

Modification Proposal – F76/01

MP No: P5
(mandatory by ELEXON)

Title of Modification Proposal (mandatory by originator):

Extension Of Indemnity Under Section B2.9

Submission Date (mandatory by originator): 28 March 2001

Description of Proposed Modification (mandatory by originator):

Modification to Section B 2.9.1 to extend the indemnity to cover actions undertaken in good faith. The words "or in the proper exercise of the powers.." in Section B 2.9.1 should be replaced with "or in the proper or good faith purported exercise of the powers.."

Description of Issue or Defect that Modification Proposal Seeks to Address (mandatory by originator):

There are a number of reasons why the provisions of Clause 2 (A) of the indemnity should be cast in the way proposed above; a selection of which are captured below.

The new governance model under the BSC is untested and untried. Consequently, there are no precedents and no case history available to Panel Members to test the interpretation of the role. Therefore, it is unreasonable for Panel Members to be exposed to personal risk for accidental failure to correctly interpret the precise boundaries of a role that is imprecisely defined (there are over 1300 references to Panel in the Code and Panel members do not have legal training). In addition, it has become apparent that ELEXON is also unable to ensure that the Panel is not presented with decisions outside the Panel's vires. This should not be taken to indicate that ELEXON is not undertaking an appropriate role, but rather to highlight the potential difficulties.

This concern is exacerbated by the prospect that Panel decisions could be subject to Judicial Review.

In the event that the wider form of the indemnity is not granted, and given the difficulties ELEXON has had in ensuring that matters presented to the Panel are within its vires, the Panel will need to draw on legal advice on a regular basis. This may lead to a need to have a legal advisor present at some, or all Panel meetings, and/or seek written confirmation from a legal advisor on whether papers and recommendations presented to the Panel are consistent with the Panel's vires under the Code. This is a bureaucratic, costly, and inefficient solution that would not be necessary if the indemnity is cast in the way proposed.

The form of the indemnity that is being sought has been accepted by the industry as it mirrors that granted to members of the litigation committee whose remit was much narrower than that of Panel Members and, arguably, much more clearly defined.

The BSC was finalised before Panel Members were appointed and none of those involved in the drafting were acting on behalf of Panel Members. Therefore, the views of Panel members (and their legal advisor) were not available to be taken into account when the indemnity was drafted. It is the view of Panel members, and their advisor, that this extension of the indemnity is essential for the efficient conduct of Panel business and the appropriate protection of those undertaking this role.

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Impact on Code <i>(optional by Originator):</i>	
The words "or in the proper exercise of the powers.." in Section B 2.9.1 should be replaced with "or in the proper or good faith purported exercise of the powers.."	
Impact on Core Industry Documents <i>(optional by Originator):</i>	
None	
Impact on BSC Systems and Other Relevant Systems and Processes Used by Parties <i>(optional by originator):</i>	
None	
Impact on other Configurable Items <i>(optional by originator):</i>	
None	
Justification for Proposed Modification with Reference to Applicable BSC Objectives <i>(mandatory by originator):</i>	
<p>The Modification better facilitates achievement of the Applicable BSC Objective set out in Transmission Licence Condition 7A(3)(d) - promoting efficiency in the implementation and administration of balancing and settlement arrangements.</p> <p>It will reduce the need for potentially costly and inefficient procedures to be developed to ENSURE that ALL decisions placed before Panel members are consistent with their vires under the Code (Panel members will still wish this to be the case but will be able to use their judgement in situations where ambiguities arise or where timescales are particularly tight and decisions are urgent, they will also be able to rely on the advice of ELEXON staff rather seeking formal legal advice from those trained in interpreting complex documents). This will reduce meeting times; reduce the burden on ELEXON in supporting the Panel and procuring legal advice; and improve the efficiency with which Panel business is managed and hence promote efficiency in the operation of the implementation and administration of balancing and settlement arrangements.</p> <p>There appears to be no impact on the Applicable BSC Objectives set out in Condition 7A(3) (a - c).</p>	
Details of Proposer <i>(mandatory by originator):</i>	
Name: Paul Chesterman Organisation: London Electricity plc Telephone Number: 01454 452128 Email Address: paul_chesterman@sweb.co.uk	
Details of Proposer's Representative <i>(mandatory by originator):</i>	
Name: Martyn Hunter Organisation: St Clements Services Ltd Telephone Number: 01327 310184 Email Address: martyn.hunter@st-clements.co.uk	

Modification Proposal – F76/01	MP No: P5 <i>(mandatory by ELEXON)</i>
Details of Representative's Alternate <i>(mandatory by originator):</i>	
Name: Paul Chesterman	
Organisation: London Electricity plc	
Telephone Number: 01454 452128	
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Attachments <i>(mandatory by originator):</i> NO	
If Yes, Title and No. of Pages of Each Attachment:	

Notes:

1. Sections containing '*(mandatory by originator)*' must be completed by the proposer prior to submission of the form to ELEXON.
2. Press F1 on your keyboard while selecting the shaded area in a section of the form to view guidance notes for the completion of that section.