

REVIEW OF BSC PANEL GOVERNANCE

MEETING NAME BSC Panel

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Purpose of paper For Decision

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Summary This paper invites the BSC Panel to consider the Terms of Reference for a review of Panel Governance. It outlines the scope and approach for the review and provides a commentary on potential matters for consideration by a sub-group of Panel Members.

1. Background

The Knight Report

1.1 In his report¹, Bill Knight observed that "...change is coming to the power industry and its institutions will have to react if the opportunities are to be seized and the threats avoided." He identified four issues relating to clarity, accountability, independence and process:

- **Clarity:** there is a lack of clarity in the relationship between the BSCCo board and the Panel. The Panel and the BSCCo board are inextricably linked through a shared Chairman and through their joint responsibility in approving the annual BSCCo business plan. However, as the BSC has bedded in, and ELEXON's role has started to shift as activities have expanded beyond the BSC, it has become apparent that the relationship between the Panel and BSCCo Board is not clear or straightforward
- **Accountability:** While Knight focused this matter on the BSCCo board, it has subsequently been observed that a similar question could be posed in respect of the Panel. Certainly the matter of Panel accountability is complicated. While the Panel is established under the Transmission Licence, National Grid's role is deliberately constrained and the appointment of the Panel Chairman is subject to Authority approval. Further, all Panel members, once appointed or elected, are required to act independently and impartially;
- **Independence:** The Knight report observed that independence was likely to be an issue with any elected body. The report noted that 'while elected Panel members do their best to fulfil their duties as laid down in the BSC, which are to act impartially and not to give undue regard to the interests of those appointing them, there was a perception that Panel members act in a partisan manner and that a problem of perception is a real problem';
- **Process:** Another conclusion of the Knight report was that the modification procedures in the BSC were not designed to deal, and do not deal satisfactorily, with constitutional amendments such as vires changes. While this concern may only be tangential to BSC Panel governance, it is not always

¹ The [Knight report](#) is an independent review of ELEXON's governance commissioned jointly by the BSCCo Board and BSC Panel.

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straightforward to demonstrate a case for change under the Applicable BSC Objectives in relation to governance matters².

BSCCo Board Governance

- 1.2 The BSCCo Board has considered its own governance in light of the Knight Report and a joint workshop of BSCCo Board members and BSC Panel members was held at the end of July 2014 to discuss the governance of BSCCo.
- 1.3 The workshop identified a number of proposals for BSCCo. Other ideas were put forward regarding the BSC Panel, including:
 - the development of a Panel Strategy which should feed directly into the development of the annual BSCCo business plan; and
 - further consideration of the governance arrangements for the BSC Panel itself.

BSC Panel Governance

- 1.4 An overview of the existing BSC Panel governance provisions is set out in Appendix 1.
- 1.5 The Panel endorsed the progression of a Panel Strategy and further work on Panel governance at its meeting in August 2014.
- 1.6 The Panel observed that it was a good idea to look at Panel governance given the changes that have happened in the industry. The Panel acknowledged that further consideration should be given to the scope of this work which could encompass:
 - the composition of the Panel;
 - the processes used to appoint Panel Members;
 - BSC Panel and Panel Member accountability; and
 - Measuring and improving Panel performance.
- 1.7 It was also observed that one or more BSC Modifications would need to be raised in order for any recommendations to be progressed.
- 1.8 The Panel did note that work on a Panel strategy was something that the Panel could do in parallel with its wider thinking on governance. The development of a strategy is therefore being considered separately (see Panel Paper 229/15).
- 1.9 This paper provides an initial view of the scope and approach for a review of BSC Panel governance.

2. Objective

- 2.1 It is proposed that the review should make recommendations for change in order to:
 - a) Clarify the purpose and objective of the BSC Panel and the nature of its relationship with BSCCo, BSC signatories and any other interested parties;
 - b) Ensure that BSC Panel responsibilities and functions are clearly de-lineated from those of BSCCo;
 - c) Improve the accountability of the BSC Panel, Panel Members and Panel Committees and Expert Groups;

² For example, [P251 'Revision of the election process for BSC Panel Industry Members'](#) and [P252 'Removal of Trading Parties' ability to submit two votes at elections of BSC Panel industry members'](#) were both rejected after failing to demonstrate a case for change.

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- d) Better underpin the independent management of the BSC and ensure that any actual or perceived conflict of interest is appropriately managed without undue discrimination with respect to particular stakeholders or classes of stakeholder;
- e) Wherever possible, and unless there is good reason not to, align the governance of the BSC Panel and its Panel Committees with the principles of good governance that support and underpin the governance of UK boards of directors and / or trustees.

2.2 The review should also:

- a) Ensure that the governance and operation of the BSC Panel and its Panel Committees continues to facilitate delivery of the Applicable BSC Objectives in a transparent, economic, efficient and non-discriminatory way;
- b) Ensure that any recommendations arising from this review are aligned, where appropriate, with proposals developed elsewhere relating to the governance of BSCCo and that of the BSCCo Board.

3. Scope

3.1 The review should consider BSC Panel and Panel Member accountability; the composition of the Panel; the processes used to appoint Panel Members; and mechanisms to measure and improve BSC Panel performance as provided for in:

- a) The BSC provisions relating to the BSC Panel, in particular those set out in Section B and Annex B-2;
- b) The BSC provisions relating to the establishment of BSC Panel Committees and expert groups, in particular those set out in Section B, Section F, Section W and Section Z;
- c) The operating practices of the BSC Panel and any published guidance relating to Panel operations;
- d) The Terms of Reference for Panel Committees and Expert Groups;
- e) Panel and Panel Committee/Expert Group member appointment documentation (including, where applicable, terms of engagement, indemnity deeds, confidentiality undertakings, statements of independence, employer release letters etc.)

3.2 There are many similar Code Panels established in the industry which have governance arrangements of their own which may provide useful comparators. There may also be parallels to be drawn with the governance requirements and good working practice set out in the UK Corporate Governance Code. With this in mind, the review should take account of:

- a) The provisions set out in National Grid's Electricity Transmission Licence;
- b) The conclusions drawn by Ofgem in its reviews of Code Governance; and
- c) Governance best practice as set out in the UK Corporate Governance Code.

3.3 A commentary on potential matters arising is included as Appendix 2.

4. Approach and Timetable

4.1 We proposed that the review is led by the Panel Secretary with support from a sub-group of 3 Panel members (ideally one independent, one industry and the consumer member) and an external lawyer or other external support as the sub-group feels appropriate.

4.2 The sub group will meet as required to develop options and assess the findings of the review as work progresses.

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- 4.3 It is anticipated that, in conducting the review the sub-group will seek views from BSC Panel Members and other Panel attendees, Ofgem, National Grid and other interested parties as appropriate. This may be through workshops, one-to-one interviews, by correspondence or a combination of these approaches.
- 4.4 A representative of the Authority will be invited to participate in the review.
- 4.5 The review will take place through winter 2014/15 and will report to the Panel in March 2015.
- 4.6 It is anticipated that the cost for the review will be no more than £30k of external spend excluding use of ELEXON resources to support the review and that this can be accommodated within the total BSCCo budget.

5. Recommendations

- 5.1 We invite you to:
 - a) **APPROVE** the Terms of Reference for the Review of Panel Governance as provided for in this paper; and
 - b) **APPOINT** three Panel members to form the Panel Governance Review Group.

Appendices

Appendix 1 – The Governance of the Balancing and Settlement Code

Appendix 2 – Commentary on Matters Arising

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Appendix 1 - The Governance of the Balancing and Settlement Code

The following overview of the governance of the BSC is largely drawn from the summary set out in the Knight Report.

The Balancing and Settlement Code

The BSC was introduced in 2000 as part of the new electricity trading arrangements, which superseded the pool trading arrangements established on privatisation of the electricity industry in 1990. It is established under the licence granted to National Grid Electricity Transmission as system operator.

The BSC operates as a contract between the market participants *inter se* and the system operator and provides for the Balancing and Settlement Code Company (BSCCo) to facilitate the effective implementation of the BSC. The BSCCo acts as the contracting party with service providers; employs individuals involved in the management of the BSC and provides secretariat and resources to support the BSC governance arrangements. National Grid is the sole shareholder in the BSCCo.

The governance principles were set out in the consultation for the new arrangements.

- **Objectivity** - the decision-making processes within the BSC should be objective and not unduly biased by the interests of any particular party or group.
- **Transparency** - decisions should be taken transparently.
- **Inclusivity** - there should be no exclusion of relevant information or viewpoints.
- **Effectiveness** - decision-making processes should balance the need for timely decision making and thorough consideration of issues.
- **Efficiency** - the procurement, management and enforcement of contracts with service providers, the monitoring and enforcement of rules, financial control and dispute resolution need to be undertaken impartially and efficiently, with scope and responsibilities laid out clearly.

Origins of the Panel

In the 1999 consultation Ofgem said that the Panel 'will be the key body tasked with ensuring that the BSC is effectively and efficiently managed, and that appropriate revisions to the trading arrangements are secured in a robust and timely fashion.' The consultation went on to describe the function of the Panel 'to establish, supervise and administer the operation of BSC functions, systems and processes.'

One of the important objectives of the new arrangements was to ensure that the governance of the BSC should not be factional in nature. Ofgem aimed for an approach which emphasised objective decision-making with reference to pre-defined objectives rather than negotiation among competing commercial interests.

Ofgem therefore proposed that Panel members should not formally represent any pre-defined constituency but would provide expertise and experience in carrying out the duties assigned to them in accordance with the principles set out in the BSC. The aim was to establish rules and structures to ensure as far as possible that Panel members acted impartially in accordance with the objectives of the BSC and not merely in accordance with the interests, wishes or directions of a particular company or group. The aim was to avoid factionalism as far as possible and encourage a constructive, efficient and objective approach to decision-making, although it was recognised that there was a risk that Panel members drawn from within the industry might always be partisan to some extent.

Two possible options for the composition and appointment of the BSC Panel were consulted upon. Under option 1, the Panel would comprise members elected by the industry, while option 2 entailed members being appointed by the Panel chair and being independent of the industry. Following consultation a hybrid approach was adopted with the Panel consisting of a chair appointed by Ofgem, five elected industry

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members, two independents and two consumer members, plus a member appointed by National Grid. The chair can appoint a further industry member to reflect industry interests which would not otherwise be represented.

The Panel today

The Panel's constitution and powers are set out in detail in the BSC. In summary the Panel's objective is to give full and prompt effect to the BSC consistent with achieving the Applicable BSC Objectives in a transparent, economic, efficient and non-discriminatory way. Condition C3 of the Electricity Transmission Licence establishes six Applicable BSC Objectives. These can be summarised as:

- a) Efficient Discharge of Transmission Licence Obligations;**
- b) Efficient Operation of Transmission System;**
- c) Promoting Effective Competition;**
- d) Efficient Implementation of the Balancing and Settlement Arrangements;**
- e) Compliance with European Regulations; and**
- f) Facilitating Delivery of Electricity Market Reform**

The Panel comprises:

- the chair, now nominated by the Panel after consultation with the BSCCo board and approved by Ofgem;
- not more than five industry members elected by trading parties;
- not more than two members appointed by Citizens Advice;
- a member appointed by National Grid;
- not more than two independent members appointed by the chair; and
- an additional member appointed by the chair if he or she decides that the interests of a class of generators or suppliers who are exempt from the requirement to hold a license are not reflected in the composition of the Panel.

A representative of distribution system operators, a representative from the Authority and the chief executive of BSCCo are allowed to attend and speak, but not to vote, at any meeting of the Panel.

The Panel chair holds office for three years, and Panel members for up to two years. Panel members retire together on 30th September in each even year. All are eligible for re-appointment or re-election an unlimited number of times.

Panel members are bound to act impartially with a view to achieving the Panel's objectives. Panel members are not representative and must act without 'undue' regard to the particular interests of those appointing them. Panel members are bound to disclose such interests and as a condition of appointment they must confirm in writing that they accept their obligations. Where the member is an employee he or she must provide a letter from the employer agreeing that these requirements prevail over their duties as an employee. Panel members are expected to attend meetings personally but with the consent of the chair they may appoint an alternate of their choice.

The Panel has important powers relating to the suspension of the rights of parties and modifications of the BSC. The Panel is responsible for approving the business strategy of the BSCCo. The Panel meets monthly, with a quorum of a majority of members, and may delegate to committees with members of suitable experience and qualifications including employees of any BSC party or BSCCo. The Panel may not, however, delegate its functions relating to BSC modifications.

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Appendix 2 – Commentary on Matters Arising

The following considerations are set out as an initial view of the aspects of BSC Panel Governance which should be looked at in the review. This is not intended to be an exhaustive list or a comprehensive analysis of the areas for assessment. It is an illustrative report intended to inform the initial stages of the review and it should be expected that additional matters may come to light during the review.

The areas which the review may encompass include, but are not limited to, the following matters arising:

Key Principles

a) **Accountability & Independence**

Placing accountability at the heart of governance leads to the question, 'to whom are Panel Members accountable?'

The matter of Panel accountability is complicated. While the Panel is established under the Transmission Licence, National Grid's role is deliberately constrained. Some Panel Members are elected, others are appointed by various bodies and the appointment of the Panel Chairman is subject to Authority approval. All Panel members, once appointed or elected, are required to act independently and impartially.

The principles of good governance that inform corporate governance can also inform the governance of the Panel. A series of committees have investigated corporate governance issues over the 1990s and 2000s. Following the first of these³, a Canadian committee suggested that accountability must take into account parties other than shareholders:

"Corporate Governance" means the process and structure used to direct and manage the business and affairs of the corporation with the objective of enhancing shareholder value, which includes ensuring the financial viability of the business. The process and structure define the division of power and establish mechanisms for achieving accountability among shareholders, the board of directors and management. The direction and management of the business should take into account the impact on other stakeholders such as employees, customers, suppliers and communities'

Toronto Stock Exchange (1994)

In its review of Code Governance in 2010, Ofgem confirmed its view that 'industry codes are the contractual arrangements that underpin the electricity and gas wholesale and retail markets and which define aspects of the terms under which industry participants can access the electricity and gas networks'.

Given that the BSC operates as a contract between the market participants (and the system operator), some have said that the BSC Panel is responsible for independently managing this multi-party contract to ensure that it is given effect and operates fairly and effectively for the benefit of all parties (or prospective parties) to the contract. Alternatively, it might be that the Panel is intended to be the custodian of the BSC on behalf of the Authority, ensuring that any proposed changes to the contract are robustly assessed and that parties to the contract comply with its provisions.

In overseeing the BSC, Panel Members share many similarities with trustees who, in legal terms, hold authority, or a position of trust or responsibility for the benefit of another. In this case, Panel members could be said to be acting on behalf of parties to the contract (and other stakeholders as well).

³ The Cadbury report (1992)

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i) To whom do BSC Panel Members owe a duty of care?

Directors of UK companies are accountable to the owners of the company for its continuing prosperity and the owners have the ultimate sanction of dismissing some or all directors and replacing them with new appointees (in practice this is often achieved by confirming appointments of the board at the company's annual general meeting).

However, directors are not mandated delegates of shareholders. If they were, this would imply that they should forego their own individual judgement in order to follow the wishes and demands of shareholders. The Institute of Directors (IoD) is clear that a director who was merely the mouthpiece of the shareholders would, by fettering their discretion in this way, be failing in their duty to act in the best interests of the company.

The independence requirements placed on Panel Members reflect this approach and re-enforce the concept that Panel Members' duty of care falls more widely than the organisation(s) that appointed them.

Nevertheless, the question remains: to what extent do Panel Members owe a duty of care to the Authority, BSC Parties, Trading Parties and other stakeholders (including for example, European and GB government, trade associations and other energy industry groups and committees, large industrial and commercial energy consumers and domestic energy consumers)?

ii) Pro-active management of the contract

The ultimate aim of directors of companies is generally clear in seeking to ensure the continuing prosperity of that particular company for the benefit of its shareholders. Under the licence the Panel has been charged with managing the BSC in order to facilitate the Applicable BSC Objectives. At various times, the Panel has also been asked to make other considerations when conducting its work including impacts on Green House Gases (GHG) and consumers.

However, the Panel has been established as a comparatively reactive body. Its powers to shape the ongoing balancing arrangements are limited to revising certain parameters and shaping the terms of reference for industry assessment of proposed changes. The Panel has limited powers to propose changes to the arrangements and has it delegated much of its work to independent Panel Committees and expert groups.

Some Panel Members have suggested that, in today's evolving industry, the BSC Panel could take a more pro-active stance in ensuring that the contract remains effective and fit for purpose. However, it is not clear what this means in practice for the BSC Panel's interaction with BSC Parties and other interested parties who are not signatories to the BSC (e.g. consumers).

iii) Composition of the BSC Panel and appointment principles

The Knight report observed that: 'independence was likely to be an issue with any elected body and while elected Panel members do their best to fulfil their duties as laid down in the BSC, which are to act impartially and not to give undue regard to the interests of those appointing them, there was a perception that Panel members act in a partisan manner and that 'a problem of perception is a real problem'.

Nevertheless, it could be argued that the current provisions for the appointment of Panel Members bear some of the hallmarks of a trustee model of representation. Trustee models are frequently contrasted with delegate models of representation. Constituents elect their representatives as 'trustees' (or 'entrust' them) for their constituency. These 'trustees' have sufficient autonomy to deliberate and act in favour of the greater common good and national interest, even if it means going against the short-term interests of their own constituencies. By contrast in the delegate

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model, the representative is expected to act strictly in accordance to a mandate from the represented. Essentially, a trustee considers an issue and, after hearing all sides of the debate, exercises their own judgment in making decisions about what should be done. Nevertheless, trustees can still find they face regular conflicts of interest, particularly where they are appointed by outside bodies.

The National Council for Voluntary Organisations (NCVO) notes that three traditional models of trustee governance exist:

- Where trustees are recruited for their status, influence, contacts or public standing;
- Where trustees are recruited for their specialist skills or knowledge; or
- Where trustees are recruited because they are representative of those with a stake or interest in the organisation's work.

The NCVO concludes that an effective board of trustees should draw on elements of all three of the models. An effective board should be able to draw on a range of skills, knowledge, qualities, attributes and backgrounds to be effective.

In light of other considerations regarding accountability and duties of care in the evolving market, there may be a case for considering:

- Whether distribution businesses (as BSC Parties) should be able to appoint a Panel Member rather than a non-voting representative;
- If the Transmission Company should be able to appoint a Panel Member or a non-voting representative (given that it is currently excluded from voting on Modification Proposals, and that it is also the sole shareholder in BSCCo);
- If Consumers would be better served by a voting Panel Member(s) constrained to act independently (as now) or by the appointment of a representative of Consumers attending meetings (rather than as a voting Panel Member) so as to have the right to make unfettered representations to the committee which would then be transparently available to the Authority when making decisions on the merits of proposed changes⁴;
- Whether it may be appropriate to appoint Industry Panel Members, by specific constituency-based selection mechanisms (appointment or election), i.e. independent Suppliers; independent Generators; large, vertically integrated energy companies; Non-Physical Traders etc., albeit those duly appointed Panel Members would still be required to act independently⁵;
- If there is the right balance of non-industry (i.e. Chairman Appointed 'independent' Panel Members) and industry Panel Members;

⁴ Ofgem noted in its 2010 review of Code Governance that 'the right to vote is an important mechanism for allowing a consumer voice to be heard and enabling it to influence debates on commercial issues that have an impact on consumers. The ability to vote makes active engagement in the modification process both more likely and more important'. In respect of the UNC, Ofgem confirmed its view that 'a consumer representative on the UNC Panel will be able to offer views from the important perspective of the impact on consumers, who ultimately pay the costs associated with the operation of the gas trading arrangements. This view should be capable of being expressed as part of the recommendation on whether to accept or reject a proposal'.

⁵ A similar proposition was encompassed in Modification P129 in 2003 where it was observed that constituency-based voting arrangements would be less in keeping with the impartiality obligations than the current voting arrangements. However, a key difference to P129 may be the retention of the independence requirements that underpin the trustee-type approach to Panel governance in that, once appointed, a Panel Member should act impartially and not in the interests of the party (or class of parties) that appointed them.

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- Whether the Authority should continue to have a role in appointing the Panel Chairman⁶.

There may also be a case for considering which (if any) Panel members should be appointed by election, or by appointment of various bodies or by appointment of the Panel itself and, if so, who should have the power to remove Panel Members that have been so appointed.

iv) Delegated Responsibilities

Having considered the matters outlined above, it follows that the Panel should ensure there is equivalent clarity in place with respect to the accountability, composition and appointment of members for its various Panel Committees and Expert Groups.

b) Key Roles and Functions

The BSC places an obligation on the BSC Panel to conduct its business with a view to achieving a number of key objectives. These objectives can be summarised as giving full and prompt effect to the BSC consistent with achieving the Applicable BSC Objectives in a transparent, economic, efficient and non-discriminatory way.

The BSC Panel must undertake work and make recommendations so as to better facilitate the delivery of these objectives. ELEXON, as the BSCCo, is the independent organisation which supports the Panel in its work and is the delivery body that ensures that the contract (i.e. the BSC) is given effect.

In its review of Code Governance in 2010, Ofgem confirmed its view that 'governance processes [should be] transparent and accessible, which is particularly important for small participants and consumer groups'.

However, Knight concluded that there is a lack of clarity in the relationship between the BSCCo board and the Panel. The Panel and the BSCCo board are inextricably linked through a shared Chairman and through their joint responsibility in approving the annual BSCCo business plan. However, as the BSC has bedded in, and ELEXON's role has started to shift as activities have expanded beyond the BSC, it has become apparent that the relationship between the Panel and BSCCo Board is not clear or straightforward.

Thought should be given to ensuring there is clarity in the role of the BSC Panel and, where relevant, how this relates to BSCCo. The BSCCo Board has been considering this matter and is developing proposals to take forward in dialogue with the Panel. From a BSC Panel perspective other considerations may include:

i) A BSC Panel Strategy:

Discussions at the joint BSC Panel/BSCCo Board workshop in July and subsequently at the August Panel meeting have led to the Panel calling for the development of a BSC Panel Strategy that can be used to feed into the development of the annual BSCCo business plan. The development of a Panel Strategy implies a directive role for the BSC Panel. In addition to setting a strategy, this might include setting policies which guide and constrain action. It emphasises the shared vision of the future and the desirable direction of travel. This could encompass the commercial, economic, social, technological and political environments.

⁶ Ofgem noted in its 2010 review of Code Governance that panel chairs should be approved by the Authority (via a right of veto) in order to ensure chairs are independent and can provide a greater degree of scrutiny over panel actions.

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ii) Calls for Industry Panels to co-ordinate change activities:

Ofgem has indicated that Industry Code Panels should be doing more to ensure that programmes of work are co-ordinated both within and across Industry Codes. Most recent discussions in this area have related to P272 'Mandatory Half Hourly Settlement for Profile Classes 5-8', P300 'Introduction of new Measurement Classes to support Half Hourly DCUSA Tariff Changes (DCP179)' and DCP179 'Amending the CDCM tariff structure'.

iii) Alignment with Critical Friend Principles:

Ofgem has previously said that it sees the role of a 'critical friend' being that of a 'devil's advocate', testing the appropriateness of analysis that is being contemplated and the strength of the conclusions that can be drawn from it.

Principle 1 of the Code Administration Code of Practice requires Code Administrators to act as Critical Friends. It describes this as a 'Code Administrator who provides support to all with an interest in the code Modification process, but paying particular attention to underrepresented parties, small market participants and consumer representatives.' The question then arises as to whether it automatically follows that the BSC Panel and its Panel Committees and Expert Groups should support and facilitate the behaviours of a critical friend which include (but are not limited to):

- Ensuring people are available to discuss issues and Modifications with all interested parties;
- Ensuring users understand the minimum requirements for Modifications to be progressed;
- Ensuring that:
 - unsubstantiated assumptions or assertions do not go unchallenged;
 - all arguments for and against a Modification are adequately discussed at Workgroup and Panel level and reflected in Modification documents; and
 - previous discussions or decisions that may be relevant to the Modification being considered are highlighted.
- Ensuring that the Code Administrator is able to provide impartial input into the terms of reference set by the Panel and the Workgroup's analysis, taking into account for example, relevant views expressed by Ofgem;
- Ensuring that small market participant/consumer representatives viewpoints can be articulated and debated at Workgroup and Panel meetings and that other Workgroup members or panellists do not seek to stifle or prevent such debate; and
- Holding teleconference rather than 'face to face' meetings if this is more convenient for those that wish to participate, including smaller market participants.

iv) Active Management of the BSC:

As has been noted the Panel has been established as a comparatively reactive body. Its powers to shape the ongoing balancing arrangements are limited. The Panel may wish to consider its role in setting the signals that impact the operation of the arrangements (e.g. by determining the values of the various parameters that impact the calculations and transactions performed under the BSC; instigating reviews; its powers for proposing changes to the BSC; managing risk arising under the provisions of the BSC and ensuring compliance with the requirements of the BSC on the part of BSC Parties).

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v) Panel Policies:

In considering the above matters, the Panel may also wish to reflect on the utilisation of policies. Policies play an important governance role and can help an effective committee perform optimally in both routine and difficult times. They can be broken down into discrete areas including:

- Long Range Planning Policies – to help define the committee’s purpose, its vision and mission;
- Governance Policies – to help determine the committee’s philosophy and its accountability;
- Monitoring Policies – to clarify the manner in which the committee expects information concerning performance, conformance and risk to be presented;
- Delegation Policies – to set out the delegation of power from the committee (to other committees or to the delivery body – in this case, ELEXON Ltd.)

c) Improving Panel Performance:

The UK Corporate Governance Code states that a board should ‘undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors’. It goes on to state that this evaluation should consider the balance of skills, experience, independence and knowledge. It should encompass how the board works as a unit. Individual evaluation should aim to show whether each director continues to contribute effectively and to demonstrate commitment to the role (including commitment of time for board and committee meetings and any other duties).

The Panel may wish to consider how it should evaluate its own performance. Generally, two solutions can be adopted:

- The committee assesses itself, usually by setting explicit benchmarks and goals; or
- The committee appoints an external expert or neutral person to assess performance.

Although different approaches can be used, in examining the performance of boards, the IoD notes that a major challenge to any board is its openness to learning and development and that it is often the board’s own culture that prevents it from changing. The IoD goes on to note that common issues can arise, including:

- What is the relationship between individual performance and board performance?
- Who is being assessed, the directors or the board?
- What is being assessed and how?
- How do you measure the overall impact of the board?
- How do you know when a board is being effective as oppose to being efficient?

d) Purpose of the Annual BSC Meeting

The UK Corporate Governance Code states that board’s should ‘use the Annual General Meeting (AGM) to communicate with investors and encourage their participation’. The Annual BSC Meeting established in the BSC is not an AGM of the BSCCo, neither is it a meeting of the BSC Panel. In the light of the Panel’s key roles and functions and the above considerations regarding accountability of Panel Members (including the Members of Panel Committees) and the principles relating to their appointment, consideration should be given to the purpose and the Annual BSC Meeting.

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Rules and Mechanics

Consideration of the principles noted above may result in recommendations to change key rules and mechanics contained in the BSC. This might encompass:

- a) Appointment rules for Panel Members, Panel Committee Members and Alternate Members including:
 - i) the process for appointment (including the mechanics of elections and voting);
 - ii) the timing of appointments and/or elections;
 - iii) maximum terms of office; and
 - iv) the rules underpinning the removal of members.

Any such considerations should take account of the findings of previous Modifications that have looked at various elements of Panel governance, in particular Modifications P129 'Changes to Panel Determination Process and Panel Election Procedures', P251 'Revision of the election process for BSC Panel Industry Members' and P252 'Removal of Trading Parties' ability to submit two votes at elections of BSC Panel industry members'.

- b) The rules and requirements relating to the delegation of powers and responsibilities, including the processes used by the Panel for oversight of such delegated matters and any limitations placed on delegated responsibilities. This might encompass:
 - i) The role of Panel Sponsors in relation to Panel Committees and Expert groups;
 - ii) The appropriateness of Panel Members sitting on Panel Committees and Expert Groups as voting members of such bodies;
 - iii) The role of the Panel and the requirements placed on it where the BSC mandates separation of functions such as the requirement to establish a Performance Assurance Board and a Trading Disputes Committee and (on a case by case basis) Modification Groups including the oversight of their established powers and responsibilities;
 - iv) The role of the Panel and the requirements placed on it where it has chosen to delegate its powers and functions to a Panel Committee (such as the Supplier Volume Allocation Group or the Imbalance Settlement Group) or to the Code Administrator (ELEXON Ltd).
- c) Panel Reporting, Transparency and operation of the Annual Meeting;
- d) Panel Powers to raise change to the BSC; and
- e) Operation of Panel Meetings (including the capability to consider business at meetings held by teleconference).