

Issue 25

Governance Issues related to PAB determination

A recent matter determined by the Performance Assurance Board (PAB) gives rise to the following issues, which Npower Limited requests to be considered by a Standing Modification Group (probably the Governance Standing Modification Group):

- 1) A determination under paragraph 4.1.1 of Annex S-1, involving interpretation of the Code, has the potential to change the meaning of the Code and thereby effectively circumvent the Modification Process, putting Parties in breach of the Code in respect of matters for which they reasonably believed they were compliant.
- 2) There does not appear to be a process for appeal of PAB decisions, except in respect of Certification/Accreditation (or post P197, Qualification), other than judicial review. The cost, effort and time required for the latter would appear to be disproportionate for all but the most major issues.
- 3) For a decision where PAB has discretion, is it appropriate that PAB should hear any appeal on that decision (as opposed to a query)? If not, who should be the appeal body?
- 4) It does not seem appropriate that PAB should act as the appeal body in respect of a matter where a previous decision of PAB is being challenged on the grounds of being inconsistent with the Code (i.e. potentially 'ultra vires'). In this case, who should be the appeal body?
- 5) The BSC 'issue' process does not in itself provide an adequate mechanism to play the role of an appeal process, since it does not result in a decision. Furthermore, it cannot be assumed that it will always be necessary to make a Modification to the Code in order to resolve an issue, if it is an interpretation or compliance matter.

It may also be appropriate to draw these issues to the attention of the Modification Group considering Modification Proposal P207.