

Issue 82 'Expand the BSC Panel's ability to raise Modification Proposals'



Contact

Fungai Madzivadondo

020 7380 4341

Fungai.Madzivadondo@elexon.co.uk



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About This Document

This document is the Issue 82 Group's Report to the Balancing and Settlement Code (BSC) Panel. ELEXON will table this report at the Panel's meeting on 10 October 2019.

There are two parts to this document:

- This is the main document. It provides details of the Workgroup's discussions and proposed solutions to the highlighted issue and contains details of the Workgroup's membership.
- Attachment A contains the Issue 82 proposal form.

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Issue

ELEXON raised [Issue 82 'Expand the BSC Panel's ability to raise Modification Proposals'](#) on 19 June 2019 at the BSC Panel's request, to consider whether to expand the Panel's ability to raise Modifications. The BSC Panel cannot raise a Modification unless recommended by the following:

- ELEXON as the BSCCo, in specific limited circumstances
- The Trading Disputes Committee (TDC)
- The Performance Assurance Board (PAB)
- Reports relating to a value of Lost Load Review
- Reports relating to a review of the Quorum Requirements for voting at BSC General Meetings

In general, the Panel cannot raise a Modification to facilitate the achievement of Applicable BSC Objectives (a), (b), (c), (e), (f) and/or (g) unless it would also better facilitate Objective (d).

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

- Increase the effectiveness of the Panel, and thereby the BSC;
- Reduce the burden on BSC Parties (and designated non-Parties) to be Proposers;
- Promote improvements in the BSC's self-governance arrangements; and
- Help maintain consistency with the Panel's objectives as set out in the BSC.

Issue 82 was raised to explore potential solutions for expanding the BSC Panel's powers to raise Modifications.

Conclusions

The Issue 82 Workgroup (WG) considered potential solutions for expanding the Panel's powers to raise Modifications and agreed the following:

- No Modification should be raised at this time to expand the BSC Panel's ability to raise Modifications. If someone feels strongly about a change then they should raise it. ELEXON is already helping industry participants through the change process and [P370 'Allow the Panel to designate non-BSC Parties to raise Modifications'](#) gives a mechanism for non-Parties to raise Modifications directly with the Panel.
- [The BSC Sandbox](#) is also there to help participants trial products and services that may eventually lead to Modifications.
- Currently the BEIS and Ofgem code review overshadows the need for the Panel to have more powers as the outcome is not yet known and is therefore not efficient to progress at this time.
- Expanding the Panel's ability to raise Modifications could compromise its impartiality and independence.

Further detail and justification for these recommendations can be found in sections 3 and 4 of this paper.

What are the current arrangements?

The BSC Panel can only raise a Modification under the following circumstances, as set out in [BSC Section F2.1.1.1](#):

- 1. On the recommendation of ELEXON** (as the BSCCo), where:
 - 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
- 2. On the recommendation of the Trading Disputes Committee** (TDC, a Panel Committee), in consequence of a Trading Dispute.
- 3. On the recommendation of the Performance Assurance Board** (PAB, a Panel Committee), in accordance with [BSC Section Z8.2](#), in order to:
 - 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.
- 4. On the recommendation of a report relating to a Value of Lost Load Review**, in accordance with [BSC Section T1.12](#).
- 5. 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](#).

What is the Issue raised?

The Panel can only raise Modifications on the recommendation of ELEXON, the TDC and PAB and reports relating to a Value of Lost Load Review or Quorum Requirements for voting at BSC General Meetings. In practice, the scope of these restrictions means that the Panel cannot raise a Modification to facilitate the achievement of Applicable BSC Objectives (a), (b), (c), (e), (f) and/or (g) unless it would also better facilitate Objective (d).

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.

Currently ELEXON and the Panel can 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 the Issue

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](#)⁴) to be Proposers by;
 - Sponsoring changes for the benefit of the industry;
- 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 and;
 - Increase the effectiveness of the BSC Panel;
 - Help maintain consistency with the Panel's objectives.

ELEXON discussed the idea with the BSC Panel at its meetings in [August](#) and [September](#) 2018. The Panel asked us to raise an Issue to seek industry views on the proposal as noted the [BSC Panel 282 minutes](#).

Examples of where recommendations from reviews or White Papers have initially struggled to find Proposers are as follows:

- 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.

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⁴ 'Allow the Panel to designate non-BSC Parties to raise Modifications'.

Potential Solution

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

The change would remove the current restrictions to allow the BSC Panel to 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
- 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. In accordance with BSC Section B2.8, Panel Members would continue to act impartially and not as representatives of the persons electing or appointing them.

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.

3 Issue Group's Discussions

A single Issue 82 meeting was held on 20 August 2019. The Issue WG discussions focused on:

- Whether expanding the Panel's powers to raise Modifications could increase the effectiveness of progressing changes under the BSC;
- Who the Panel represents when it proposes changes and operates the Modification Procedures;
- The role of the Panel as a custodian and arbiter of the BSC / Modification Procedures;
- The importance of perceptions of Panel impartiality; and
- The potential risks associated with enabling the Panel to raise more significant changes to the BSC.

Overview of the BSC Issue process

The Issue 82 WG discussions started with an overview of the BSC Change process and the Issues process specifically. ELEXON outlined the circumstance in which a BSC Party can raise an Issue e.g. when the Party would like to discuss a concern or issue with the wider industry and how this process differs to the Modification Procedures. Members were informed that the output of the Issue process is a final Issue Report to the Panel and does not result in a change to the BSC arrangements directly. The WG Members acknowledged that a BSC Party can take forward a Modification or Change Proposal to implement the outcomes of an Issue Group, should it wish to do so. Where a Change Proposal is recommended ELEXON will raise the Change Proposal if a Party does not come forward to raise the proposal.

Key Workgroup considerations

The WG considered the following key points. The WG discussions and conclusions are detailed in this report.

Questions considered under Issue 84	
1	Extent of the issue and benefits/risks of the proposal
2	BSC Panel's role in Modification Procedures
3	Potential extra criteria if Panel's ability to raise Modifications is expanded

Table 1: A summary of key areas considered under Issue 82

What is the extent of the Issue and what are the benefits/risks of the proposal?

ELEXON provided the background to Issue 82 covering the current arrangements and restrictions limiting the Panel's ability to raise Modifications.

The WG discussed the extent of the issue and the benefits/risks of the proposal, including the below points:

- WG Members noted that there have been delays in raising Modifications recommended by reviews or White Papers, due to initial difficulties in finding a Party to sponsor these as Proposer (see examples in Section 2 above). However, they also noted that Parties did eventually come forward to raise these Modifications. WG Members were, in general, not convinced that it is necessary or appropriate for the Panel to raise these kind of changes for the reasons set out below. A WG Member believed in particular that it would not have been appropriate for the Panel to raise P379, since this Modification has significant competition impacts, but was more comfortable with the Panel raising changes recommended from a BSC review.
- The WG discussed who would act as the Proposer for Panel-raised Modifications. ELEXON clarified that, as now, the Panel could appoint whoever it wishes as its Proposer's Representative. This could be a Panel Member, ELEXON or another third party. If the Panel appointed ELEXON, then control of the Modification's solution would pass to the Workgroup. ELEXON noted that these rules are the same as for Party-raised Modifications.
- WG Members were concerned that giving the Panel more powers to raise Modifications could result in the Panel 'picking winners' and not acting impartially, in the sense of being seen to support particular technologies or business models. ELEXON clarified that the intention of the proposal is to enable the Panel to raise changes to ensure that the BSC is not an undue barrier to innovation, and suggested that this is an appropriate role for the Panel. One WG Member commented that beneficial changes to the BSC should not have to be based on young start-up companies having to employ consultants to progress them. However, after discussing the other points below, WG Members agreed that there is a risk that enabling the Panel to raise these kind of changes could undermine perceptions of the Panel's independence and impartiality. In general it agreed that if a change is important to a participant, then that participant can and should raise it.
- WG Members noted that the following mechanisms are already in place for BSC and non-BSC Parties to raise Modifications:
 - Any BSC Party can raise a Modification under the BSC;
 - Recently-implemented Modification [P370 'Allowing non-BSC Parties to raise Modifications'](#) also allows the Panel to designate non-BSC Parties to raise Modifications;
 - Potential Proposers can make use of ELEXON's support and advice as 'critical friend' throughout the change process, including when drafting and progressing Modifications;
 - Any Proposer (whether a Party or a designated non-Party) has the ability, under [BSC Section F2.4.5C](#), to appoint ELEXON to act as its Proposer's Representative at Panel and Workgroup meetings – although noting that this means the Proposer loses the ability to control the Modification's solution, which passes collectively to the Workgroup;
 - Any person can apply to use the BSC Sandbox to test products and services that may eventually lead to Modifications (although they must become a BSC Party to do so); and
 - Any BSC Party or non-Party can raise an Issue to help work up a potential Modification.

Overall, WG Members were therefore unconvinced that this proposal is needed – noting that access to the Modification Process is greater than ever. However, some WG Members noted that P370 has only been implemented recently and commented that they would like to have more experience of the non-Party designation process before deciding that there is no issue to address.

- A WG Member believed that achieving quorum for Workgroup meetings is more challenging than raising the initial Modification, and noted that the proposal would not address this problem.
- WG Members noted that there is a finite amount of change that the industry can progress at any time, and were generally unconvinced that it is appropriate for the Panel to add to the resource burden by deciding what changes are important enough to raise. A WG member also commented that it should be BSC Parties that raise Modifications because they fund the costs involved in progressing them and are best placed to decide what the most important issues to resolve are.
- WG Members were concerned that expanding the Panel's ability to raise Modifications could compromise its independence, due to the risks that:
 - The Panel will feel obliged to raise changes and consequently support them;
 - The Panel could increase costs for Parties by raising new changes, there are already routes for parties to get Modifications raised (with ELEXON acting as Proposer Representative). It should therefore be left to Parties to raise material changes;
 - Having raised a Modification, the Panel might feel that it then has to approve/recommend it (although noting that the BSC would not require it to);
 - The Panel could be put under pressure by Parties or Ofgem to raise and recommend changes with significant impacts on participants; and
 - This could limit Parties' right of appeal to the Competition and Markets Authority (CMA), since appeals can only be brought where the Panel's recommendation and Ofgem decision conflict with each other.
- One WG Member believed that, in the worst-case scenario, this could compromise the Panel's indemnity protections and lead to Parties pursuing legal action against the Panel.
- The industry are best placed to raise changes as they are the ones impacted by the changes. Moreover, Parties are the ones bound by the Code and pay for the associated costs. By taking on these liabilities they also take on the right to propose changes to the BSC. This is the 'quid pro quo' arrangement of the BSC.

BSC Panel's role in Modification Procedures

The WG considered the following questions during its discussions. In doing so, it also considered the outputs of:

- 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
- The current review of [Energy Industry Codes](#), launched in November 2018 by the Department for Business, Energy and Industrial Strategy (BEIS) and Ofgem.

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Who does the Panel represent when it proposes changes and operates the Modification Procedures?

The WG agreed that the Panel represents BSC Parties and impacted non-Parties. The WG agreed that the purpose of the Panel in the 2014 Panel governance review remains valid:

“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 good⁵ in a way which is consistent with achieving the Applicable BSC Objectives in a transparent, economic, efficient and non - discriminatory fashion.”

What is the appropriate role of the Panel?

The WG discussed whether the Panel has a role to play in proactively setting the strategic direction of the BSC. It agreed that:

- The Panel’s primary role is to act as an independent arbiter of how the BSC and Modification Procedures are managed, and of any changes brought forward to it;
- The Panel is the custodian of the BSC rules; and
- The Panel’s impartiality and transparency are valued and are key to perceptions of its independence from vested interests – compromising these would undermine industry’s trust in the Panel and thereby the change process.

The WG considered that the Panel should help set the strategy for running the BSC and that, in this sense, the Panel should perform a proactive, forward-looking function rather than being simply reactive. It agreed that this role includes responding to government policy (for example on Half Hourly Settlement) and raising changes that improve the operation of the BSC. The WG noted that the current rules already allow the Panel to perform this role. However, it agreed that it would not be appropriate for the Panel to take a policy or strategic agenda – which it believed is a more appropriate role for Ofgem through its existing Significant Code Review process.

ELEXON noted that the Panel has various existing BSC obligations that are intended to ensure its impartiality and independence, as follows:

- 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

⁵ consistent with the objectives of the 1989 Electricity Act the Panel is concerned with ensuring security of energy supplies and catering to rising demand without prices becoming unaffordable and while reducing greenhouse gas emissions

- There is transparency and openness in the conduct of its business (subject to any express BSC provisions on confidentiality);
- BSC Section F1.2.2 requires the Panel to endeavour, at all times, to operate the Modification Procedures:
 - in an efficient, economical and expeditious manner, taking account of the complexity, importance and urgency of particular Modification Proposals;
 - with a view to ensuring that the Code facilitates achievement of the Applicable BSC Objective(s); and
 - in a manner that is consistent with the Code Administration Code of Practice Principles; and
- BSC Section B2.8 requires Panel Members to act impartially and not as representatives of the persons electing or appointing them.

ELEXON noted that the Panel would still be bound by these obligations even if its ability to raise Modifications is expanded. ELEXON also noted that giving the Panel the ability to raise wider Modifications would not necessarily mean that it chooses to do so – it would be up to the Panel to decide how to exercise its powers in accordance with its obligations. WG members noted that this was the case but remained concerned that it could create real or perceived conflicts of interest for the reasons described above. WG Members were also concerned that the Panel could come under pressure from Parties to raise large numbers of Modifications (see below). Although it noted that Parties ultimately elect the Industry Panel Members, the WG noted that there are limited circumstances under which Panel Members can be removed once in office.

ELEXON highlighted that the Panel's objectives and obligations referred to other Applicable Objectives than just Objective (d). However, WG Members believed that the Panel's role was to ensure the efficient operation of the BSC. A member commented that they would expect the NGESO to raise changes relevant to Objectives (a) and (b) and so the Objective at the heart of the debate was really Objective (c). In general, WG Members believed that:

- If a Modification is beneficial for competition, then there should be someone disadvantaged by the current rules who wishes to raise it; and
- While the Panel should be able to raise Modifications where there is a genuine 'greater good' argument, it should focus on Objective (d) improvements – anything material should be raised by an affected Party (or designated non-Party).

ELEXON noted that there did not appear to be anything in the current rules that prevents the Panel from raising a Modification that impacts Objective (c), so long as it benefits Objective (d). A WG member commented that the Panel's past practice and, they believed, the spirit of the rules, was to only raise Modifications where the primary benefits are to (d) and where any impacts on (c) are minor.

ELEXON noted that Ofgem's previous Code Governance Reviews have encouraged Code Panels to take on greater self-governing responsibilities. A WG member believed that the types of Modification covered by this proposal are more likely to impact competition.

The WG discussed the ongoing [BEIS/Ofgem Energy Codes Review](#). ELEXON noted that the review's direction of travel appears to involve a more strategic focus for Industry Codes. It suggested that expanding the Panel's ability to raise Modifications could be an interim step towards the forward-looking and responsive framework envisaged by the review. ELEXON also noted that the new Retail Energy Code (REC), currently under development, proposes

to allow any person (which presumably includes the REC Panel) to raise a change to that code – and is intended to represent a ‘best in class’ code. However, WG Members believed that it was premature to try to pre-empt the outcomes of the Codes Review and that progressing this proposal would not be the best use of industry resource while that review is ongoing.

Should there be extra criteria on any expanded ability for the Panel to raise Modifications?

One WG Member was concerned that the Panel could feel pressurised to raise changes that benefit ELEXON. ELEXON noted that it is bound by the same impartiality obligations and objectives as the Panel, and that the Panel is not required to raise Modifications that are recommended to it. It noted that there have been past examples of where the Panel has decided not to raise Modifications recommended by ELEXON.

Some WG Members were concerned that the Panel might raise large numbers of Modifications, either at its own initiative or under pressure from Parties. These Members believed that, without further controls, the costs of change could outweigh the benefits. Some members therefore suggested that, if the Panel’s ability to raise Modifications is expanded, criteria should be included in the solution to help mitigate the resource impact and ensure prioritisation of changes. ELEXON noted that the Panel is already required to operate the Modification Procedures ‘in an efficient, economical and expeditious manner, taking account of the complexity, importance and urgency of particular Modification Proposals’. Some WG Members believed that further criteria for the Panel’s raising and prioritisation of changes would be beneficial if the proposal is progressed, but noted that these could be difficult to define in practice.

Issue Group recommendation

Following discussions as part of Issue 82, the WG agreed that no Modification should be raised at this time to expand the BSC Panel's ability to raise Modifications.

Some Members believed that the proposal is simply not needed and would create inappropriate risks. Other Members commented that they would like more experience of the non-Party designation process under P370 before deciding whether this proposal needs to be revisited, but noted other Members' concerns over the potential risks. One member believed that there would be still be merit in exploring the proposal further in the future, depending on how effective the non-Party designation process proves in practice.

Issue Group further questions

During the discussions, WG Members noted that they would welcome further clarity on the scope of the Modifications that the Panel can currently raise under the existing rules.

ELEXON agreed to obtain advice from its Legal team on the following points:

- Where is the line between what the Panel can and can't raise as an 'efficiency' (Objective (d)) Modification and how flexible is this? For example:
 - Could the Panel have raised [P363 'Simplifying registration of new configurations of BM Units'](#) and [P389 'Resolution of Capacity Market and Balancing Mechanism registration conflicts'](#) (both raised by Green Frog Power) and, if not, why is this?
 - Can the Panel raise Modifications to align with policy or other Industry Codes?
 - The BSC allows the Panel to raise a Modification where there is a change to a Core Industry Document and/or the System Operator-Transmission Owner Code (STC) that impacts the BSC, but where is the definitive list of Core Industry Documents?
- Is there any limit on who can be designated to raise Modifications under [P370](#)?

The WG also questioned why the Panel could only raise Modifications on the recommendation of the PAB and TDC, and not other Panel Committees. ELEXON noted that the PAB and TDC are the only Panel Committees that have a specific defined role in the BSC. While BSC Section B5 allows the Panel to establish other Panel Committees as required, it does not enable these committees to recommend Modifications. ELEXON noted past suggestions that the Imbalance Settlement Group (ISG) and Supplier Volume Allocation Group (SVG) should be able to recommend Modifications to the Panel, and that this would require a change to the BSC to progress. It noted that ELEXON could still recommend Modifications on behalf of these committees, if they would benefit Objective (d).

One WG member shared their recent positive experience of raising an Issue, commending the support provided by ELEXON and noting that this had minimised the effort involved. This member stated that they would welcome exploration of any other ways in which it could be made even simpler for participants to raise Modifications.

ELEXON's legal feedback

The ELEXON Legal team provided the following feedback on the scope of Modifications that the Panel can currently raise under the existing rules. The feedback will be shared with the Issue 82 Workgroup members and the BSC Panel.

Question 1 - Where is the line between what the Panel can and can't raise as an 'efficiency' (Objective (d)) Modification and how flexible is this?

- [Section F](#) of the BSC clearly sets limitations on the extent to which the Panel can raise modifications, as opposed to BSC Parties and other listed persons, who are not limited in terms of the scope or subject matter of proposals they can raise. The limitations the BSC places on the Panel in Section F2.1 should be taken into account in interpreting Objective (d) for the purposes of Section F2.1.1(d)(i).
- Section F allows the Panel to raise modification proposals on the recommendation of BSCCo in accordance with [Section C3.8.8](#). Section C 3.8.8 provides that the 'BSCCo shall keep under review whether any possible modification of the Code from time to time would better facilitate the objective in Condition C3(3)(d) of the Transmission Licence, and shall recommend to the Panel any particular such modification which in BSCCo's opinion would do so.'
- The objective in Condition C3(3)(d) is 'promoting efficiency in the implementation and administration of the balancing and settlement arrangements ...'. Although Section C3.8.8 sits within BSC provisions requiring review of the BSC in relation to all of the Applicable BSC Objectives, it specifies that the BSCCo can only raise recommendations for modifications in relation to Objective (d).

Question 2 - Could the Panel have raised P363 'Simplifying registration of new configurations of BM Units' and P389 'Resolution of Capacity Market and Balancing Mechanism registration conflicts' (both raised by Green Frog Power) and, if not, why is this?

- ELEXON could only recommend a Modification in accordance with [BSC Section C3.8.8](#) if it would better facilitate Objective (d), and that would need to be the purpose of and reason for the recommendation.
- The BSC does not explicitly prevent the Panel from raising a Modification under Section F2.1.1(d)(i) if that modification would impact other Applicable BSC Objectives in addition to efficiencies in balancing and settlement arrangements, (for example, competition). Whether a particular modification should be raised by the Panel would, however, be considered in light of the restrictions imposed on the Panel to raise modifications under F2.1.1.
- To have recommended the Modifications P363 or P389 in accordance with Section C3.8.8, ELEXON in the first instance would need to consider that the reason for raising the Modification was to better facilitate Objective (d). If the Modification would impact multiple other objectives, and have significant or wide ranging impacts on BSC Parties, it may have been considered beyond the scope of Section F2.1.1(d)(i), and more appropriate in the circumstances for the Modification to be raised on a different basis, and by another BSC Party.

Question 3 - Can the Panel raise Modifications to align with policy or other Industry Codes?

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- Yes, to some extent. Under Section F2.1.1(d)(ii) the Panel can raise a Modification on the recommendation of the BSCCo where the BSCCo receives notice of a proposed change to the [System Operator-Transmission Owner Code](#) (STC) or a Core Industry Document that would have an impact on the BSC.
- Where a change does not fall under Section F2.1.1(d)(ii), for example government policy changes, the change would need to fall under another Section F2.1.1(d) for the Panel to be able to raise a Modification.
- A Modification to align the BSC with government policy or an industry code could potentially fall under Section F 2.1.1(d)(i), if there was inconsistency of some kind that would cause inefficiencies or if alignment between the BSC and another code or policy would otherwise promote efficiencies in the implementation or administration of the balancing and settlement arrangements.

Question 4 - The BSC allows the Panel to raise a Modification where there is a change to a Core Industry Document and/or the STC that impacts the BSC, but where is the definitive list of Core Industry Documents?

- 'Core Industry Documents' are defined in the Transmission Licence as documents that '(a) in the Secretary of State's opinion are central industry documents associated with the activities of the licensee and authorised electricity operators, the subject matter of which relates to or is connected with the BSC or the balancing and settlement arrangements, and (b) have been so designated by the Secretary of State'.
- We are seeking confirmation (from Ofgem and NGESO) on what documents are currently designated as core industry documents in accordance with the Transmission Licence, and will provide this information once received.

Question 5 - Is there any limit on who can be designated to raise Modifications under [P370](#)?

- Section F2.1A does not explicitly limit who may apply to be a Third Party Proposer. However, the definition of Third Party Proposer makes clear a third party must have an interest in the Code to be designated. In order to be designated, a Third Party Applicant must explain why they believe they have an interest in the Code, and must describe their rationale for requesting designation as a Third Party Proposer, including any steps they have taken to have the Code issue or defect addressed. This will be taken into account by the Panel in considering whether to designate an Applicant as a Third Party Proposer.
- Given this, a Third Party should be impacted by the Code, or have an interest in the Code, to be designated. Section F2.1A.1 and BSCP40/07 suggest that the Applicant should have made some attempt to engage BSC Parties or otherwise seek to have the Code issue addressed before applying for designation, however, this is one consideration to be taken into account by the Panel and may not be determinative if the Applicant was clearly impacted by the issue.
- These requirements would not necessarily be taken to set a significant hurdle or barrier to designation. If any particular designation application from a Third Party Applicant seemed controversial, the Panel may consult with BSC Parties, and other interested third parties, before deciding whether to designate that person.

Question 6 - Also why the Panel could only raise Modifications on the recommendation of the PAB and TDC.

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- Section F2.1.1 of the BSC only provides for recommendations of the PAB and TDC to form a basis on which the Panel may raise a modification (as opposed to recommendations from other Panel Committees). As noted within this report the BSC specifically requires the creation of the PAB and the TDC, sets out their functions and remit, and also provides explicitly that those committees can make recommendations for modifications (in sections C, Z and W).
- Other Panel Committees have different governance arrangements. The BSC does provide that the Panel may create other committees, however, specific additional committees or groups are not referenced in the BSC (except for a possible Claims Committee), or required to be established under the BSC. The membership and functions of other Panel Committees are determined by the Panel, not by the BSC, and such committees can be ceased by the Panel. In addition, Section B of the BSC provides in paragraph 5 that provisions related to establishing Panel Committees (other than the PAB and the TDC) and their functions do not apply to the Panel's modification functions under Section F.
- If the ISG or SVG were concerned that a modification should be raised to address an issue, this would need to fall under a different basis in order for the Panel to raise it as a modification (e.g. possibly on the recommendation of ELEXON under 2.1.1(d)(i)).

BSC Panel Discussion

ELEXON presented the Issue 82 Report to the BSC Panel at its meeting on 10 October 2019.

The BSC Panel chair noted that the conclusions of the Workgroup were broadly in line with the feeling the BSC Panel has held for some considerable time. Where the Panel does not raise a Modification it can be raised by a BSC Party or a non-BSC Party through the designation process. The Panel recognise a Modification carries more weight if raised by an industry participant. Modifications which would impact multiple other objectives, and have significant impacts on BSC Parties should be raised by Parties.

A Panel Member, noting the Issue Groups views on the code's review, pointed out that the BEIS and Ofgem review could take a long time to conclude, and asked whether this had been considered by the Issue Group. ELEXON confirmed it had and that the WG believed the industry should await the code review outcome as this could provide guidance on what is expected of the Panel going forward.

The Panel Members noted that although the BSC Panel is less likely to raise Modifications with wide ranging impacts on BSC Parties, the Panel can respond to industry initiatives such as the Market Wide Half Hourly Settlement reform and to ELEXON reviews commissioned by the Panel and its sub-Committees.

The BSC Panel:

- Noted the Issue 82 report.

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Appendix 1: Issue Group Membership

Issue Group membership and attendance

Issue 82 Group Attendance		
Name	Organisation	20 August 2019
Lawrence Jones	ELEXON (Chair)	✓
Fungai Madzivadondo	ELEXON (Lead Analyst)	✓
Kathryn Coffin	ELEXON (Design Authority)	✓
Andy Colley	SSE	☎
Paul Youngman	Drax	✗
Phillipa Burton	Scottish Power	✓
Steph Clements	Scottish Power	✗
Paul Bedford	Opus Energy	✓
Lisa Walters	Consultant	☎
Caroline Bragg	ADE	☎

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Appendix 2: Glossary & References

Acronyms

Acronyms used in this document are listed in the table below.

Acronym	Definition
BSC	Balancing and Settlement Code
BSCCo	Balancing and Settlement Code Company
CMA	Competition and Markets Authority
WG	Workgroup
PAB	Performance Assurance Board
TDC	Trading Disputes Committee
BEIS	The Department for Business, Energy and Industrial Strategy
STC	System Operator-Transmission Owner Code
REC	Retail Energy Code
SVG	Supplier Volume Allocation Group
ISG	Imbalance Settlement Group

External links

A summary of all hyperlinks used in this document are listed in the table below.

All external documents and URL links listed are correct as of the date of this document.

External Links		
Page(s)	Description	URL
2	Issue 82 webpage on the ELEXON website	https://www.elexon.co.uk/smg-issue/issue-82/
2, 4, 7, 12	P370 webpage on the ELEXON website	https://www.elexon.co.uk/mod-proposal/p370/
2	The BSC Sandbox procedure on the ELEXON webpage	https://www.elexon.co.uk/bsc-and-codes/bsc-related-documents/bsc-sandbox-procedure/
3	BSC Section C3.8.8 on the ELEXON Website	https://www.elexon.co.uk/the-bsc/bsc-section-c-bscco-subsidiaries/
3	BSC Section F2.1.1: on the ELEXON Website	https://www.elexon.co.uk/documents/bsc-codes/bsc-sections/bsc-section-f-modification-procedures/
3	BSC Section H9.8 on the ELEXON Website	https://www.elexon.co.uk/the-bsc/bsc-section-h-general/
3	BSC Section Z8.2 on the ELEXON Website	https://www.elexon.co.uk/the-bsc/bsc-section-z-performance-assurance-3/
3	BSC Section T1.12 on the ELEXON Website	https://www.elexon.co.uk/the-bsc/bsc-section-t-settlement-and-trading-charges/

External Links		
Page(s)	Description	URL
3	BSC Section C, Annex C-2 on the ELEXON Website	https://www.elexon.co.uk/the-bsc/bsc-section-c-bscco-subsidiaries/
4	BSC Panel meeting 281 papers	https://www.elexon.co.uk/meeting/bsc-panel-meeting-281/
4	BSC Panel meeting 282 papers	https://www.elexon.co.uk/meeting/bsc-panel-meeting-282/
4	BSC Panel 282 minutes	https://www.elexon.co.uk/documents/groups/panel/2018-meetings/282-september/bsc-panel-282-minutes/
4	Modification P379 Webpage on the ELEXON Website	https://www.elexon.co.uk/mod-proposal/p379/
4,12,13	Modification P363 Webpage on the ELEXON Website	https://www.elexon.co.uk/mod-proposal/p363/
7	BSC Section F2.4.5C on the ELEXON Website	https://www.elexon.co.uk/documents/bsc-codes/bsc-sections/bsc-section-f-modification-procedures/
8	2013 Knight Review on the ELEXON website	http://www.elexon.co.uk/wp-content/uploads/2013/07/The-Governance-of-ELEXON-Final-Report.pdf
8	BSC Panel's 2014 review on the ELEXON Website	https://www.elexon.co.uk/group/the-panel/panel-strategy-governance/
8	Code Governance Reviews on the Ofgem Website	https://www.ofgem.gov.uk/licences-industry-codes-and-standards/industry-code-governance/code-governance-review
8, 10	Review of Energy Industry Codes on the BEIS Website	https://www.gov.uk/government/consultations/reforming-the-energy-industry-codes/energy-industry-codes-review-joint-beis-ofgem-privacy-notice
12, 13	Modification P389 Webpage on the ELEXON Website	https://www.elexon.co.uk/mod-proposal/p389/