

4.7 Issue Form

Issue Form - BSCP40/04	Issue Number 82 <i>(mandatory by BSCCo)</i>
Issue Title <i>(Mandatory by originator)</i> Expand the BSC Panel's ability to raise Modification Proposals	
Issue Description <i>(Mandatory by originator)</i> <p>BSC Section F2.1.1 restricts the BSC Panel's ability to raise Modification Proposals to the following circumstances:</p> <ul style="list-style-type: none"> • On the recommendation of ELEXON (as the BSCCo), where: <ul style="list-style-type: none"> ○ ELEXON identifies a change that it believes would better facilitate the achievement of Applicable BSC Objective (d)¹, in accordance with BSC Section C3.8.8; ○ The Bank of England recognises another currency unit as a lawful UK currency, as set out in BSC Section H9.8; ○ ELEXON receives a change to a Core Industry Document² and/or the System Operator-Transmission Owner Code (STC) that impacts the BSC; ○ ELEXON becomes aware of a change of circumstances, since approval of a Modification, that would make the Modification's implementation impossible, significantly more costly than originally envisaged or no longer relevant; or ○ ELEXON identifies manifest errors, minor inconsistencies or other minor consequential amendments requiring changes to the BSC.³ • On the recommendation of the Trading Disputes Committee (TDC, a Panel Committee), in consequence of a Trading Dispute. • On the recommendation of the Performance Assurance Board (PAB, a Panel Committee), in accordance with BSC Section Z8.2, in order to: <ul style="list-style-type: none"> ○ Remedy any error, ambiguity, inconsistency or deficiency which emerges as a result of the PAB exercising its functions; or ○ Establish a new Performance Assurance Technique or modify an existing Performance Assurance Technique. • On the recommendation of a report relating to a Value of Lost Load Review, in accordance with BSC Section T1.12. • On the recommendation of a report relating to a review of the Quorum Requirements for voting at BSC General Meetings, in accordance with paragraph 3.1.7 of BSC Section C, Annex C-2. 	

¹ 'Promoting efficiency in the implementation and administration of the balancing and settlement arrangements'.

² As defined in the Transmission Licence. These are designated by the Secretary of State as being central industry documents that are associated with the activities of the National Electricity System Operator (NETSO) and authorised electricity operators, and whose subject matter is connected with the BSC and/or the balancing and settlement arrangements.

³ Modification Proposals raised with this scope are usually referred to as 'housekeeping' changes and progressed as Fast Track Self-Governance Modification Proposals.

Issue Description Cont'd (*Mandatory by originator*)

Where a potential Modification Proposal does not meet the criteria above, the Panel cannot raise it. For example, the BSC prevents the Panel from raising a Modification Proposal to better facilitate the achievement of Applicable BSC Objectives (a)⁴, (b)⁵, (c)⁶, (e)⁷, (f)⁸ and/or (g)⁹ unless it would also better facilitate Objective (d).

ELEXON and the Panel can still highlight other beneficial changes to the BSC and encourage a Party to raise them, for example by publishing review recommendations and White Papers. However, raising a Modification Proposal means committing resource to attending Panel and Workgroup meetings. Parties may find this difficult for changes that would improve the overall BSC arrangements but deliver no significant benefit for their own organisations. Modification Proposals that facilitate new entrants and new business models may also struggle to find Proposers.

Justification for Examining Issue (*Mandatory by originator*)

ELEXON believes that expanding the Panel's ability to raise Modification Proposals would:

- Increase the effectiveness of the Panel, and thereby the BSC, by enabling the Panel to:
 - Address a wider range of issues on behalf of BSC participants;
 - Drive change to evolve the BSC and facilitate innovation;
 - Avoid delays in progressing the recommendations of reviews and White Papers (see below); and
 - Support the large-scale and complex changes facing the industry;
- Reduce the burden on BSC Parties (and designated non-Parties under [Approved Modification P370](#)¹⁰) to be Proposers;
- Promote improvements in the BSC's self-governance arrangements; and
- Be consistent with the conclusions of the Panel's 2014 review of its governance, the Panel's objectives as set out in the BSC and the aims of Ofgem's past and present Code Governance Reviews (see Appendices 1 and 2 for a summary of these).

We discussed this idea with the Panel at its meetings in August and September 2018 (see papers [281/07](#) and [282/09](#)). The Panel has asked us to raise an Issue to see if participants support progressing it further.

Examples of review / White Paper recommendations that initially struggled to find Proposers are:

⁴ 'The efficient discharge by the NETSO of obligations imposed upon it by the Transmission Licence'.

⁵ 'The efficient, economic and co-ordinated operation of the national electricity transmission system'.

⁶ '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'.

⁷ '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]'.

⁸ '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'.

⁹ 'Compliance with the Transmission Losses Principle'.

¹⁰ 'Allow the Panel to designate non-BSC Parties to raise Modifications'.

- [P379](#) 'Enabling consumers to buy and sell electricity from/to multiple providers through Meter Splitting', raised as a result of ELEXON's [White Paper](#) on enabling customers to buy power from multiple providers. ELEXON published the White Paper in April 2018 and New Anglia Energy raised P379 in January 2019.
- [P363](#) 'Simplifying the registration of new configurations of BM Units' and [P364](#) 'Clarifying requirements for registering and maintaining BM Units', raised as a result of ELEXON's Review of Metering Dispensations and Nonstandard BM Unit Applications (Panel paper [264/08](#)). ELEXON published the review recommendations in March 2017 and Green Frog Power raised P363 and P364 in December 2017.

Potential Solution(s) *(Optional by originator)*

ELEXON proposes that the Panel should have the same ability as any Party to raise Modification Proposals.

This means removing the existing BSC restrictions so that the Panel:

- Can raise any Modification Proposal that it believes would better facilitate the achievement of the Applicable BSC Objectives, regardless of which Objective(s) it facilitates; and
- Can raise any Modification Proposal on its own initiative, regardless of the nature of any specific triggering event, report or recommendation.

As currently, the Panel's decision to raise a Modification Proposal would remain without prejudice to its decision on whether to approve, or recommend approval of, that Modification Proposal. All Panel-raised Modification Proposals would continue to go through the normal Modification Procedures.

We anticipate that the Panel would, in practice, continue to appoint ELEXON as its Proposer's representative for Panel-raised Modification Proposals that require Workgroup assessment. In accordance with [BSC Section F2.4.5C](#), this means that:

- ELEXON, in its role as Proposer's representative, would be required to act as an impartial representative of the Panel's views and not as an advocate of the Modification Proposal (and would not participate in any Workgroup voting); and
- Control of the Proposed Modification solution would pass to the Workgroup collectively.

We suggest that the Issue Group may wish to consider:

1. The appropriate role of the Panel in the Modification Procedures, with reference to any relevant materials from:
 - The [2013 Knight Review](#) of BSC governance;
 - The BSC Panel's [2014 review](#) of its own governance;
 - Ofgem's previous [Code Governance Reviews](#), conducted between 2007 and 2016; and
 - Ofgem's current [Energy Codes Review](#), launched in November 2018.

This could include considering:

- Whether the Panel has a role to play as a driver of change as well as a custodian and arbiter of the BSC / Modification Procedures (i.e. should it be proactive or reactive?); and
 - Who the Panel represents when it proposes change and operates the Modification Procedures.
2. Whether the existing Self-Governance¹¹ checks and balances remain appropriate if the Panel can raise any Modification Proposal without restriction. These are that:
 - Any Party can appeal, to Ofgem, the treatment of a Modification Proposal as Self-Governance ([BSC Section F6.4](#)); and

¹¹ The Panel can approve or reject Self-Governance Modification Proposals without an Ofgem decision.

<ul style="list-style-type: none"> ○ Ofgem can direct, at any time during its progression, that a Modification should not be treated as Self-Governance (BSC Section F6.1.4).
Proposer's Details
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Appendix 1 – The Panel's role, objectives and accountability

The Panel has previously concluded, in its 2014 [thought-pieces on its accountability, role and functions](#), that:

‘The BSC Panel is responsible for independently ensuring that the terms of a multi-party contract (the BSC) are given effect and operate fairly and effectively for the benefit of all parties (or prospective parties) to the contract but always in favour of the greater common good in a way which is consistent with achieving the Applicable BSC Objectives in a transparent, economic, efficient and non -discriminatory fashion.’

The Panel also agreed that its four main roles can be summarised as:

- 1) Setting certain parameters and directing certain actions to ensure the BSC provides appropriate signals and intended outcomes that demonstrably achieve the Applicable BSC Objectives and align with the greater common good;
- 2) Amending the BSC to ensure it is robust, fair and continues to facilitate the Applicable BSC Objectives and aligns with the greater common good;
- 3) Providing assurance to interested parties that BSC Parties comply with the terms of the BSC and that identified issues are appropriately resolved; and
- 4) Setting the requirements for BSC services, including those for BSCCo as an independent provider of services to BSC Parties and the BSC Panel.

The Panel's objectives, as set out in [BSC Section B1.2](#), are to ensure that:

- The BSC is given effect:
 - Fully and promptly;
 - In such manner as will facilitate the achievement of Applicable BSC Objectives (a), (b) and (c);
 - Without undue discrimination between Parties or classes of Party;
 - As economically and efficiently as is reasonably practicable (but as consistent with the full and proper discharge of its functions and responsibilities); and

- There is transparency and openness in the conduct of its business (subject to any express BSC provisions on confidentiality).

Panel Members are required to act impartially and not as representatives of the persons electing or appointing them ([BSC Section B2.8](#)).

All Panel Committees and their members, including the TDC and PAB, have the same objectives and impartiality requirements as the Panel itself ([BSC Section B5.3](#)).

ELEXON, as the BSCCo, must also exercise its powers and discharge its functions and responsibilities with a view to achieving the Panel's objectives – as if references to the Panel in these objectives were to BSCCo ([BSC Section C1.3](#)).

Appendix 2 – Aims of Ofgem's Code Governance Reviews

Ofgem's previous [Code Governance Reviews](#) have aimed to:

- Reduce unnecessary barriers and red tape in governance processes;
- Encourage code panels to take on greater self-governing responsibilities on behalf of code parties;
- Ensure that significant code change can be delivered more effectively; and
- Ensure that code governance arrangements can effectively support the large scale and complex changes facing the industry.

Ofgem's Terms of Reference for its current [Energy Codes Review](#) cite industry views that the existing system of codes and code governance is:

- Reactive to existing problems, rather than forward-looking in preparing the energy system for future changes; and
- Resource-intensive, leading to a lack of representation from smaller and/or newer parties.

One of the aims of its review is to assess the effectiveness of the current industry governance arrangements, in light of the scale of ongoing industry change.