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

This Report Phase Consultation was issued on 19 May 2021, with responses invited by 3 June 2021.

Consultation Respondents

Respondent	Role(s) Represented
E.ON	Supplier, ECVNA, MVRNA
Centrica	Supplier

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Question 1: Do you agree with the Panel's initial recommendation that P416 should be rejected ?

Summary

Yes	No	Neutral/No Comment	Other
0	2	0	0

Responses

Respondent	Response	Rationale
E.ON	No	Not for profit does not necessarily mean efficient; without significant competition for the services that Elexon provides, it is essential that adequate balances and checks can be applied to ensure a.) Elexon is operating as efficiently as possible, i.e. that its customers' money is being spent effectively, and b.) to ensure that there are not any unintended consequences of budgetary decisions that apply an unfair burden of costs to certain Parties. Elexon's budget has increased from £41.5m in 2017/18 to £62.1m in 2021/22. Sadly, this budgetary increase is a trend across the industry, with aggregated budgeted costs increasing across SPAA, MRA (supplier element only), DCUSA, REC, Elexon and CDSP increasing by ~£67m during this period. We are fully supportive of budgets that delivery value for money by driving efficiencies and ultimately benefits to end consumers, but we are not supportive of the lack of an appeal process. There is not evidence to suggest that the existence of an appeals process would deliver disbenefits. In our opinion, it is clear that the current governance framework regarding the Elexon's budget process does not offer adequate opportunities to challenge. We recognise that there are engagement points but ultimately budget sign-off is completed through self-governance. From listening to feedback, it would appear that engagement with Elexon's budget process is very poor with Parties providing little or no feedback on the final budget. One hypothesis for this is that Parties are unlikely to provide feedback if it is not felt action would be taken, given there not being the opportunity to escalate to an appeal stage (noting, this would be a last resort approach). The current process does not offer balance as Parties do not feel they can influence the budget. Elexon may ignore or be more diplomatic by "taking feedback onboard", respond to concerns, but not take any action where concerns continue to persist. The introduction of an

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Respondent	Response	Rationale
		appeals process would ensure there is a process for voices to not fall silent. The Retail Energy Code, which has been developed recently, allows for an appeals process. If this is deemed/designed to be a "best in class" code, why would the BSC not look to mirror and/or take learnings by introducing an appeals process? 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: "to oversee the annual development of code-specific work plans for the purpose of ensuring the delivery of the strategic direction" The 2016 CMA report also suggested that Ofgem could be more in touch with the code framework: the introduction of an appeals process would encourage this. (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 Enablers need to be in place for effective competition to take place. There is an ongoing risk of Elexon budgetary decisions disproportionately affecting certain Parties, which could ultimately lead to customer detriment by means of higher costs. A transparent and open to challenge (appeal) budgetary process would help to ensure that Elexon is held to account with regard to delivering an efficient and effective service and would allow all Parties to voice concerns with a mechanism of a review outside of Elexon's walls, i.e. by the Authority. (d) Promoting efficiency in the implementation and administration of the balancing and settlement arrangements As noted, the cost to implement this change are minimal. The benefits regarding introducing additional oversight could be substantial and, as a minimum, would likely increase engagement with the budget process. Without engagement and a diversity of views there is a risk with a "blinkered" approach as well as proposals being put forward that do not meet the needs of all Parties – recognising compromise is always required.

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Respondent	Response	Rationale
		As noted above, it is our view that not-for-profit does not necessarily equate to "efficient". We see the introduction of an appeals process as an additional opportunity for Parties to scrutinize Elexon's spend and ratify that value for money is being delivered.
Centrica	No	We do not agree with the Panels initial recommendation that P416 should be rejected. The rationale put forward by the Panel for proposing that P416 should be rejected is as follows: 1. 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. 2. 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 3. 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. In response to this rationale we would make the following points: 1. In our view that fact that the BSC does not have an appeals mechanism in line with other codes is a defect in itself. We would also caution against taking lack of engagement as a signal that industry parties are content with the Annual Budget. 2. We disagree that introducing the Authority into the governance process of the Annual Budget would be detrimental. Our experience of having the ability to appeal budgets in other codes has meant that code Boards have had to ensure budgets are well justified and robust rationale is provided for each budget item. Code Boards are better incentivised to engage fully with their funding parties and provide full and transparent details. 3. We do not see any justification for a different mechanism to be put in place for the BSC as opposed to

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Respondent	Response	Rationale
		other codes such as the SEC, SPAA, UNC and REC. it is inefficient for code parties to navigate a diverse set of arrangements, therefore this change is has a positive effect on objective d). We would prefer to see as much consistency across the industry codes as possible and implementing this modification will help to facilitate this.

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Question 2: Do you agree with the Panel that the redlined changes to the BSC deliver the intention of P416?

Summary

Yes	No	Neutral/No Comment	Other
2	0	0	0

Responses

Respondent	Response	Rationale
E.ON	Yes	It strikes the balance between taking elements from the Retail Energy Code approach (thus delivering consistency) as well as introducing BSC specific evolutions, such as the de-minis requirements to ensure a pause in spend is not the default regardless of the appeal (and support for it). The only concern that we raise, is whether the de-minis approach disproportionately benefits larger Parties, i.e. it might be more difficult for a smaller Party to reach the threshold without gaining support from others. We are pleased that options are being considered to address this and ensure this feature functions correctly and enables a route to challenge for all Parties – large or small.
Centrica	Yes	We agree with the Panel that the redlined changes deliver the intention of P416

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Question 3: Do you agree with the Panel's recommended Implementation Date?

Summary

Yes	No	Neutral/No Comment	Other
2	0	0	0

Responses

Respondent	Response	Rationale
E.ON	Yes	Given the change is relatively straightforward there is no reason why it cannot be ready to take effect for the 2022/23 budget process.
Centrica	Yes	We agree with the Panel's recommended implementation date.

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Question 4: Do you agree with the Panel's initial view that P416 should not be treated as a Self-Governance Modification?

Summary

Yes	No	Neutral/No Comment	Other
2	0	0	0

Responses

Respondent	Response	Rationale
E.ON	Yes	Ofgem will need to be onboard with the Modification as it will be key to the appeals process.
Centrica	Yes	We agree with the Panel's initial view that P416 should not be treated as a Self-Governance Modification as P416 will likely have a material effect on the Code's Governance procedures.

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Question 5: Do you agree with the Panel's initial recommendation that P416 does not impact the European Electricity Balancing Guideline (EBGL) Article 18 terms and conditions held within the BSC?

Summary

Yes	No	Neutral/No Comment	Other
2	0	0	0

Responses

Respondent	Response	Rationale
E.ON	Yes	No comment
Centrica	Yes	We agree with the Panel's initial consideration that P416 does not impact the European Electricity Balancing Guideline (EBGL) Article 18 terms and conditions held within the BSC

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Question 6: Do you have any further comments on P416?

Summary

Yes	No
2	0

Responses

Respondent	Response	Rationale
E.ON	Yes	We recognise that Elexon and its Panel may be reluctant to approve this Change given that it could move some responsibility to Ofgem if an appeal is raised. However, where there are not alternative providers, we see an appeal process as being critical to holding Elexon to account and delivering value for money particularly at a time when industry costs continue on an upward path. We would also like to stress that it would be our expectation that an appeal would only occur in exceptional circumstances
Centrica	Yes	There is currently no direct route of appeal for any BSC Parties not in agreement with any items in the Annual Budget, and who feel their comments have not been addressed during the drafting phase of the Business Strategy/Annual Budget. A Party who is sufficiently motivated could lobby other BSC Parties to support the removal of Elexon Board members, which would be both disproportionate and inefficient in most cases. Introducing a 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.

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