



TERMS OF REFERENCE
Performance Assurance Board
(Version 6)

Unless otherwise stated or the context otherwise requires, words and expressions and general rules as to interpretation that are used in these Terms of Reference shall have the same meanings and application attributed to them under the Balancing and Settlement Code (the Code). In particular, references to Sections in these Terms of Reference are to Sections of the Code and a reference to the Performance Assurance Board (PAB and/or Committee) shall, unless the context otherwise requires, include a PAB Member (Member) and any duly appointed alternate.

1. ESTABLISHMENT AND ROLE

1.1 Establishment

1.1.1 Section B3.4 requires that the Panel shall establish a Panel Committee to act, as the Performance Assurance Board. The Panel has, in accordance with Section B5.1.1 therefore established a Panel Committee to be called the Performance Assurance Board.

1.2 Role

1.2.1 The Committee shall discharge those functions and responsibilities so designated to it under the Code, including but not necessarily limited to those functions and responsibilities listed in Sections B, D, J, S and Annex S-1 and Section Z.

1.2.2 The Panel has, in accordance with Section B5.1.3, delegated certain of its powers, functions and responsibilities under the Code to the Committee. Therefore, it is also the role of the Committee to support the Panel in discharging those powers, functions and responsibilities, so delegated to the Committee and as are set out in these Terms of Reference.

2. COMPOSITION OF THE COMMITTEE AND APPOINTMENT OF MEMBERS

2.1 Members

2.1.1 The Committee shall be composed (as the Panel shall decide) of those members (each a Member) having such experience and expertise in the electricity industry as the Panel decides is appropriate. For the avoidance of doubt, a Panel Member may also be a Member.

2.1.2 The Panel shall appoint Members to the Committee and a Member of the Committee shall remain in office until their resignation has been submitted in writing to the Secretary (as that person is described in paragraph 2.6) or their removal by the Panel in accordance with paragraph 2.1.3 below (whichever is earlier).

2.1.3 Without prejudice to paragraph 2.1.2 above, the Panel may remove and replace such Members from time to time if:

- (i) in the Panel's opinion they are unwilling, unable, unfit or otherwise are incapable for any reason to carry out their duties as a Member in accordance with the Code, Code Subsidiary Documents (CSDs) or these Terms of Reference; or
- (ii) any of the matters stated in Sections B2.7.4(b) or B2.7.4(d) occurs and/or applies with such section being read as if a Panel Member was a Member.

2.1.4 Without prejudice to the generality of paragraphs 2.1.2 and 2.1.3 above, the Panel may review and alter the membership of the Committee at any time.

2.2 Independence and Confidentiality

2.2.1 Each Member shall act independently, impartially and shall not be representative of, and shall act without undue regard to, the particular interests of any particular body, person or class of persons or any Related Person.

2.2.2 The Panel shall require from any Member such applicable statements equivalent to those set out in Sections B2.8.2 to B2.8.4 (inclusive) with such sections being read as if a Panel Member was a Member.

2.2.3 Members shall acknowledge that in carrying out their duties and functions as a Member they may during the course of their business be in receipt of confidential information and as such each Member will be required to sign a confidentiality agreement. For the avoidance of doubt each Member shall not disclose any confidential information received in their capacity as Member to any person except where:

- (i) expressly required under the Code, CSDs and/or these Terms of Reference (including but not necessarily limited to those reasons set out in Section Z2.3.3(b), (c) or (d));
- (ii) the disclosure of data is to the Authority, the Panel and/or any other Panel Committee as may be directed by the Panel;
- (iii) the data is in the public domain;
- (iv) required to do so in order to comply with any dispute resolution process, Legal Requirement and/or any Approved Modification.

2.3 Alternates

2.3.1 A Member shall be entitled to appoint an alternate (with such appointment and such alternate being approved by the Panel (including as to the proposed alternates appropriate expertise and/or experience within the electricity industry)) and further may remove such person as his alternate from time to time by giving written notice to the Secretary. The appointment and removal of an alternate shall be effective from the time so specified in such notice given to the Secretary.

2.3.2 These Terms of Reference shall apply in respect of the appointment of an alternate as though references to the Member in any paragraph were to such alternate.

2.3.3 Sections B2.10.6 and B2.10.7 shall apply in respect of any alternate as though references to a Panel Member alternate were to such a Member's alternate.

2.4 Indemnification and Liability

2.4.1 BSCCo shall indemnify all Members and their duly appointed alternate in accordance with Sections B2.9 and Z1.3.

2.4.2 The total aggregate liability of the Committee and each member to an Interested Person whether in contract, tort (including negligence or breach of statutory duty) or otherwise arising directly or indirectly out of or in connection with the performance or non-performance of its functions (including the contents of any opinion or report prepared by the Performance Assurance Board) shall in no circumstances exceed £1,000,000 per claim or series of related claims.

2.4.3 Neither the Committee nor any Member shall be liable to any Interested Person for any loss of profit, loss of revenue, loss of contract, loss of goodwill or any indirect or consequential loss arising out of or in connection with the performance or non-performance of its functions.

2.4.4 The exceptions to this paragraph are set out in Section B2.9.6 and Section Z4 and in essence include that the Committee and any of its Members will be excluded from this paragraph in the case of fraud, death or personal injury caused by negligence of the Committee or any of its Members.

2.5 Chairman and Committee Sponsor

2.5.1 There shall be a chairman to the Committee (PAB Chairman) who shall be a person appointed (and removed) by the Panel from time to time.

2.5.2 The PAB Chairman shall select a PAB Vice Chairman. In the PAB Chairman's absence, the PAB Vice Chairman will fulfil the role of PAB Chairman and exercise such powers, functions and responsibilities as the PAB Chairman.

2.5.3 There shall be a Panel Sponsor to the Committee who shall be a person appointed (and removed) by the Panel Chairman from time to time.

2.5.4 The PAB Chairman, PAB Vice Chairman and Panel Sponsor shall not be members of the Committee and shall not cast votes as Members.

2.5.5 In the event that both the PAB Chairman and PAB Vice Chairman are unable to attend a meeting then Sections B4.2.3(b) and B4.2.4 shall apply. In the circumstance, and for the avoidance of doubt, if Sections B4.2.3 (b) and B4.2.4 apply then the PAB Member acting as chairman shall not cast a vote as a Member.

2.5.6 For the avoidance of doubt the PAB Chairman may also be the same person as the person whom the Chief Executive Officer of BSCCo appoints as his representative.

2.6 Secretary

2.6.1 There shall be a secretary to the Committee (Secretary) who shall be a person (or persons) appointed (and removed) by BSCCo from time to time.

2.6.2 The Secretary shall not be a member of the Committee and shall not cast a vote as a Member.

2.7 Expenses

2.7.1 The reasonable costs and expenses, and all other amounts incurred on behalf of the Committee in association with its functions and responsibilities, shall be paid by BSCCo and for the avoidance of doubt; any payments paid by BSCCo shall be BSC Costs.

2.7.2 Sections B2.11.2 shall apply to each Member save for circumstances where their attendance is required for other Panel Committee business for which they are already receiving reimbursement for the same reasonable expenses.

3. CONFLICT OF INTEREST

3.1.1 It shall be each Member's responsibility to disclose to the PAB Chairman from time to time any interests of such Member which constitute, in such Member's reasonable opinion, an actual or perceived conflict of interest with their functions as a Member and in such circumstances such Member may absent themselves from voting. If the PAB Chairman decides (after consultation with other Members (if necessary) including but not limited to circumstances where a Member does not volunteer to absent themselves from voting on such matters) that a Member has an actual or perceived conflict of interest then the PAB Chairman may determine whether the Member in question should be required to absent themselves from particular Committee business and/or whether a recommendation should be made to the Panel that such Member be removed as a Member. Any decision of the PAB Chairman (and/or the Panel) in this regard shall be final and binding.

4. RESPONSIBILITY

4.1 The Committee's responsibilities are owed exclusively to Trading Parties collectively, and to no other person.

5. POWERS AND FUNCTIONS OF THE COMMITTEE

5.1 General Powers and Functions

5.1.1 The Committee shall act in accordance with the Code, any relevant CSDs and these Terms of Reference.

5.1.2 The Committee shall further have the right to develop, implement and amend such working practices and procedures as it considers necessary or appropriate for its proper performance. In addition, the Committee shall have such powers, authorities and discretions as are necessary for or incidental to the performance of its functions, duties and responsibilities in relation to Sections J and Z.

5.1.3 The Committee shall have the powers, functions and responsibilities as are detailed in the Code and any relevant CSDs with such powers, functions and responsibilities including but not necessarily being detailed in:

- Section B
- Sections D4.6.1 and 4.6.2 (Supplier Charges)
- Section J (Qualification)
- Section S and Annex S-1 (Reporting and Monitoring of Standards and Supplier Charges)
- Section Z (Performance Assurance)

5.1.4 In addition to the above the Committee shall be responsible for supporting the Panel in discharging those powers, functions and responsibilities which the Panel has delegated to the Committee, namely:

- reviewing, considering and recommending the terms of reference for the BSC Auditor in accordance with Section H5.2.2 as well as the review, consideration, recommendation, determination and/or approval (as the case may be) of any issues arising as a result of the BSC Audit.
- any and all matters under the remit of the Panel which are associated with Party Agents including the appointment and replacement of Party Agents in accordance with Section J4 and any relevant CSDs.
- the technical assurance of Metering Systems as set out in Section L7 and any relevant CSDs including the right to consider advise and determine any Technical Assurance for Settlement Metering Appeals.

5.2 Delegation

5.2.1 The Committee may delegate or procure the delegation of all or any part of the day to day administration of its functions.

5.2.2 BSCCo shall act as the Performance Assurance Administrator (PAA) and it shall be deemed that the Committee when delegating any of its powers, functions and responsibilities under paragraph 5.2.1 shall so have delegated them to the PAA.

5.2.3 The Secretary shall keep a record of the functions so delegated to the PAA from time to time and a copy of such shall be made available upon request.

- 5.2.4 The Committee shall not have the right to delegate;
- 5.2.4.1 any decision as to whether an Applicant should be Qualified (or re-Qualified) or as to whether an Applicant's Qualification should be removed;
- 5.2.4.2 the approval of the Risk Evaluation Methodology;
- 5.2.4.3 the approval of Risk Management Plans;
- 5.2.4.4 any decision relating to a Risk Management Query.

6. PROCEEDINGS OF THE COMMITTEE

6.1 Meetings

- 6.1.1 Meetings of the Committee shall be held at least once a month, at such a time and place as notified to the Members by the Secretary in accordance with these Terms of Reference.
- 6.1.2 Subject to the remaining provisions of this paragraph 6.1, the Secretary shall, at the request of the PAB Chairman, convene Committee meetings by giving notice, at least 5 Working Days prior to the proposed meeting (or such other period so determined by the PAB Chairman), to BSCCo, each Member and any alternates. Such notice shall set out:
 - (i) the date, time and place of the meeting; and
 - (ii) an agenda of the matters for consideration at the meeting and any supporting papers available to the Secretary at the time the notice is given (and the Secretary shall, if necessary, circulate to Members any late papers, as approved by the PAB Chairman, as and when they are received by him).
- 6.1.3 Where Section J3.3.12 applies the Secretary shall also provide to the Applicant that part of the notices mentioned in paragraph 5.1.2 applicable to the Applicant.
- 6.1.4 Where there is any meeting of the Committee concerning those matters as set out in Section Z2.1.2 (h) and the Risk Evaluation Methodology then such notices mentioned in paragraph 5.1.2 shall be provided to all Performance Assurance Parties.
- 6.1.5 Where there is a meeting of the Committee concerning those matters as set out in Section Z2.1.2 (i)(v) or Z2.1.2 (i) (vi) then such notices mentioned in paragraph 5.1.2 shall be provided to those particular Performance Assurance Parties who are discussed at the meeting.
- 6.1.6 Where a meeting is in relation to a relevant matter (as that term is defined in Section Z2.3.1) then the Member shall not be entitled to receive any documentation or otherwise in connection with the relevant matter.
- 6.1.7 Where there is a meeting of the Committee concerning matters which are not of a confidential nature nor commercially sensitive then at the PAB Chairman's discretion (after consultation with the PAB Members (if necessary)) such matters may be considered (including any determinations made) in open session of the meeting and such notices mentioned in paragraph 5.1.2 shall be provided to any and all persons.
- 6.1.8 The Secretary shall ensure that details of forthcoming Committee meetings shall be notified on the BSC website. Such notification shall include agendas and where applicable any non-confidential information/papers.
- 6.1.9 A scheduled meeting of the Committee may be cancelled if:
 - (i) the PAB Chairman determines that there is no business for the Committee to conduct, and so requests the Secretary to cancel the meeting; and

- (ii) the Secretary notifies all Members in writing of the proposal to cancel it, not less than 5 Working Days prior to the date that the meeting is or is to be convened; and
- (iii) if 3 Working Days before the date for which the meeting is or is to be convened, no Member has notified the Secretary that he objects to such cancellation.

6.1.10 Sections B4.1.9 and B4.1.10 shall apply in respect of a meeting of the Committee with such sections being read as if a meeting of the Panel were to be a meeting of the Committee.

6.1.11 For the avoidance of doubt any Member may notify additional matters to the Committee for consideration or otherwise. All papers should be submitted within 3 Working Days of the meeting as is in accordance with Section Z2.1.2(b).

6.1.12 Where any matter not contained in the agenda is put before a meeting of the Committee that is in the opinion of the PAB Chairman necessary (in view of the urgency of the matter) for it to consider then where all the Committee Members present at the meeting agree, the Committee may determine upon such matter.

6.2 Urgent/Special Committee meetings

6.2.1 Notwithstanding anything contrary in paragraph 6.1 if, in the opinion of the PAB Chairman, any matter arises which is of a sufficiently urgent nature so as to require a decision earlier than is possible under the next convened Committee meeting:

- (i) the Secretary shall, at the request of the PAB Chairman, convene such a meeting and distribute an agenda and any papers in accordance with such notice as the PAB Chairman considers appropriate; and
- (ii) each Member shall be deemed to have consented to the convening of such a meeting and distribution of the agenda and papers in the manner and on such notice as the PAB Chairman determines.

6.2.2 In respect of an urgent/special meeting if after 1 hour a quorum is not present, then at the election of the PAB Chairman (with such consideration being given to the nature of the business), those Members present shall constitute a quorum provided that at least 2 Members are present and provided further that the PAB Chairman shall endeavour to contact each Member individually in order to ascertain each Member's vote and any matter decided shall be decided by a majority of those Members voted. Where the PAB Chairman is unable to contact the correct quorum number of Members within 1 Working Day of the meeting the PAB Chairman may decide the matter in consultation with the Panel and/or Panel Chairman.

6.3 Attendance by Members, alternatives and other attendees to Meetings

6.3.1 In addition to Members (or their duly approved alternates), the following individuals are entitled to attend all meetings of the Committee:

- (i) the PAB Chairman or PAB Vice Chairman;
- (ii) the Secretary;
- (iii) the Chief Executive (or his duly appointed representative) of BSCCo¹;
- (iv) the Panel Sponsor of the Committee;
- (v) the Performance Assurance Administrator;
- (vi) a representative from the Authority; and

¹ The Chief Executive of BSCCo (or his duly appointed representative) shall also be obliged to attend

(vii) a representative from Consumer Focus.

6.3.2 The following individuals may upon invitation from the PAB Chairman attend any meeting of the Committee and shall be entitled to receive all notices and documentation relating to such meetings:

- (i) a representative from the BSC Auditor;
- (ii) such other external experts as is necessary; and
- (iii) any member of BSCCo,

provided that and prior to the receipt of any notices or documentation, notification is given to the Secretary of their attendance and a confidentiality undertaking is executed by such representative.

6.3.3 If the meeting concerns a matter relating to Qualification (including but not necessarily limited to any matter arising from Section J3.3.12) then the meeting shall be held in closed confidential session save that an Applicant may attend that part of the meeting at which the Applicant's application for Qualification (or part thereof) is being discussed and/or determined.

6.3.4 Where a meeting is concerned with any matter listed in Section Z2.1.2(i) it shall be held in closed confidential session save that if the meeting concerns a matter as described in Section Z2.1.2 (i) (v) or Z2.1.2 (i) (vi) then a representative of the Performance Assurance Party may attend that part of the meeting at which the Performance Assurance Party Risk Management Query and/or performance is being discussed and/or determined.

6.3.5 For the avoidance of doubt where a meeting is concerned with the Risk Evaluation Methodology and/or the Risk Evaluation Register and no confidential information is being disclosed then any Performance Assurance Party shall be entitled to receive notice and attend such a meeting.

Where there is a meeting of the Committee concerning any matter(s) which are of a confidential nature and/or commercially sensitive then at the PAB Chairman's discretion (after consultation with the PAB Members (if necessary)) such matters shall be considered (including any determinations made) in closed confidential session.

6.3.6 Any person in attendance at a Committee meeting other than a Member (or their duly appointed alternative) shall:

- (i) have no vote and shall not be a Member of the Committee; and
- (ii) address the meeting where invited to do so by the PAB Chairman.

6.4 Qualification Requests and Risk Management Queries

6.4.1 Where an Applicant requests (by written notice) that the Committee is to provide advice or otherwise or seeks a determination in accordance with Section J3.3.12 ("Request") and/or a Performance Assurance Party submits a Risk Management Query in accordance with Section Z6.2, the following shall occur:

6.4.1.1 the Secretary shall acknowledge (in writing) receipt of Request and/or Risk Management Query and if it hasn't already done so seek confirmation of whether the Applicant/Performance Assurance Party intends on being present at the meeting. The Secretary shall then notify the Applicant/Performance Assurance Party of the date of the meeting at which their Request and/or Risk Management Query shall be heard. The Secretary shall also ensure that appropriate notice of the meeting is given to the Applicant and/or Performance Assurance Party in accordance with these Terms of Reference;

6.4.1.2 the Applicant and/or Performance Assurance Party shall provide to the Secretary, at least 20 Working Days prior to the scheduled meeting, any and all documentation, information or otherwise which the Applicant and/or Performance Assurance Party wishes to rely on and/or use to support its Request or Risk Management Query (respectively) (the "Applicants Documents");

6.4.1.3 no later than 10 Working Days after receipt of the Applicants Documents the Secretary shall forward to the Applicant and/or Performance Assurance Party any and all documentation, information or otherwise which will be presented to the Committee in respect of the Request and/or Risk Management Query (including but not limited to any reports prepared by BSCCo); and

6.4.1.4 in the circumstance where the Applicant and/or Performance Assurance Party intends on being present at the meeting at which a Request and/or Risk Management Query has been sought the Applicant and/or Performance Assurance Party must be represented by a duly authorised officer or employee (for the avoidance of doubt this may or may not include a legal representative).

6.4.2 The PAB Chairman may in his discretion regulate the conduct of any meeting at which a Request and/or Risk Management Query is being heard as he deems necessary.

6.5 Quorum

6.5.1 No business shall be transacted at any meeting of the Committee unless a quorum is present at the meeting.

6.5.2 Subject to paragraph 6.2.2, and in accordance with Section Z2.1.2(d), a quorum shall comprise of at least 4 Members (or by their duly appointed alternates).

6.5.3 Any Committee meeting at which a quorum is not in attendance after a period of 30 minutes of its commencement shall be adjourned and re-scheduled with the Secretary giving notice of the adjourned hearing and re-scheduling in such manner as requested by the PAB Chairman.

6.5.4 For the avoidance of doubt, the PAB Chairman may, if it is considered appropriate, allow a Member to participate in a meeting (and therefore be in attendance) by way of telephone conference call (or such other similar means) provided that all other Members in attendance at the meeting are able to speak and hear such Member.

6.5.5 Where a meeting is in relation to a relevant matter (as that term is defined in Section Z2.3.1) then the Member shall not participate in the meeting, nor receive any working papers or otherwise in connection with the relevant matter and as such will not be counted in ascertaining whether a quorum is present at the meeting.

6.6 Voting

6.6.1 At any meeting of the Committee all matters to be decided shall be put to a vote of all quorum Members (or by their duly appointed alternate).

6.6.2 In deciding any matter, each Member (or their duly appointed alternate) shall cast one vote. All matters shall be decided by a simple majority of votes cast.

6.6.3 For the avoidance of doubt and for the purposes of paragraphs 6.6.1 and 6.6.2, abstentions shall not be classed as votes and will therefore not prevent majority agreement of a matter.

6.6.4 A resolution in writing signed by or on behalf of all Members entitled to vote in respect of the matter the subject of the resolution shall be valid and effectual as if it had been passed at a duly convened and quorate meeting of the Committee.

6.6.5 Where a majority decision can not be reached within a reasonable period of time the Chairman may at his discretion refer the matter to the Panel for determination.

6.7 Teleconference and/or Correspondence Meetings

6.7.1 Where the PAB Chairman considers it appropriate (whether it be at the request of a Member or otherwise), a meeting of the Committee may be validly held by telephone conference call (or such other similar means) or by correspondence.

6.7.2 A quorum is obtained in respect of a teleconference call (or such other similar means) as per these Terms of Reference but in addition all present Members at the teleconference must be able to speak to and hear each other.

6.7.3 A quorum is obtained in respect of a correspondence meeting where at least a quorum as per these Terms of Reference shall provide a response (including their vote) to the correspondence (the subject of a determination) provided that the Members have at least 5 Working Days to consider and respond to such correspondence received. Paragraph 6.7 shall apply to any meetings outlined in this paragraph.

6.8 Minutes of Meetings

6.8.1 The Secretary shall ensure that as soon as is reasonably practicable after each meeting that all discussions are minuted (including any determinations and failure to make any determinations) and such minutes are to be distributed to only those persons who were entitled to attend the meeting (or part thereof) for approval.

6.8.2 No other person other than those who were entitled to attend the meeting (or part thereof) shall be entitled to receive a copy of the minutes (or part thereof) for a meeting as they are confidential.

6.8.3 For the avoidance of doubt and notwithstanding any other paragraphs in these Terms of Reference relating to the distribution of notices, agendas or otherwise, in the circumstance where Section Z2.3 applies, that Member is not entitled to receive any working papers, opinions, reports or other documentation that have been prepared for or by the Committee in connection with the particular application or otherwise.

6.8.4 The Secretary shall also prepare a report detailing key decisions and such other non-confidential information so agreed by the Members that can be publicised. Such headline report once agreed by the Members is to be made available on the BSCCo website as soon as practical after the meeting.

6.9 Papers

6.9.1 The Secretary shall circulate to Members (and such other appropriate persons as is contemplated by the Code and/or these Terms of Reference) any papers (including any late papers) as and when is appropriate, save that such circulation shall not be less than 3 Working Days before the meeting unless otherwise instructed by the PAB Chairman.

6.9.2 Notwithstanding paragraph 6.1.8, the PAB Chairman may bring additional matters to the attention of the Committee without advance notice when such information is deemed by the PAB Chairman to be of a sufficiently urgent nature that requires immediate Committee attention.

7. MODIFICATIONS

7.1 The Committee may in accordance with Section Z8.2 submit recommendations to the Panel for modification of the Code and/or any Code Subsidiary Documents to be modified in order to:

7.1.1 remedy any error, ambiguity, inconsistency or deficiency therein which emerges as a result of the exercise of the Committee functions; or

7.1.2 establish a new Performance Assurance Technique or modify an existing Performance Assurance Technique.

8. DECISIONS OF THE COMMITTEE

8.1.1 Any determination of the Committee made in respect of any matter under these Terms of Reference shall be final and binding and no such decision shall be capable of being referred to for the purposes of an appeal or otherwise to the Panel (subject to paragraph 9).

9. APPEALS OF COMMITTEE DECISIONS

9.1 Decisions made by the Committee in respect of Qualification may be appealed against in accordance with Section J3.7.

9.2 Decisions made by the Committee in respect of a Risk Management Query may be appealed against in accordance with Section Z6.3.

10. REPORTING TO THE PANEL

9.1 The PAB Chairman shall provide a monthly report to the Panel which will include but not be limited to a summary of the key decisions and activities arising at the meeting. In addition to this, the Committee shall prepare an Annual Report in accordance with Section Z8.1.1.