



Warm Homes Discount Reconciliation Disputes Committee – Terms of Reference

Meeting Name	BSC Panel
Meeting Date	08 December 2011
Purpose of paper	For Decision
Summary	This paper details how the Warm Homes Discount Reconciliation Disputes Committee will function.

1. Background

- 1.1 Under the Warm Homes ITT, ELEXON (BSCCo) is required to provide a disputes service to those suppliers participating in the Warm Homes Discount Scheme (the “Scheme”), where, if they raise a dispute, we have arrangements in place to analyse the dispute and determine a resolution.
- 1.2 The dispute process is limited to calculations performed by BSCCO under the Scheme.
- 1.3 This paper proposes that the Panel establish a new Panel Committee, the Warm Homes Discount Reconciliation Disputes Committee (the “Committee”) to hear disputes under the Scheme. The Panel has been given the power to establish such a Committee under Sections B3.1.2A and B5.1.1 of the Code to resolve a dispute. There are no additional requirements placed on the Panel, in relation to the Scheme.
- 1.4 The Committee would determine whether to uphold the dispute or not and the appropriate rectification. Given the simplicity of what we’re doing, BSCCO would expect disputes to be a rare event, but, we do need to demonstrate that we can offer the service if requested.

2. Committee and Terms of Reference

- 2.1 BSCCo propose to utilise the expertise of the Trading Disputes Committee (TDC) to form the new Committee. Thus, the Panel is invited to appoint the current members of the TDC as members of the new Committee and to update such members on each occasion there is a change to the membership of the TDC. This would be a pragmatic approach to meeting our obligation of convening an expert Committee at short notice.
- 2.2 Draft Terms of Reference (ToR) for the new Committee have been drawn up based on the current TDC Terms of Reference and the dispute requirements contained in the Warm Home Discount (Reconciliation) Regulations 2011. The ToR allow for the Panel to make any changes to the Committee that may be required for any dispute arising. The ToR have been developed with input from of the ELEXON Legal team.

3. Recommendations

3.1 We invite the Panel to:

- a) **APPROVE** the establishment of the Warm Homes Discount Reconciliation Disputes Committee;
- b) **APPROVE** the appointment of the existing members of the Trading Disputes Committee as members of the Warm Homes Discount Reconciliation Disputes Committee;
- c) **AGREE** any changes to the Terms of Reference; and
- d) **APPROVE** the Terms of Reference.

Attachment:

Attachment A – Draft Terms of Reference

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TERMS OF REFERENCE
Warm Home Discount Reconciliation Disputes Committee
(version 1)

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. In addition, references to 'the Regulations' are references to The Warm Home Discount (Reconciliation) Regulations 2011 and defined terms of the Regulations that are used in these Terms of Reference shall have the same meaning attributed to those terms under the Regulations.

1. ESTABLISHMENT AND ROLE

1.1 Establishment and purpose

- 1.1.1 The Panel has, in accordance with Section B3.1.2A, established a Warm Home Discount Reconciliation Disputes Committee ("WHDRDC") which shall in accordance with Section B3.1.2B be a Panel Committee for the purposes of Section B.
- 1.1.2 The WHDRDC is established to provide for arrangements for the resolution of disputes about determinations by the WHD Operator under the Regulations. In effect, this is the first tier of the appeals process provided for by regulation 14 of the Regulations. Where scheme electricity suppliers do not agree with the determination of the WHDRDC they may appeal that determination to the Secretary of State pursuant to regulation 14.
- 1.1.3 Regulations 14(1) to 14(5) of the Regulations shall apply to the resolution of any dispute by the WHDRDC with the modification that references to the Secretary of State shall be references to WHDRDC.
- 1.1.4 In the event of any conflict or inconsistency between regulations 14(1) to 14(5) of the Regulations and these Terms of Reference or any other arrangements established by the WHDRDC, the Regulations shall prevail.

1.2 Role

- 1.2.1 THE COMMITTEE'S ROLE IS TO INVESTIGATE AND RESOLVE WARM HOME DISCOUNT RECONCILIATION DISPUTES ("WHDRD"). A WHDRD IS A DISPUTE RAISED BY A SCHEME ELECTRICITY SUPPLIER ABOUT A DETERMINATION BY THE WHD OPERATOR—
- (a) upon an interim reconciliation or a final reconciliation; or
 - (b) of the amounts of mutualisation payments which scheme electricity suppliers are liable to make, on the grounds that the WHD Operator has made an error in its determination. A WHDRD must be raised in writing within 10 working days after the scheme electricity supplier is notified of the relevant determination.

The Committee shall investigate and resolve WHDRDs in accordance with regulations 14(1) to 14(5) of the Regulations, these Terms of Reference and the Code.

2. COMPOSITION OF THE COMMITTEE AND APPOINTMENT OF MEMBERS

2.1 Members

The Committee shall be composed of not less than six (6) and not more than twelve (12) persons (each a Member) of suitable experience and qualifications as the Panel shall decide (having regard to its duties under Section B3.1.2A and the functions of the WHD Operator under Section C1.2.1A) and as shall be willing to serve thereon.

2.1.1 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 and B2.8.4 with such sections being read as if a Panel Member was a Member of the WHDRDC.

2.2.3 Members acknowledge that in carrying out their duties and functions as a Member that 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 and/or these Terms of Reference;
- (ii) the disclosure of data is to the Authority or the Secretary of State;
- (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) 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.

2.3.4 For the avoidance of doubt a person appointed as an alternate shall automatically cease to be available as an alternate:-

- (i) if the Member ceases to be a Member; or

- (ii) if any of the matters stated in Section B2.7.4 occurs with such section being read as if a Panel Member was an alternate.

2.4 Indemnification

2.4.1 BSCCo shall indemnify all Members and their duly appointed alternates in accordance with Section B2.9.

2.5 Chairman

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

2.5.2 In the event the WHDRDC Chairman is unable to attend Sections B 4.2.3(b) and B4.2.4 shall apply.

2.5.3 The WHDRDC Chairman shall not be a member of the Committee and shall not cast votes as Members.

2.5.4 The principal powers, functions and responsibilities of the WHDRDC Chairman shall include but not be limited to:

- (i) chair and regulate the conduct of meetings of the Committee;
- (ii) set the agenda for the meetings of the Committee;
- (iii) use reasonable endeavours to ensure a quorum is present at a meeting of the Committee;
- (iv) authorise the use of any forms required for the business or operation of the Committee; and
- (v) any other functions in connection with the business or operation of the Committee as appropriate.

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.

2.6.3 The principal functions and responsibilities of the Secretary shall include but not be limited to:

- (i) schedule and notify Members of meetings of the Committee;
- (ii) use reasonable endeavours to ensure a quorum is present at meetings of the Committee;
- (iii) circulate the agenda and any relevant papers before a scheduled meeting of the Committee;
- (iv) produce the minutes of Committee meetings;
- (v) produce any forms as necessary for the business or operation of the Committee;
- (vi) maintain a Register of Determinations of the Committee;
- (vii) ensure that prior to the attendance of any invitees at a Committee meeting they execute an approved confidentiality undertaking or such other undertaking as may be required by the Committee;

- (viii) record the expenditure associated with the Committee and account for such amounts to the WHDRDC Chairman;
- (ix) advising all relevant parties of the appointment, re-appointment and/or resignation of the Chairmen and/or any Members or their alternates of the Committee;
- (x) provide training for Members as necessary; and
- (xi) any other functions in connection with the business or operation of the Committee as appropriate.

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. For the avoidance of doubt any payments paid by BSCCo pursuant to this paragraph shall not be BSC Costs.
- 2.7.2 Section 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 WHDRDC 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 of the WHDRDC and in such circumstances such Member may absent themselves from voting. If the WHDRDC 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 WHDRDC 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 WHDRDC Chairman (and/or the Panel) in this regard shall be final and binding.

4. POWERS AND FUNCTIONS OF THE WHDRDC

4.1 Powers and Functions

- 4.1.1 The Committee shall act in accordance with the Regulations, the Code and these Terms of Reference. The Committee's powers are limited to the determination of WHDRDs as defined in section 1.2 above.
- 4.1.2 In considering a WHDRD, the Committee may :
 - (a) make such enquiries as it sees fit; and/or
 - (b) request BSCCo to procure such additional information or data as it reasonably requires to enable it to determine the WHDRD.
- 4.1.3 Having considered all relevant material available to it and any representations made in accordance with the Regulations, the Committee may:

- (a) dismiss a dispute (for example where an application is not made within 10 working days after the scheme electricity supplier is notified of the determination or it does not meet the criteria of a WHDRD); or
- (b) allow the dispute and direct the WHD Operator to make a determination.

4.1.4 If the Committee directs the WHD Operator to make a fresh determination, the Committee may give instructions to the WHD Operator in relation to the making of the determination, and the WHD Operator must make the fresh determination in accordance with any such instructions.

4.2 Representations

- 4.2.1 Before determining a WHDRD, the Committee shall provide an opportunity to make representations to the Committee to—
- (a) each other scheme electricity supplier; and
 - (b) WHD Operator.

4.3 Delegation

- 4.3.1 The Committee shall not delegate to any person any of its powers, functions and responsibilities.

5. PROCEEDINGS OF THE COMMITTEE

5.1 Meetings

- 5.1.1 Meetings of the Committee shall be held on the request of the Panel, at such a time and place as notified to the Members by the Secretary in accordance with these Terms of Reference
- 5.1.2 The Secretary shall, at the request of the WHDRDC Chairman, convene Committee meetings by giving notice, at least 4 Working Days prior to the proposed meeting (or such other period so determined by the WHDRDC Chairman), to each Member, approved alternates, BSC Auditor, the Secretary of State and the Authority. 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 WHDRDC Chairman, as and when they are received by him).
- 5.1.3 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 a meeting of the Committee.
- 5.1.4 Where any matter not contained in the agenda is put before a meeting of the Committee that is in the opinion of the Committee necessary (in view of the urgency of the matter or otherwise) to consider then the Committee may determine upon such matter.

5.2 Quorum

- 5.2.1 No business shall be transacted at any meeting of the Committee unless a quorum is present. A quorum shall comprise of at least 4 Members (or by their duly appointed alternates).
- 5.2.2 Any Committee meeting at which a quorum is not in attendance after a period of 30 mins 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 WHDRDC Chairman.

5.3 Voting

- 5.3.1 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).
- 5.3.2 In deciding any matter, each Member shall cast one vote. All matters shall be decided by a simple majority of votes cast.
- 5.3.3 For the avoidance of doubt and for the purposes of paragraphs 5.3.1 and 5.3.2, abstentions shall not be classed as votes and will therefore not prevent unanimous agreement of a matter.
- 5.3.4 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.

5.4 Teleconference and/or Correspondence Meetings

- 5.4.1 Where the WHDRDC Chairman considers it appropriate (noting that it shall be only in exceptional circumstances), a meeting of the Committee may be validly held by telephone conference call (or such other similar means) or by correspondence.
- 5.4.2 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 telephone conference call must confirm that they can speak and hear each other.
- 5.4.3 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 correspondence the subject of a determination provided that the Members have at least 4 Working Days to consider and respond to such correspondence received.
- 5.4.4 Paragraph 5.3 shall apply to any meetings outlined in this paragraph.

5.5 Attendance by other persons

- 5.5.1 All meetings of the Committee shall be held in closed confidential session.
- 5.5.2 The following Non Member Representatives may 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, if required;
 - (ii) a representative of the Secretary of State; and
 - (iii) a representative from the Authority,

provided that in the case of paragraph (ii), and prior to the receipt of any notices or documentation, notification is given to the Secretary and confidentiality undertaking is executed by such representative.

5.5.3 The individuals referred to in paragraph 5.5.2 shall be entitled to speak at any of the meetings they attend but shall have no vote and shall not be members of the Committee.

5.5.4 The WHDRDC Chairman may invite such individuals as he sees fit to attend a meeting of the Committee provided that prior to their attendance a confidentiality undertaking is executed by such invitee. Any such individual shall be entitled to receive from the Secretary (with approval from the WHDRDC Chairman) such part of the agenda and/or any papers that may concern the invitee.

5.5.5 Any person in attendance at a Committee meeting by virtue of paragraph 5.5.4 shall:

- (i) have no vote and shall not be a member of the Committee;
- (ii) address the meeting where invited to do so by the WHDRDC Chairman; and
- (iii) leave the meeting when requested to do so by the WHDRDC Chairman.

5.6 Minutes of Meetings

5.6.1 The Secretary shall ensure that as soon as is reasonably practicable after each Committee meeting that all discussions are minuted (including determinations and the failure to make a determination) and such minutes are to be distributed to the meeting attendees for approval, provided that the discussion in respect of individual Warm Home Discount Reconciliation Disputes shall not be minuted.

5.7 Papers

5.7.1 The Secretary shall circulate to Members any papers (including any late papers) as and when is appropriate, save that such circulation, unless otherwise agreed by the WHDRDC Chairman, shall not be less than 4 Working Days before the proposed meeting.

6. DETERMINATIONS OF THE COMMITTEE

6.1.1 Any determination of the Committee made under these Terms of Reference shall be final and binding, except for an appeal to the Secretary of State as described in the Regulations.

6.2 Notification of Committee Decisions in respect of Warm Home Discount Reconciliation Disputes

6.2.1 Scheme electricity suppliers and the WHD Operator shall be notified of a WHDRD determination by the Committee.

6.3 Register of Decisions in respect of Warm Home Discount Reconciliation Disputes

6.3.1 The Committee shall maintain a Register of Determinations in respect of Warm Home Discount Reconciliation Disputes.

6.3.2 The Committee may have regard, where relevant, to the Register of Determinations but it shall not be bound by a precedent in respect of a WHDRD.