeals process. BSC Parties that do not use the appeals process will not be impacted.
Ofgem	Variable	Ofgem will be expected to make determinations on any appeals raised. The costs associated with considering these changes would be highly variable depending on the nature of the appeal.

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On-going cost estimates		
Organisation	On-going costs (£)	Comment
<b>Total</b>	0 or Variable	

## P416 impacts

Impact on BSC Parties and Party Agents		
Party/Party Agent	Impact	Estimated cost
BSC Parties	<p>P416 will give BSC Parties a direct mechanism to formally raise a challenge to an item in the Annual Budget to Ofgem. Any change in the Annual Budget may have an impact on all Parties.</p> <p>If BSC Parties do not choose to use the appeals process then Parties will not be directly impacted.</p> <p>There will be some costs to BSC Parties that choose to appeal Annual Budget line items. These costs will be highly dependent on the nature and complexity of appeal.</p>	0 or Variable

Impact on the NETSO	
Impact	Estimated cost
As a BSC Party the NETSO would gain the right to appeal Annual Budget line items under P416.	0 or Variable

Impact on BSCCo		
Area of Elexon	Impact	Estimated cost
BSCCo Board	<p>This Modification potentially represents a significant change to the governance of Elexon in that under the current arrangements, the BSCCo Board is responsible to BSC Parties directly (as introduced by P324 in 2016).</p> <p>P416 will introduce potential intervention by Ofgem (which currently has no direct involvement in the governance of BSCCo), and as such it could be perceived by the Board as constituting a material impediment to the Board being able to carry out its duties and responsibilities.</p> <p>If the Authority uses its powers to refer cost items back to the BSCCo Board for further consideration, the BSCCo Board and BSCCo staff time may be required to consider such referrals.</p> <p>The new governance arrangements in P416 may also adversely affect the ability of the BSCCo Board to attract appropriate candidates.</p>	Variable

Impact on Ofgem	
Impact	Estimated cost
Ofgem will be required to introduce new processes to first establish whether the appeal is valid, and then carry out a determination as to whether the appeal is upheld and the appropriate course of action (which could include referring it back to the BSCCo Board for further consideration, or making its own determination of the appropriate value for the budget item under appeal). Ofgem may choose to carry out its own consultation processes to seek wider views.	Variable

Impact on BSC Settlement Risks
No impacts identified

Impact on BSC Systems and process	
BSC System/Process	Impact
No impact	P416 is a document only change and so does not impact any BSC Systems or processes.

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Impact on BSC Agent/service provider contractual arrangements	
BSC Agent/service provider contract	Impact
No impact	No impacts identified

Impact on Code	
Code Section	Impact
Section C	Changes are required to BSC Section C 'BSCCo and its Subsidiaries', which governs Elexon's required and permitted activities under the BSC. The proposed legal text details the valid appeal criteria, the Authority's powers with respect to any appeal and includes an explicit exemption for the appeals process to be used in relation to BSC Change procedures under Section F.

Impact on EBGL Article 18 terms and conditions	
No impact identified	

Impact on Code Subsidiary Documents	
CSD	Impact
No impact	No impact identified

Impact on other Configurable Items	
Configurable Item	Impact
No impact	No impact identified

Impact on Core Industry Documents and other documents	
Document	Impact
Ancillary Services Agreements	No impacts identified
Connection and Use of System Code	
Data Transfer Services Agreement	
Distribution Code	
Distribution Connection and Use of System Agreement	
Grid Code	

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### What are the consumer benefit areas?

**1)** Will this change mean that the energy system can operate more safely and reliably now and in the future in a way that benefits end consumers?

**2)** Will this change lower consumers' bills by controlling, reducing, and optimising spend, for example on balancing and operating the system?

**3)** Will this proposal support:

i) new providers and technologies?

ii) a move to hydrogen or lower greenhouse gases?

iii) the journey toward statutory net-zero targets?

iv) decarbonisation?

**4)** Will this change improve the quality of service for some or all end consumers. Improved service quality ultimately benefits the end consumer due to interactions in the value chains across the industry being more seamless, efficient and effective.

**5)** Are there any other identified changes to society, such as jobs or the economy.

### Impact on Core Industry Documents and other documents

Document	Impact
Master Registration Agreement	
Supplemental Agreements	
System Operator-Transmission Owner Code	
Transmission Licence	
Use of Interconnector Agreement	

### Impact on a Significant Code Review (SCR) or other significant industry change projects

No impacts identified. We requested that Ofgem treat this Modification as a SCR Exempt Modification Proposal on 5 November 2020. Ofgem confirmed that this Modification Proposal was SCR exempt on 10 November 2020.

### Impact of the Modification on the environment and consumer benefit areas:

Consumer benefit area	Identified impact
1) Improved safety and reliability	Neutral
2) Lower bills than would otherwise be the case No direct impacts identified. Where an appeal is upheld, there could be nominal indirect cost reductions for consumers, or changes to the quality of service provided by the BSCCo.	Neutral
3) Reduced environmental damage	Neutral
4) Improved quality of service	Neutral
5) Benefits for society as a whole	Neutral

### Assessment Procedure Consultation Responses

Do you agree with the Workgroup's assessment of the impact on the BSC Settlement Risks?			
Yes	No	Neutral/No Comment	Other
2	0	0	0

Two respondents agreed with the Workgroup's assessment of the impact on the Settlement Risks. This is that there are no direct risks associated with P416.

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Do you agree with the Workgroup's assessment that P416 does not impact the European Electricity Balancing Guideline (EBGL) Article 18 terms and conditions held within the BSC?			
Yes	No	Neutral/No Comment	Other
1	0	1	0

One respondent agreed (and one did not provide a comment on this point) that this Modification will have no impact on the EBGL Article 18 terms and conditions held within the BSC.

Will P416 impact your organisation?			
Yes	No	Neutral/No Comment	Other
0	1	1	0

One respondent did not believe that P416 would impact their organisation while the other respondent highlighted that the Modification would only directly impact them if they chose to make use of the suggested appeal mechanism.

A respondent highlighted that the pausing on spend detailed in the Proposed Solution could make the general management of BSC business very difficult. Areas highlighted by the respondent include:

- Reduction of BSCCo Board influence on the budget as P416 does not require appellants to engage with the Board prior to raising an appeal; and
- The effect of the Proposed Solution could be to make Ofgem rather than the BSCCo Board ultimately accountable for large parts of the Elexon budget.

Will your organisation incur any costs in implementing P416?			
High	Medium	Low	None
0	0	0	2

Two respondents commented that their organisation would not incur any costs in implementing P416.

A respondent expressed the view that the implementation of P416 could increase BSC costs. The rationale given for this view is that the pausing of spend could affect the ability of Elexon enter into binding commercial agreements, recruit qualified Non-Executive Directors and increase borrowing costs due to increased uncertainty.

## 5 Implementation

### Recommended Implementation Date

The Workgroup recommends an Implementation Date for P416 of:

- **Five WDs** after Authority approval

The Proposer intends for the Modification to be implemented in time for it to be applied to the 2022/2023 Annual Budget process (if required). This Implementation Date reduces the risk that the appeals process will not be in place in the required timeframe. The Workgroup noted that P416 is a document-only Modification that will not require any material lead time prior to implementation.

### Assessment Procedure Consultation Responses

Do you agree with the Workgroup's recommended Implementation Date?			
Yes	No	Neutral/No Comment	Other
2	0	0	0

Two respondents agreed with the Workgroup's recommended Implementation Date. One of the respondents commented that the proposed Implementation Date will allow the new arrangements to be implemented in time for next year's budget setting process.

How long (from the point of approval) would you need to implement P416?			
0-6 Months	6-12 Months	>12 Months	Other
2	0	0	0

No respondents to the consultation identified any lead time associated with the implementation of P416.



### Business Strategy and Annual Budget

#### What is the current approval process?

Elexon presented a summary of the current Annual Budget approval process to the Workgroup. The key points presented are below:

- The BSC requires the BSCCo to prepare a Business Strategy that sets out the principal activities that the BSCCo expects to carry out in the coming financial year and the following two years.
- The BSC requires the BSCCo to prepare an Annual Budget setting out the expenditure reasonably necessary to carry out the Business Strategy in the coming financial year.
- Both the Business Strategy and Annual Budget are considered, consulted upon and approved via the same process and are included in a single document.
- The Annual Budget focuses on the on-going business as usual expenditure to deliver BSC obligations.
- The Annual Budget includes details of the funding requirements in support of the Business Strategy e.g. in the 2021/2022 financial year such supporting activities include:
  - BSC Change Assessment
  - Kinect Programme
  - Technology roadmap
  - Product innovations
  - Wider Market Development activities.
- The timeline associated with the development of the [2021/2022 Business Strategy and Annual Budget](#) was presented and Elexon highlighted that Board approval is expected prior to the BSC mandated deadline.

The BSCCo Finance Director commented that they welcomed all responses to the consultation, considered them carefully and believed it was important that BSCCo took action when responses had been received.

Workgroup Members discussed how multi-year expenditures were managed in the budget. Elexon informed Workgroup Members that each budget includes indicative cost projections for the next two years to align with the Business Strategy document. It was noted that whilst every effort is made to adhere to these cost projections these can only be indicative and necessarily will be subject to change with changing business requirements.

#### Could the current approval process timescales be amended?

Workgroup Members discussed whether the Annual Budget and Business Strategy could be developed earlier than is currently the case. Elexon expressed the view that there was a balance to be struck when developing the Business Strategy and Annual Budget between developing the documents earlier (to allow more time for increased stakeholder input),

and developing the documents as close to the financial year to which they relate as possible (which would allow greater certainty on assumptions used to develop the budget). Elexon expressed the view that developing the Annual Budget and Business Strategy earlier would be at a significant detriment and potentially cause undue inaccuracies that would need revising closer to the start of the year. Elexon also expressed the view that the current timelines strike a reasonable balance between accuracy and consultation times. Elexon have not received any comment to date from Parties that the consultation periods are too short.

## Binding and Non-Binding Resolutions

### General interaction with Parties and the BSCCo Board

Under the governance arrangements introduced in P324, the BSCCo Board is accountable to BSC Parties. As such it has a duty to consider respectfully any issue raised by any Party at any time. Such consideration also applies to the BSCCo Business Strategy and Annual Budget setting processes.

In order to manage situations where the BSCCo Board did not respond to Parties raising issues, P324 set out more formal processes for further escalating them as described below.

### What are Binding and Non-Binding Resolutions?

Workgroup Members considered the Binding/Non-Binding Resolutions process when developing P416. [P324 'Review of BSCCo's governance: introducing improved accountability to BSC Parties'](#) introduced the Binding/Non-Binding resolutions process and sought to make a number of changes to ensure the BSC was in line with industry governance best practice.

A significant change included in the P324 solution was the introduction of greater BSCCo Board accountability to Voting Parties by giving them the following powers:

- **Non-Binding Resolutions** - One or more Voting Parties may propose a vote on a Non-Binding Resolution in relation to any matter related to the activities of the Board.
- **Binding Resolutions** - One or more Voting Parties may propose a vote on a Binding Resolution to remove one or more Directors from the Board.

P324 was implemented on 11 November 2016 and as at the time of publication, neither the Binding nor Non-Binding Resolution provisions have been utilised by any BSC Party.

### Process for Voting on Resolutions

P324 introduced the following process for the raising of Binding/Non-Binding Resolutions.

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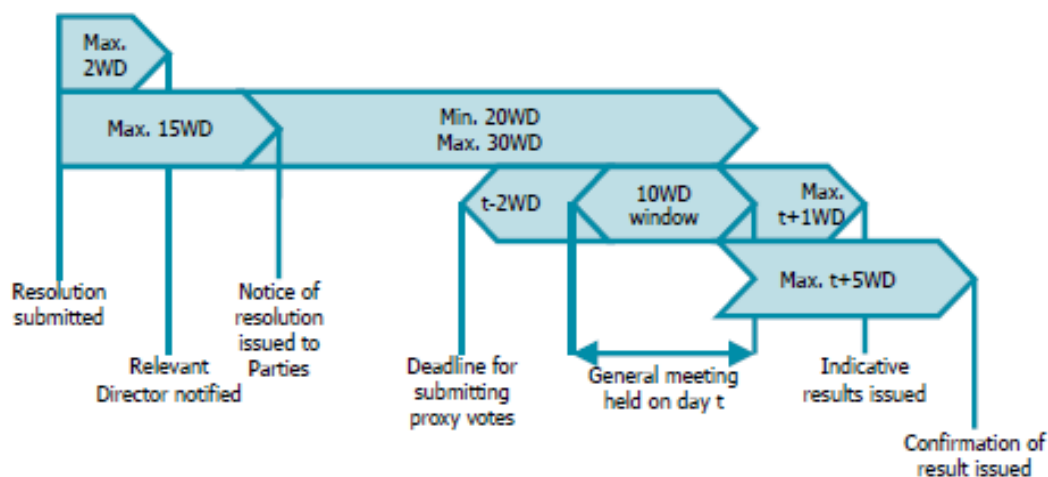


Figure 2: Process for voting on binding or Non-Binding Resolutions

The key process steps in the above are:

- **Submitting a resolution** - To raise either a Non-Binding Resolution or a Binding Resolution under the BSC, the Authorised Person for the relevant Voting Party requires support from Voting Parties with an aggregate Actual Voting Share greater than or equal to 5%.
- **Issuing notice of Resolution to Parties** - Within 15 WDs of receipt of the resolution, BSCCo notifies all Voting Parties and the Authority. A voting form with a clear yes/no determination is included as part of the notice, along with any supporting material.
- **General Meeting** - The general meeting is open to all Voting Parties, Directors and the Board Secretariat only. A representative from the Transmission Company is required to attend. The meeting is chaired by the Board Chairman or his deputy. The quorum for the general meeting is 10 Voting Parties representing at least 30% of the total number of votes. Parties can vote for or against a proposal at a General Meeting and if a majority of votes cast is greater than 50% of the total votes cast the proposal is passed, otherwise the proposal is rejected.
- **Vote Confirmation result** - Within one WD of the general meeting BSCCo will issue the indicative results of the meeting to the industry. Within five WDs of the meeting BSCCo will publish the final confirmation of the result.

The above process can be started at any time provided the requirements specified above are met and that an appropriate Authorised Person contacts the BSCCo with their Resolution and supporting rationale. From the above, the shortest possible time from the Resolution submission to the confirmation of the result of the resolution is 20WDs (although this is very unlikely to be achieved in practice) and the maximum time for the process to conclude is 50WDs.

Further details of each process step can be found in the [P324 Final Modification Report \(FMR\)](#).

### Non-Binding/Binding Resolution timescales in relation to an appeal process

The Workgroup noted that the intention of P324 was that Parties would raise concerns directly with the BSCCo Board, and that the consultation process provided a convenient vehicle to do this.

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The Workgroup then considered whether an appeals process was required in addition to the Non-Binding/Binding Resolution process or whether these provisions would be sufficient to appropriately appeal Annual Budget items. Elexon highlighted that the timescales between the BSC required deadline for the Annual Budget approval by the BSCCo (15 March) and the start of the associated financial year (1 April) are very tight and noted that if the process were to be triggered after the Annual Budget approval deadline, the Non-Binding/Binding Resolution process would very likely not conclude until after the start of the financial year.

Elexon highlighted that whilst the BSC mandates BSCCo approval on the Annual Budget by 15 March, in practice this is usually approved earlier (e.g. The 2021/2022 Annual Budget was approved on 3 March 2021). Elexon was of the opinion that even if the Annual Budget approval date was earlier than the 15 March deadline, the above process may not conclude prior to the start of the next financial year.

With the Non-Binding/Binding resolution process Elexon notes that it requires no determination by the Authority for approval, and once raised has a set timescale to conclude. This means where possible the Non-Binding/Binding Resolution process could conclude relatively quickly.

Elexon also highlighted that because the Non-Binding/Binding Resolutions can be raised at any time, they could be used prior to the BSCCo Board approving the Annual Budget if Parties had significant concerns on the contents of the Annual Budget. Elexon highlighted that the nature of the appeal was key to determining whether the Non-Binding/Binding Resolution provisions could conclude before the start of the financial year.

## Pre-appeals process

The Workgroup discussed whether there was a need for a pre-appeals process as required by the P416 Workgroup Terms of Reference. The Proposer noted that under the current Annual Budget review process there are a significant number of opportunities for parties to highlight any issues that they have prior to the BSCCo Board decision on the Annual Budget (such as when the Annual Budget is issued for comment and the Elexon webinar). Therefore introducing additional BSC mandated steps via a pre-approval process would be unnecessary and inefficient. The Proposer believed that the onus should be on Elexon to ensure appropriate governance to prevent appeals rather than including a prescriptive approach that may be cumbersome and may not add any additional value. For these reasons, the Workgroup agreed that a code mandated pre-appeals process should not be included in the draft redlining for P416.

Workgroup Members also discussed whether the drafting should be altered to include a 'duty to consult' provision instead of a prescriptive pre-appeals process. Workgroup Members did not agree with this approach for the same reasons that they did not agree with including a formal code mandated pre-appeals process.

## Authority Determination Timescales

The Workgroup discussed the possible length of time that appeals made under P416 could take to resolve. The Authority Representative stated that as appeals can be raised for a wide variety of reasons which, depending on their complexity, would take varying lengths of time to determine. The Authority Representative stated that it would not be possible or

reasonable for the Authority to give indicative timescales for determinations on any appeals.

The Workgroup noted this and concluded that any appeal process considered for P416 would need to assume that a determination may not be made in time for the start of the financial year, and that there was a possibility that the determination could take several months or even longer.

## Who should be able to appeal?

Workgroup Members considered whether all BSC Parties should be able to appeal the Annual Budget or whether the appeal provisions should only apply to a more limited set of Parties. Under the Proposed Solution, all BSC Parties can appeal any Annual Budget line items provided the appeal criteria are met.

The Proposer expressed the view that it was important that all BSC Parties have access to the appeals process under this Modification on the basis that specific spend included within the Annual Budget may disproportionately impact a small number of parties or individual organisations and they should not be locked out of any appeals process as a result of their size.

A Workgroup Member highlighted that not all BSC Parties have material exposure to the Elexon budget (e.g. distribution companies) and suggested that it might be appropriate to exclude these Parties from being able to launch appeals against Annual Budget line items under P416. Workgroup Members acknowledged that immaterial exposure to the Annual Budget only applies to a limited set of BSC Parties. However, they believed that the risk of appeals being raised by such parties was low due to the inclusion of a defined set of appeal criteria and the determination powers given to Ofgem. Overall the Workgroup concluded that all BSC Parties should be able to raise an appeal under P416.

## Appeal Criteria Discussions

### Interpretation of reasonable regard in clause 6.4.6 a)

The Workgroup considered the appeal criteria included in the Proposed Modification redlining. Workgroup Members considered the wording for the following appeal criterion:

*'the Authority may allow an appeal where the Authority is satisfied that the cost item in question:*

- a) was not submitted to Parties for comment as part of the draft Annual Budget in accordance with Clause 6.4.1 or the Board failed to have reasonable regard to the consultation responses comments submitted'*

The Workgroup discussed how the term 'reasonable regard' could be interpreted in the context of this appeal criteria. Members agreed that this should be interpreted as being satisfied if the minimum applicable process steps in the Annual Budget approval process were followed. Members also agreed that this should not, in any way, be contingent on the quality of the responses given by the BSCCo Board to any specific queries raised.

## Exemption for spend against BSC Change activities

Workgroup Members expressed the view that activities related to the BSC Change process should be exempt from appeals under this Modification. Elexon highlighted that impacts and costings are considered as part of the development of any Change Proposal (CP) or Modification and spending is monitored and controlled by the BSC Panel. Additionally, BSC Change activities have a fixed amount of funds allocated each financial year; this prevents overspending on BSC Change activities without gaining further approval from BSC Parties for the extra spend.

Elexon presented two variants of the legal text to the Workgroup that would exempt the BSC Change process from the appeals provisions for consideration:

### Option 1

The option 1 variant of the legal text for section 6.4.9 below:

*No appeal to the Authority may be allowed in respect of any cost item that relates to BSCCo's role, powers, functions and responsibilities under Section F.*

Under this option, appeals against spend related to BSC Modifications and CPs would not be allowed under P416. For the avoidance of doubt this includes all variants of the process such as Self-Governance, Urgent, EBGL etc.

### Option 2

The option 2 variant of the legal text for section 6.4.9 below:

*'No appeal to the Authority may be allowed pursuant to paragraphs 6.4.6(b) and/or 6.4.6(d) in respect of any cost item that relates to BSCCo's role, powers, functions and responsibilities under Section F.*

This option is a more limited BSC change exemption as it does allow appeals against BSC Change spending in the following cases:

- Elexon has not followed the correct process when approving a specified Annual Budget cost item; or
- The highlighted cost item is manifestly inappropriate.

The Workgroup agreed to consult on the suitability of option 1 and option 2 in its Assessment Procedure Consultation.

## Assessment Procedure Consultation Responses

**Do you agree with the Workgroup that BSC Change activities should be exempt from the appeals process? If you agree that BSC Change activities should be exempt, which of option 1 or option 2 is do you believe is most appropriate and why?**

Yes	No	Neutral/No Comment	Other
2	0	0	0

Two respondents to the Assessment Procedure Consultation agreed with the Workgroup in principle that BSC Change activities should be exempt from the appeals process. One of the respondents believed that the option 2 provisions would be most suitable and highlighted that in their view, it was not reasonable to allow appeals to be raised in the limited circumstances detailed in option 1.

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The other respondent believed that the option 1 provisions would be most suitable. The respondent highlighted concerns that the limited circumstances in which appeals could be raised could lead to a situation in which a party could use the appeals process to frustrate progression of a change that they do not like by appealing the BSCCo's budget and therefore limiting their ability to implement a change. This respondent expressed a preference for the provisions in option 1.

### **Workgroup consideration of Assessment Procedure Consultation Responses**

The Workgroup considered both options 1 and 2 above and noted the consultation responses received.

Workgroup Members raised concerns relating to the term 'manifestly inappropriate' and highlighted that this could have a wide range of different interpretations; there was therefore a risk that this text could be used to frustrate divisive or controversial BSC Modifications. Workgroup Members questioned whether this was a defined term in the equivalent REC drafting. Elexon confirmed that the term was not defined in the REC and clarified that as it is not a defined term, the dictionary definition of the term would apply, if approved. . As such, Workgroup Members agreed to remove the 'manifestly inappropriate' provision from the option 2 text.

Workgroup Members also considered whether Elexon not following the correct process when approving a specified Annual Budget cost item should be grounds for appeal in relation to BSC Change. Workgroup Members agreed that it would be appropriate for BSC Parties to raise appeals in this instance.

Overall Workgroup Members agreed to include the option 2 redlining in the Proposed Modification with the 'manifestly inappropriate' provision removed.

## **Appeals in other Electricity and Gas Codes**

### **Retail Energy Code (REC) v1.1 Consultation**

The provisions contained within P416 are based on the Proposals detailed in the [REC v1.1](#). Ofgem issued a consultation on these proposed v1.1 changes between 19 October 2020 and 16 November 2020. The REC drafting is similar to the redlining detailed in the Proposal Form for this Modification in Attachment A. Question 2.6 of this consultation asked respondents:

*'Do you agree that future RECCo budgets should be decided upon by the RECCo Board, subject to appeal by REC Parties?'*

Respondents to the consultation supported the approach for budget approval detailed in this question. Many respondents highlighted the need for consultation as part of the approval process. V1.1 of the REC has now been designated and effective from 1 April 2021.



## Other Relevant Codes and budget appeal mechanisms

The Workgroup considered how the Ofgem appeals mechanism for Annual Budget line items featured in other comparable market codes. Table 1 summarises the arrangements in these codes.

Budget appeals across relevant codes	
Code	Appeal Mechanism (Y/N)
BSC	N
REC	Y
SEC	Y
DCUSA	N
Grid Code	N
CUSC	N
SPAA (to be subsumed into the REC)	Y
DCode	N
MRA (to be subsumed into the REC)	N (but must be formally approved by parties)
UNC	Y
STC	N

*Table 1: Budget appeals across relevant codes*

Elexon noted the mix of Ofgem appeal options in the various gas and electricity codes. Workgroup Members noted that budget appeal mechanisms existed in other gas and electricity codes but also noted that budget appeal mechanisms do not exist across a large number of other relevant codes. Some Workgroup Members also stated that whilst some of the code bodies listed above do have an appeals mechanism, without considering a wider range of governance provisions and business situations (e.g. whether the other codes feature provisions equivalent to the Resolution processes), it is difficult to draw any meaningful comparisons.

The Proposer believes that cross-code consistency in approach is a benefit of P416 and expressed their view that the REC is considered industry best practice. A Member stated that the REC has just come into being and was in its first budget year so the process was currently untested. The Authority Representative stated that any appeals mechanism should be fit for purpose and designed with the BSC governance arrangements in mind.

## Annual Budget Discussions

### Annual Budget line items

Workgroup Members discussed the presentation of line items in the Annual Budget. Elexon highlighted to members that the current presentation (as detailed in the 2021/2022 Business Plan) of the Business Strategy and the format of the Annual Budget line items is a result of efforts by Elexon to ensure all parties can easily access key information without undue effort. A Workgroup Member highlighted that there is a great deal of detail available

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to support if Parties require it. Elexon advised that the Annual Budget has been presented in a wide variety of different ways with differing levels of detail over the years and that they continue to refine their approach based on Party feedback.

Members discussed whether any Annual Budget line items should be pre-defined within the P416 solution. Elexon informed Workgroup Members that defining this or including further provisions that explicitly define a line item could inadvertently reduce the flexibility that Elexon currently has to present the Annual Budget in a level of detail that is both sufficient and easy to absorb.

Workgroup Members acknowledged that a consequence of the implementation of P416 could be to significantly increase the granularity of the Annual Budget line item data. The Workgroup suggested that this was a potential benefit of the Modification as it increases the required transparency of spend in the Annual Budget. Elexon responded by highlighting its willingness to engage with any party that wished to explore more detail, and that this information was readily available having been used to construct the budget in the first place. Workgroup Members also noted the possibility that the higher level of detail would require more effort for Parties to process and adversely affect the engagement of smaller Parties.

### How should spend associated with Annual Budget line items be treated?

Workgroup Members identified that a key consideration for the Modification was how spend associated with appealed Annual Budget line items was treated if the appeal was not determined by the Authority prior to the year to which the Annual Budget line item relates. Workgroup Members noted that in the drafting contained in the Proposal Form (Attachment A), Elexon would not be able to spend any money with respect to an appealed budget line item until an Authority determination was made.

Workgroup Members agreed that whilst it was important for all BSC Parties to be able to access the appeals process, there was a risk that without suitable controls the appeals process could be misused by BSC Parties to inappropriately prevent spend against Annual Budget line items. To address this, Workgroup Members agreed with the following approach:

- Any BSC Party should be able to launch an appeal regardless of their size; and
- A de minimis threshold should be included in P416 that:
  - **If reached**, spending against an appealed line item could be paused until the Authority determined the outcome of an appeal; or
  - **If not reached**, spending against an appealed line item could be undertaken whilst the Authority determines the outcome of an appeal.

### De minimis threshold criteria options

The Workgroup discussed what a suitable level for the de minimis threshold could be. The following options were initially considered by the Workgroup:

- **5% Voting Share threshold** – Under this option, any appealing BSC Party or BSC Parties would require an aggregate Actual Voting Share (as published on the [BSC Website](#)) of 5% or greater. This threshold would align to that required to raise a Non-Binding/Binding Resolution but Workgroup Members noted that this

could mean that a single larger Party could meet the threshold without wider party support (Some BSC Parties have Voting Shares that marginally exceed c.6% due to the way in which voting shares are determined under the Code)

- **5% Voting Share threshold with at least one other Voting Party Group in support** – Under this option, a single larger BSC Party could not meet the threshold without wider party support. The Workgroup noted that this could block a single BSC Party who is disproportionately impacted by a particular budget line item from preventing Annual Budget spend against an appealed line item.
- **10% Voting Share threshold** – Under this option, any appealing BSC Party or BSC Parties would require an aggregate Actual Voting Share (as published on the [BSC Website](#)) of 10% or greater. This approach would mean that at least two BSC Parties would need support and appeal before it can be raised. The Workgroup noted that this could block a single Party who is disproportionately impacted by a particular Annual Budget line item from preventing Annual Budget spend against that line item.

Workgroup Members discussed the options above and considered whether it could be appropriate to vary the Voting Share percentage or include a different number of required BSC Parties to support an appeal before it can be used to prevent spending under P416. The Workgroup initially expressed a preference for the 5% Voting Share with at least one other Party in support of an appeal option. Members believed that this approach would strike the right balance between ensuring that appropriate wider support was gathered prior to preventing spend against an Annual Budget line item but also ensuring that no undue barriers were in place that prevented legitimate Annual Budget appeals from smaller BSC Parties. Workgroup Members agreed to consult on whether one other Voting Party Group or two Voting Party Groups should be required as part of the de minimis threshold criteria.

Workgroup Members also agreed that controls should be included in the draft redlining that prevent BSC Parties that are part of the same corporate group from having multiple votes. This is to prevent some BSC Parties from having a disproportionate ability to stop spending against individual Annual Budget line items.

### **What is a Voting Share and a Voting Party?**

A Voting Party is each Trading Party, each DSO together with all Affiliates (if any) that are Trading Parties or DSOs.

Voting Shares are allocated to Voting Parties under the BSC. The Voting Shares are allocated to NETSO, Trading Parties and Distribution System Operators.

10,000 Voting Shares are split between Voting Parties. The Voting Shares are allocated to each Voting Party in the following ways:

- Trading Parties are allocated Voting Shares based on their proportion total Annual Funding Share.
- NETSO is allocated a fixed number of Voting Shares.
- Distribution System Operators are allocated a fixed number of Voting Share which is equally split between each Distribution System Operator

A Voting Share Cap is also applied so that a single Voting Party has no more than 600 of the Voting Shares regardless of their overall Annual Funding Share.

Elxon confirmed that NETSO would be able to raise appeals under P416 as it is considered a Trading Party.

### Concept of Party Group

A consultation respondent highlighted that the use of Voting Party Groups in the legal text could inadvertently exclude individual BSC Parties from raising appeals i.e. Parties that did not have Affiliates that are also Parties. The legal text was updated and the concept of a 'Party Group' was introduced to address this.

### Option for appealing parties to not prevent budget spend if the de minimis threshold criteria was met

A Workgroup Member highlighted the need for the provisions relating to the prevention of spend against appealed Annual Budget line items to be optional under the P416 legal text. Workgroup Members believed that it would be important to include further flexibility on the basis that the appealing BSC Party may not want to suspend all spending against a particular budget line item. For example, if a BSC Party agrees that some spend would be appropriate against the specific Annual Budget line item but does not agree with the amount of spend allocated to that specific line item.

Workgroup Members agreed to include these more flexible provisions in the P416 draft redlining.

### Assessment Procedure Consultation Responses

Do you agree with the Workgroup's proposed de minimis threshold criteria? If yes, please give your preference as to whether one or two other Voting Party Groups would be appropriate. If no, please provide your rationale.			
Yes	No	Neutral/No Comment	Other
1	1	0	0

There was a mix of support for the Workgroup's proposed de minimis threshold criteria. One of the respondents agreed with the Workgroup's initial proposal that there should be a de minimis threshold of 5% Voting Share and expressed a preference for one other Voting Party Group to be required in support of any appeal raised before spending is paused. The respondent gave the rationale that this approach would ensure that no single party could pause spend as a result of an appeal.

Another respondent did not agree with the Workgroup's proposed de minimis threshold criteria. The respondent highlighted that there are over 100 Voting Parties and that in their view, an appeal supported by only two Voting Parties representing an aggregate share of 5% is too few Parties. The respondent also highlighted that setting the bar too low for this threshold could lead to multiple appeals on different grounds and ultimately delay the budget process. Finally, the respondent also raised concerns that the 5% market share criterion could exclude a multiple number of smaller parties from raising an otherwise legitimate appeal. This respondent suggested that a threshold for a valid appeal of 10 or more Voting Parties could be a more appropriate de minimis threshold criterion. This mirrors that quoracy threshold for General Meetings.

## Workgroup consideration of Assessment Procedure Consultation Responses

Workgroup Members acknowledged that the appeals mechanism within P416 is designed to be used as a last resort mechanism. Workgroup Members also agreed that the possible pausing of spend against Annual Budget line items could have a significant impact on the operations of Elexon.

Taking into account the comments made by respondents to the consultation, Workgroup Members concluded that the de minimis threshold of 5% Voting Share threshold with at least one other Voting Party Group in support was not an appropriate level of support to pause spend against Annual Budget line items due to the potential impacts and consequences. Workgroup Members agreed that a 10 Voting Party Group + 5% Voting Share de minimis threshold would ensure sufficient wider support by Parties prior to a spending pause.

### Section 6.4.11 Interpretation

A consultation respondent questioned whether section 6.4.11 a) of the draft redlining delivered the intent of the P416 Solution. The respondent queried whether the phrase 'previously incurred in accordance with the Code' was suitable as it would only exclude pre-existing obligations from the spending pause under the P416 appeals process. The respondent also questioned whether the drafting needed to be altered to exclude cases where a future obligation is placed on Elexon by means other than through the Code.

Elexon made the following points:

- Elexon clarified that the term 'previously' is intended to prevent Elexon from voluntarily entering into legal obligations after an appeal;
- The reference to 'incurred in accordance with the Code' doesn't exclude statutory obligations that have arisen previously, even if not explicitly reflected in the Code. It is Elexon's view that setting a budget to comply with statutory obligations would be 'in accordance with the Code'; and
- The P416 legal text does largely exclude appeals for expenditure that we have been directed to incur by Ofgem or BEIS.

### Possible impacts of P416 on BSCCo Board

Workgroup Members discussed the potential impacts that P416 could have on the BSCCo Board and noted that the [P324](#) Modification clarified and increased the Board's accountabilities to BSC Parties.

A Workgroup Member suggested that such a move could result in Ofgem being defined as a 'Shadow Director' of the company as it would have powers to override the Board's budget decisions. The member also expressed the view that there was a risk that if the P416 solution was implemented, the powers of the BSCCo Board could be significantly diluted due to having less control over the Annual Budget, and thus prejudice individual directors' abilities to carry out their legal and fiduciary duties under the Companies Act 2006.

A Workgroup Member was very concerned that P416 would dilute the governance linkages between parties and the BSCCo Board and make them far less effective because parties have the option to avoid dialogue with the BSCCo Board and go straight to Ofgem.

A Workgroup Member highlighted that there is also a risk that Board Members could be dissuaded from including worthwhile but possibly controversial items in the Business Strategy and/or Annual Budget due to the expectation of an appeal from BSC Parties.

## Comparisons between the Resolution Process and the P416 Appeals Process

A consultation respondent expressed the view that it was not clear why P416 was needed and highlighted that the Annual Budget development process and Binding/Non-Binding resolutions processes (which constitute the current BSC mechanism of challenging Annual Budget spend) included in the BSC were proportionate and fit for purpose. The majority of Workgroup Members believed that P416 has value as a last resort option where existing BSC mechanisms to address issues in the Annual Budget have not been, in the appellant's view, appropriately addressed.

Workgroup Members discussed whether the Proposed Modification should require appellants to raise a Non-Binding Resolution prior to using the P416 appeals process. A Workgroup Member highlighted that this:

- May not be possible due to the timescales involved (See 'Binding/Non-Binding Resolution timescales in relation to an appeal process' earlier in this section);
- Would add further complexity to the Proposed Solution; and
- May not be a suitable route for individual BSC Parties to raise valid appeals due to the quorum requirements under the Non-binding Resolutions process.

The table below highlights the key differences between the Non-binding/Binding Resolutions process and the P416 appeal process:

	Resolution Process	P416 Appeals Process
<b>Timescales to raise</b>	At any point in time	10WDs after the BSCCo notifies Parties of the finalised budget
<b>Timescales to conclude</b>	Between 20WDs and 50WDs	No fixed timescale
<b>Treatment of spend</b>	If timescales allow, the BSCCo Board can revise elements in response to a resolution	If de minimis threshold criteria is met spending may be paused against a specified budget line item

	Resolution Process	P416 Appeals Process
<b>Thresholds</b>	<p><b>To call meeting</b></p> <p>Authorised Person from one or more Voting Parties with a combined share of 5% or more of the total number of votes</p> <p><b>Quorum requirements</b></p> <p>10 Voting Parties representing at least 30% of the total number of votes</p> <p><b>To pass Resolution</b></p> <p>Simple majority of votes</p>	<p><b>To raise an appeal</b></p> <p>Any Authorised Person representing a BSC Party</p> <p><b>To stop spend against a budget line item</b></p> <p>At least 10 Party Groups in support; and 5% Voting Share</p>
<b>Treatment of spend if issue is not resolved prior to the start of the financial year</b>	<p>Annual Budget would be approved and spending against the relevant budget line item could commence</p> <p>Please note that the BSCCo Board could choose to pause spending pending a resolution outcome but would not be obligated to do so</p>	<p>If the appealing party meets the de minimis threshold to stop spend against a budget line item then the appellant can choose to stop spend against a specified Annual Budget line item.</p> <p>If the de minimis threshold to stop the spend is not reached then Elexon can spend against a budget line item up until the point that a determination is made by Ofgem. If the Authority determines that the appeal is valid where future spending can be stopped or amended if the Authority directs it.</p>

	Resolution Process	P416 Appeals Process
<b>Process Outcomes</b>	<p><b>Non-Binding Resolutions</b></p> <p>The process forces the BSCCo Board to consider a questions raised via a Resolution. Puts pressure on BSCCo board to address concerns raised.</p> <p><b>Binding Resolutions</b></p> <p>Leads to the removal of Board Members</p>	<p><b>Ofgem Powers</b></p> <p>The Authority has powers to:</p> <ul style="list-style-type: none"> <li>• Refer the item back to the Board for further consideration;</li> <li>• Revise the provision for that Annual Budget cost item to a figure which it reasonably considers to be a better forecast of the cost likely to be incurred, whether that is higher or lower than the originally budgeted figure; and</li> <li>• Direct the Board to remove that cost item entirely, and make suitable revision to its annual budget and strategy.</li> </ul>

*Table 2: Summary of Resolutions Process and P416 Appeals Process*





### Proposer's views of P416 benefits

The Proposer contends that current routes of appeal for BSC Parties not in agreement with items in the Annual Budget, and who feel their comments have not been addressed during the drafting and consultation phase of the Business Strategy/Annual Budget are not satisfactory. The Proposer contends that the current options of:

- Raising Non-binding Resolutions that require BSCCo Board members to consider a specified issue; or
- Raising a Binding Resolution to remove a director

are inefficient and in the case of a Binding Resolution to remove a director, disproportionate.

The Proposer contends that introducing a new route to challenge items in the Annual Budget in a limited and specific way is therefore an improvement in efficiency in the implementation of the Balancing and Settlement arrangements.

### Applicable BSC Objectives

Workgroup Members discussed Applicable BSC Objective (d) 'Promoting efficiency in the implementation and administration of the balancing and settlement arrangements'. A minority (two out of five) voting Workgroup Members did not agree that the Modification would better facilitate Applicable BSC Objective (d) compared to the current baseline. Workgroup Members who held this view believed that the current arrangements provided suitable accountability to Parties in a mature code like the BSC and that P416 would be detrimental to the efficient governance of the BSC due to the introduction of additional process steps. Furthermore, there were potential conflicts with current governance that introducing Ofgem would entail. They also cited concerns relating to undermining the authority of the BSCCo Board (as detailed in the possible impact of P416 on BSCCo Board section in the Workgroup discussions). A majority (three out of five) voting Workgroup Members supported the view that P416 would better facilitate Applicable BSC Objective (d) for the reasons detailed by the Proposer.

Workgroup Members discussed whether any other Applicable BSC objectives would be impacted by P416. A Member highlighted that there could be a slight detrimental impact on Applicable BSC Objective (a) 'The efficient discharge by the Transmission Company of the obligations imposed upon it by the Transmission Licence'. The Member highlighted that this would be an indirect consequence of Elexon not being able to deliver its full set of duties imposed on them through the Transmission Licence, due to challenge it had received this could therefore introduce inefficiencies and reduce the efficient discharge of the Transmission Company obligations under the Transmission Licence. A minority of Workgroup Members (one out of five) agreed with this rationale.

### What are the 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 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

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Does P416 better facilitate the Applicable BSC Objectives?		
Obj	Proposer's Views	Other Workgroup Members' Views <sup>1</sup>
(a)	• Neutral	• Majority neutral (one detrimental, three neutral)
(b)	• Neutral	• Neutral
(c)	• Neutral	• Neutral
(d)	• Positive	• Majority positive (two positive, two negative)
(e)	• Neutral	• Neutral
(f)	• Neutral	• Neutral
(g)	• Neutral	• Neutral

### What is the Self-Governance Criteria?

A Modification 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.

## Assessment Procedure Consultation Responses

Do you agree with the Workgroup's initial majority view that P416 does better facilitate the Applicable BSC Objectives than the current baseline?			
Yes	No	Neutral/No Comment	Other
2	0	0	0

Two respondents agreed with the Workgroup's initial majority view that P416 does better facilitate the Applicable BSC Objectives better than the current baseline. A respondent agreed with the Proposer's view of the P416 benefits as detailed above and another respondent agreed that the Proposed Modification better facilitates Applicable BSC Objective (d), no further rationale was given for support by this respondent.

## Self-Governance

The Workgroup did not believe that this Modification should be Self-Governance on the basis that P416 will likely have a material effect on the Code's Governance procedures.

The Panel initially agreed with the Workgroup that the P416 Modification should not be treated as a Self-Governance modification for the reasons provided by the Workgroup.

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<sup>1</sup> Shows the different views expressed by the other Workgroup members – not all members necessarily agree with all of these views.

The P416 Assessment Report was presented to the Panel at its meeting on 13 May 2021 (314/05).

The Panel discussed the P416 solution. A Panel Member highlighted that the REC has an appeals mechanism and this was used as the Proposer's starting point for the development of the Proposed Solution. The Member also highlighted that due to the open and constructive Workgroup sessions the P416 solution was, in their view, now appropriately risk managed.

A Panel Member expressed the following concerns with the P416 solution:

- No defect had been identified in the BSC by the Workgroup. The Member also highlighted that in the past 3 years Elexon had only received two formal responses to the Annual Budget which demonstrates that Parties are content with Elexon's level of engagement.
- Introducing the Authority into the governance process of the Annual Budget would be detrimental as it reduces the accountability of the BSCCo Board to BSC Parties introduced in P324 and will detract from the Non-binding/Binding Resolutions arrangement currently in place; and
- Ofgem stated during the Workgroup sessions that the governance arrangements for appeals should be tailored to each code and that the assertion that the REC is considered best practice and other Codes should align is not correct.

The Panel agreed by majority that P416 does not better facilitate any of the Applicable BSC Objectives and thus made an initial recommendation that P416 should be rejected for the rationale given above.

## 9 Report Phase Consultation Responses

This section summarises the responses to the Panel's Report Phase Consultation on its initial recommendations. You can find the full responses in Attachment D.

Summary of P416 Report Phase Consultation Responses				
Question	Yes	No	Neutral/ No Comment	Other
Do you agree with the Panel's initial majority recommendation that P416 should be rejected?	0	2	0	0
Do you agree with the Panel that the redlined changes to the BSC deliver the intent of P416?	2	0	0	0
Do you agree with the Panel's recommended Implementation Date?	2	0	0	0
Do you agree with the Panel's initial view that P416 does not impact the EBGL Article 18 terms and conditions related to balancing held within the BSC?	2	0	0	0
Do you agree with the Panel's initial view that P416 should not be treated as a Self-Governance Modification?	2	0	0	0
Do you have any further comments on P416?	2	0	0	0

### Summary of responses

Two responses were received, including a response from the P416 Proposer, to the Report Phase Consultation in total, with both respondents representing Suppliers and one respondent also representing the Party Agent roles of ECVNA and MVRNA.

Both respondents did not agree with the Panel's initial majority view that P416 should be rejected. Respondents gave the following views on the Modification:

- The BSC does not have an appeals mechanism in line with other codes and there isn't any justification for a different mechanism to be put in place for the BSC compared to other codes such as the SEC, SPAA, UNC and REC. It was highlighted that it is inefficient for code parties to navigate a diverse set of arrangements, and therefore this change has a positive effect on Objective (d).
- The introduction to the Authority into the Governance process of the Annual Budget would not be detrimental. Having the ability to appeal budgets in other codes has meant that code Boards have had to ensure budgets are well justified and that a robust rationale is provided for each budget item.
- There is no evidence to suggest that the existence of an appeals process would deliver disbenefits and highlighted the need for Elexon to operate as efficiently as possible particularly in light of an industry trend for increasing budgets for industry code bodies.
- The current governance framework regarding the Elexon budget process does not offer adequate opportunities to challenge.

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- An appeals process, which would introduce Authority oversight, would align with recommendations made in 2016 by the CMA by encouraging Ofgem to keep a watchful eye on budgetary developments knowing that it may have to make a judgement, if an appeal surfaces.

Both respondents agreed with the remaining Report Phase Consultation questions and no new rationale was given in support beyond that detailed in the Workgroup discussion detailed in section 6 of this report.

One respondent highlighted that in the absence of alternative providers for BSCCo services, they view an appeal process as critical for holding Elexon to account for delivering value for money.

## 10 Recommendations

We invite the Panel to:

- **AGREE** that P416:
  - **DOES NOT** better facilitate any of the Applicable BSC Objectives;
- **AGREE** a recommendation that P416 should be **rejected**;
- **AGREE** that P416 **DOES NOT** impact the EBGL Article 18 terms and conditions held within the BSC;
- **APPROVE** an Implementation Date of:
  - **5WDs** after Authority decision
- **APPROVE** the draft legal text; and
- **APPROVE** the P416 Modification Report.

### Workgroup's Terms of Reference

Specific areas set by the BSC Panel in the P416 Terms of Reference	Conclusion
What controls would need to be in place to prevent frivolous and vexatious appeals or appeals that would result in Elexon being unable to meet its obligations or duties?	<p>The Proposed Modification contains the following provisions to prevent frivolous or appeals that would result in Elexon being unable to meet its obligations or duties?</p> <p><b>Section C 6.4.10</b> – This section gives the Authority the powers to dismiss an appeal on the grounds that an appeal is vexatious and/or frivolous</p> <p><b>Section C 6.4.12</b> – This section expressly prohibits appeals that would prevent BSC changes from being progressed or implemented.</p>
Do the current BSCCo Annual Budget deadlines for draft publication, comment summary and BSCCo Board decision need to be changed to accommodate the appeals process? – Do current timescales allow General Meetings to be convened in a timely manner if BSC Parties wish to raise concerns on the BSCCo Annual Budget?	<p>The Workgroup believes that the nature and complexity of an appeal will have a significant impact on the timescales required for the Authority to make a determination on an appeal. Acknowledging this, the Proposed Modification does not assume that the Authority will make a determination on an appeal in any specified period of time and does not suggest amendments to any of the Annual Budget deadlines currently within the BSC.</p> <p>The timescales associated with the Binding/Non-Binding Resolutions process within the BSC may allow General Meetings to be convened in a timely manner (i.e. prior to the start of budget year) however this is dependent on when the specific appeal is raised and the nature of the appeal.</p>
What process (if any) is needed to resolve a disagreement before a formal appeal is raised?	The Workgroup agreed that a formal pre-appeal process would not be suitable to include in the Proposed Modification and highlighted that there would be an expectation for appealing parties to use the opportunities in the current Annual Budget review process (Elexon webinar/respond to consultation/raising Resolutions) as appropriate, prior to appeal.
How would the existing mechanisms handle such an appeal and are these sufficient?	There is currently no specific formal appeal process within the BSC. BSC Parties can however raise Resolutions to discuss any issues with the BSCCo Board including the Annual Budget or ultimately remove Board Members.

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Specific areas set by the BSC Panel in the P416 Terms of Reference	Conclusion
What are the potential benefits/dis-benefits of this Modification?	<p><b>Benefits</b></p> <p>Greater disclosure on line items in Annual Budget Increased stakeholder engagement.</p> <p><b>Dis-benefits</b></p> <p>Creates risk for Elexon in their organisation e.g. recruitment, contract negotiations.</p> <p>Changing freedom of operation for the Elexon Board could skew decisions which could provide a barrier for doing what is best for industry.</p> <p>Risk of Ofgem being deemed to be a shadow director of Elexon in the event it makes decisions on budget items</p>
How will P416 impact the BSC Settlement Risks?	No impacts identified
What changes are needed to BSC documents, systems and processes to support P416 and what are the related costs and lead times? When will any required changes to subsidiary documents be developed and consulted on?	The Proposed Modification makes amendments to BSC Sections C. P416 is a document only change that will not require any changes to BSC Central Systems.
Are there any Alternative Modifications?	No
Should P416 be progressed as a Self-Governance Modification?	The Workgroup <b>does not</b> believe that this Modification meets the Self-Governance criteria on the basis that P416 will likely have a material effect on the Code's Governance procedures.
Does P416 better facilitate the Applicable BSC Objectives than the current baseline?	The Workgroup agreed <b>by majority</b> that the Proposed Modification does better facilitate Applicable BSC Objective d) 'Promoting efficiency in the implementation and administration of the balancing and settlement arrangements'
Does P416 impact the EBGL provisions held within the BSC, and if so, what is the impact on the EBGL Objectives?	The Workgroup believe that the redlining <b>does not</b> impact the EBGL Article 18 Terms and Conditions.

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## Assessment Procedure timetable

P416 Assessment Timetable	
Event	Date
Panel submits P416 to Assessment Procedure	12 November 2020
Workgroup Meeting 1	14 December 2020
Workgroup Meeting 2	22 January 2021
Workgroup Meeting 3	15 March 2021
Assessment Procedure Consultation	7 April 2021 – 22 April 2021
Workgroup Meeting 4	27 April 2021
Panel considers Workgroup's Assessment Report	13 May 2021



## Workgroup membership and attendance

P416 Workgroup Attendance					
Name	Organisation	14 Dec 21	22 Jan 21	15 March 21	27 April 21
Members					
Claire Kerr	ELEXON ( <i>Chair</i> )	✓	✓	✓	✓
Chris Arnold	ELEXON ( <i>Lead Analyst</i> )	✓	✓	✓	✓
Kevin Woollard	Centrica ( <i>Proposer</i> )	✓	✓	✓	✓
Phil Hare	Independent	✓	✓	✓	✓
Andy Colley	SSE	✓	✓	✓	✓
Urszula Thorpe	Pozitive Energy	✓	✓	✓	✓
Michael Lain	Eon	✗	✓	✓	✗
Lee Stone	Eon (Alternate)	✗	✗	✗	✓
Attendees					
Chris Welby	ELEXON ( <i>Design Authority</i> )	✓	✓	✓	✓
Nicholas Brown	ELEXON ( <i>Lead Lawyer</i> )	✓	✓	✓	✓
Nigel Smith	ELEXON ( <i>Chief Financial Officer</i> )	✗	✓	✓	✗
Yasmin Mouse	Elxon ( <i>Finance</i> )	✗	✗	✗	✓
Amanda Rooney	ELEXON ( <i>Head of Strategy</i> )	✗	✓	✗	✗
Nicholas Brocklesby	ELEXON ( <i>Change Analyst</i> )	✗	✓	✗	✗
Jonathan Coe	Ofgem	✓	✓	✓	✓
Claire Louise Roberts	Scottish Power	✓	✓	✓	✓
Rhys Kealley	Centrica	✗	✓	✗	✓

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## Appendix 2: Glossary & References

### Acronyms

Acronyms used in this document are listed in the table below.

Acronyms	
Acronym	Definition
BSC	Balancing and Settlement Code
CSD	Code Subsidiary Document
CUSC	Connection and Use of System Code
DCUSA	Distribution Connection and Use of System Agreement
EBGL	Electricity Balancing Guidelines
EMR	Electricity Market Reform
FMR	Final Modification Report
MRA	Master Registration Agreement
NETSO	National Electricity Transmission System Operator
REC	Retail Energy Code
SCR	Significant Code Review
SEC	Smart Energy Code
SPAA	Supply Point Administration Agreement
STC	System Operator Transmission Owner Code
UNC	Uniform Network Code
WD	Working Day

### External links

A summary of all hyperlinks used in this document are listed in the table below.

All external documents and URL links listed are correct as of the date of this document.

External Links		
Page(s)	Description	URL
6 & 17	Elexon 2021/2022 Business Plan	<a href="https://www.Elexon.co.uk/documents/about-Elexon/business-plan/Elexon-business-plan-2021-2022/">https://www.Elexon.co.uk/documents/about-Elexon/business-plan/Elexon-business-plan-2021-2022/</a>
6, 18, 19 & 28	P324 Webpage	<a href="https://www.Elexon.co.uk/mod-proposal/p324/">https://www.Elexon.co.uk/mod-proposal/p324/</a>
6	BSC Section C 'BSCCo and its subsidiaries'	<a href="https://www.Elexon.co.uk/the-bsc/bsc-section-c-bscco-subsidiaries/">https://www.Elexon.co.uk/the-bsc/bsc-section-c-bscco-subsidiaries/</a>

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External Links		
Page(s)	Description	URL
8	P416 Webpage	<a href="https://www.Elexon.co.uk/mod-proposal/p416/">https://www.Elexon.co.uk/mod-proposal/p416/</a>
8	BSC Section F 'Modification Procedures'	<a href="https://www.Elexon.co.uk/documents/bsc-codes/bsc-sections/bsc-section-f-modification-procedures/">https://www.Elexon.co.uk/documents/bsc-codes/bsc-sections/bsc-section-f-modification-procedures/</a>
23	Retail Energy Code (REC) v1.1	<a href="https://www.ofgem.gov.uk/system/files/docs/2020/10/proposed_changes_to_rec_main_body_red_lined_text_0.pdf">https://www.ofgem.gov.uk/system/files/docs/2020/10/proposed_changes_to_rec_main_body_red_lined_text_0.pdf</a>
25 & 26	Voting Share Register	<a href="https://www.Elexon.com/about-Elexon/Elexon-board/">https://www.Elexon.com/about-Elexon/Elexon-board/</a>
33	Panel Meeting 314	<a href="https://www.Elexon.co.uk/meeting/bsc-panel/">https://www.Elexon.co.uk/meeting/bsc-panel/</a>