ELEXON

Stage 03: Assessment Report

What stage is this document in the process?

01 Initial Written Assessment

02 Definition Procedure

03 Assessment Procedure

04 Report Phase

P298 'Consequential amendments to the BSC Modification process following the implementation of Third package and other miscellaneous changes'

P298 seeks to align the BSC with the Transmission Licence to reflect that the Authority can raise, or direct National Grid (as the Transmission Company and Licensee) to raise, Modifications it considers necessary to comply with, or implement, European Electricity Regulation and legally binding decisions.

The P298 Workgroup recommends **approval** of P298

Low Impact:

- Transmission Company
- BSCCo

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Contents

1	Summary	3
2	Why Change?	4
3	Solution	5
4	Impacts & Costs	7
5	Implementation	8
6	Workgroup's Discussions	9
7	Workgroup's Conclusions	13
8	Recommendations	14
Appendix 1: Workgroup Details		15

About This Document

This document is the P298 Workgroup's Assessment Report to the BSC Panel. ELEXON will present this report to the Panel at its meeting on 10 April 2014. The Panel will consider the Workgroup's recommendations, and will agree an initial view on whether this change should be made. It will then consult on this view before making its final recommendation to the Authority on 13 June 2014.

There are three parts to this document:

- This is the main document. It provides details of the solution, impacts, costs, benefits/drawbacks and proposed implementation approach. It also summarises the Workgroup's key views on the areas set by the Panel in its Terms of Reference, and contains details of the Workgroup's membership and full Terms of Reference.
- Attachment A contains the draft redlined changes to the BSC for P298.
- Attachment B contains the full responses received to the Workgroup's Assessment Procedure Consultation.

Any questions?

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1 Summary

Why Change?

The Balancing and Settlement Code (BSC) needs amending to align it with the Electricity Transmission Licence Standard Conditions ('the Licence'), specifically Standard Licence Condition (SLC) C3, which covers the BSC. This is to reflect that the Authority can raise, or direct National Grid[1] to raise, Modification Proposals in order to ensure that the BSC complies with the Electricity Regulation and any relevant legally binding decisions of the European Commission (EC) and/or the Agency[2] ('European Required').

This Modification is being progressed in parallel with the Connection and Use of System Code (CUSC) Modification Proposal CMP225[3], which proposes to make equivalent changes to the CUSC.

What is the proposed solution?

The proposed solution seeks to modify Section F to align it with the Transmission Licence Standard Conditions (SLC C3).

Solution

P298 proposes to modify Section F 'Modification Procedures' of the BSC to align it with the Licence. This is to reflect that under certain circumstances the Authority may:

- raise a Modification, or
- direct National Grid to raise a Modification; and
- consider a National Grid raised Modification, which it hadn't directed National Grid to raise, to be a European Required Modification and therefore treated as if it was a directed Modification.

Impacts & Costs

P298 has no direct impact on Parties, only the Transmission Company and BSCCo to align the BSC with the Licence.

The central implementation cost of the proposed solution will be approximately £240, which equates to one man-day's effort.

Implementation

Ten Working Days following an Authority decision to approve.

Recommendation

The P298 Workgroup unanimously recommends **approval** of P298, as it believed that the P298 solution would better facilitate Applicable BSC Objectives (a), (d) and (e).

[1] As the Transmission Company and holder of the Licence (the Licensee).
[2] This relates to any legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators (ACER).
[3] 'Consequential changes following Implementation of the Third Package and other miscellaneous changes'.

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2 Why Change?

Background

In November 2011, the Department for Energy & Climate Change (DECC) implemented changes to the Licence to reflect new European legislation known as the 'Third Package'. It also introduced consequential changes that enable the Authority to:

- raise Modifications to the BSC to implement Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency ('European Required Modification'); and
- direct National Grid to raise such Modifications within the same parameters.

Similar to Significant Code Review (SCR) Modifications, it also introduced requirements that an Authority raised or directed Modification:

- must be accepted by the Panel into the Modifications process;
- must not be withdrawn without the prior consent of the Authority; and
- must proceed in accordance with the Authority's timetable, which it may amend as required.

Furthermore, it introduced requirements that National Grid, and where relevant the Panel, must ensure that such Modifications are accepted into process and progressed in line with any directed timetable.

The above provisions also cover such situations where National Grid raises a Modification without prior direction by the Authority, and which the Authority 'reasonably considers' relates to Electricity Regulation and any relevant legally binding decisions from Europe.

For the avoidance of doubt, P298 does not affect any Modification Proposal raised by a Party (other than National Grid), which may contain an element of European Regulation. In that scenario the Modification raised by the Party other than National Grid would proceed in the normal way.

Further clarification to the Licence changes

The BSC wasn't amended to reflect the Licence changes in 2011, as the wording introduced into the Licence in 2011 could have been interpreted that the Authority could raise any Modification and not just a European Required Modification.

Ofgem has since clarified the Licence with changes that came into effect on the 17 December 2013.

What is the issue?

The BSC has no provisions for how the Authority can raise, or direct National Grid to raise, European Required Modification Proposals. Therefore, the BSC is not aligned with the Licence and needs to be amended to reflect the Licence. It also needs to address any areas where the Licence is silent on the raising and progression of such Modifications to ensure clarity and efficiency of process.

What is the 'Third Package'?

The 'Third Package' consists of four EC Regulations and two EC Directives, which came into force on 3 September 2009. The aim of these is to bring in a competitive and integrated energy market to allow consumers to choose between different Suppliers; and provide for all Suppliers to access the market in each EC member state. It also brought into existence the Agency for Cooperation of Energy Regulators (ACER).

The UK Parliament gave effect to this in Great Britain in November 2011 through the Electricity and Gas (Internal Markets) Regulations 2011.

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3 Solution

Proposed solution

P298 proposes to modify BSC Section F 'Modification Procedures' to align it with the Licence requirements; and include provisions where the Licence is silent. It also proposed to modify BSC Section X: Annex X-1 'General Glossary' to define certain terms introduced by the changes to Section F. The proposed legal text changes to the BSC to deliver the P298 Proposed solution can be found in Attachment A.

Alignment with the Licence

P298 aligns Section F with the Licence where necessary to reflect that:

- the Authority may raise, or direct National Grid to raise, European Required Modifications;
- National Grid and the BSC Panel must accept these into the Modifications process and that these must be progressed in accordance with any timetable directed by the Authority, which may include the completion of each of the proposal steps, and/or implementation of such Modification; and
- National Grid, where the Authority directs it to raise such Modifications, may only withdraw them with the prior consent of the Authority.

The above provisions also cover such situations where National Grid raises a Modification without prior direction by the Authority, and which the Authority deems is a European Required Modification.

Addressing events where the Licence is silent

The Licence is silent on a number of events, which the Workgroup agreed the legal text should address.

Authority notification that it considers a National Grid raised Modification, which it didn't direct, to be a European Required Modification

The Licence includes provisions for situations where National Grid raises a Modification without prior direction by the Authority, and which the Authority deems is a European Required Modification. However, it is silent on how this is communicated. P298 requires the Authority to inform the Panel where it reasonably considers that a National Grid raised Modification, which it hasn't directed, is a European Required Modification.

Adoption of withdrawn Modifications by BSC Parties

The Licence is silent in the event that the Authority withdraws, or agrees for National Grid to withdraw, a European Required Modification, and subsequently a Party wishes to adopt it. P298 allows for the adoption of such Modifications, where the Authority consents to the withdrawal of a European Required Modification, as per the usual provisions around the adoption of Modifications.

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Amalgamation with other Modifications

The Licence is silent in the event where it is proposed to amalgamate two or more Modifications. P298 allows for the amalgamation of these types of Modifications subject to Authority agreement.

The non-fettering of the Panel's or relevant Workgroup's views

The Licence is silent on whether the Panel or relevant Workgroup should be fettered by the Authority's conclusions. P298 includes clarification that the views of the relevant Workgroup and the voting rights and recommendation of the Panel shall not be fettered in respect of European Required Modifications.

Application of existing provisions to P298

Whilst not included in the Licence, P298 makes provisions for the Panel's involvement. Specifically, it allows the Panel to agree and sets the terms of reference for any necessary Workgroup meetings; and decide on when the Modification is progressed to the next phase of the Modification Process (e.g. from Assessment Procedure to Report Phase), subject to any timetable directed by the Authority.

Updates to Definitions

P298 includes the addition of three new defined terms, which are included in Section X Annex X-1. These are:

- "Agency", which P298 cross-references with the EC Regulation that established it.
- "Electricity Regulation" which P298 cross-references with the EC Regulation that defines it.
- "European Commission" which P298 cross-references with the Treaty that established it.

Impact on legal text from other changes

Due to other changes to Section F, it may be necessary to make amendments to the clause references. Such changes will not require a material change and will be highlighted to the Panel.

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4 Impacts & Costs

Estimated central implementation costs of P298

As the P298 proposed solution only involve changes to the BSC the costs to implement P298 are limited to the effort to update the BSC as set out below.

ELEXON Cost		**Total Cost**
Man days	Cost	
1	£240	**£240**

Indicative industry costs of P298

None of the three respondents to the P298 Assessment consultation indicated any costs. Only one of the three respondents believed that P298 would have an impact on it, which it believed would be minimal.

P298 impacts

Impact on BSC Parties and Party Agents
No impact.

Impact on Transmission Company
Procedures for raising Authority directed Modifications and associated processes.

Impact on BSCCo
Processes for progressing Authority raised or directed Modifications.

Impact on BSC Systems and process.
No impact.

Impact on Code	
Code Section	Potential Impact
Section F	Governance for when the Authority may raise or direct the Licensee to raise Modifications; the powers and responsibilities of the Panel with respect to these Modifications; and the associated processes
Section X: Annex X-1	Inclusion of three definitions.

Related Changes
This Modification is being progressed in parallel with the CUSC Modification Proposal CMP225, as CMP225 proposes to make equivalent changes to the CUSC.

Likely Impacts

This Modification will not impact BSC Parties or Party Agents.

It has a low impact on the Transmission Company as the Licensee and ELEXON as the BSCCo. These impacts relate to the raising and progression of Authority raised or directed Modifications.

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5 Implementation

Recommended Implementation Date

The Workgroup recommends an Implementation Date of **10 Working Days** following the Authority's decision.

Respondents to the P298 Assessment Consultation agreed with the implementation approach. You can find the full responses to the Assessment Consultation in Attachment B respectively.

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6 Workgroup's Discussions

The following section provides details on the Workgroup discussions that led to the P298 solution.

Solution Requirements

The P298 Workgroup agreed with the high-level solution, which they believed reflects that:

- the Authority may raise, or direct the Licensee to raise, European Required Modifications;
- the BSC Panel must accept these into the Modifications processes and that these must be progressed in accordance with any timetable directed by the Authority; and
- National Grid, where the Authority directs it to raise such Modifications, may only withdraw or amend the Proposed Solution with the prior consent of the Authority.

The Workgroup discussed and agreed that the legal text should have separate clauses for when the Authority raise, and for when the Authority directs the Licensee to raise European Required Modifications.

National Grid raised Modifications, which the Authority deems to be European Required Modifications

The Workgroup considered that there was the potential for National Grid to raise Modifications that may later be determined to have a European Required Modification element to it, and which it has raised without the prior direction of the Authority. It agreed, therefore, that the legal text needs to deal with such situations, so that the same provisions for Authority directed Modifications apply. This would be at the discretion of the Authority for Modifications raised by National Grid that may later be determined to have a European Required Modification element. The Workgroup also considered and agreed that the legal text include provision for the Authority to inform the Panel of such decisions, that the provisions associated with European Required Modifications are being applied. However, the Ofgem representative thought that such provision in the legal text wasn't required, but agreed that in practice that the Panel would be informed.

Practicalities

The Workgroup also considered how in practice, the situation where National Grid raises a Modification without the prior direction of the Authority that is later identified as having a European Required Modification element to it, would be managed. ELEXON advised that if it identified the element when first raised, then under the Code Administrator Code of Practice (CACoP) 'critical friend' role, it would discuss this with National Grid as the Proposer, which could then amend the Proposal. The Workgroup agreed that if it was picked up later, such as during the Assessment Procedure, National Grid could amend their Proposal under the existing provisions of Proposer ownership to remove that European Required Modification element. Where the National Grid doesn't amend the Proposal, the Authority may then apply the provisions as if it directed the Modification; whereas, if National Grid removed any European Required Modification element, the Authority could

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then raise, or direct National Grid to raise, that element as a separate Modification Proposal.

Authority Directed Timetable

The Workgroup considered the Licence provisions regard the Authority directed timetable. A Workgroup member also pointed out that the Licence includes specific clauses for where the Licensee must raise a Modification if directed; and the applicable Panel must follow the Authority's directed timetable. The Workgroup member also noted that the Authority is able to set a timetable for such Modifications that the Licensee has raised. As such, the Workgroup agreed that the legal text should reflect this.

Proposer Ownership

The Workgroup considered how in practice it would work where the Authority has raised or directed the Licensee to raise a Modification and whether or not the Proposer attending the Workgroup meetings would need written consent to amend the solution. The Ofgem attendee noted that the Licence drafting was silent in this area and didn't see any need to change the current rules around Proposer ownership specifically for these types of Modifications. Therefore, once raised the Proposer or Proposer's representative can amend the Proposed solution in line with the current provisions.

Practicalities

A Workgroup member believed that the Workgroup should consider the practicalities for when the Authority raises a Modification and attends a Workgroup both as the Authority's Proposer representative and observer. The Workgroup member didn't think it needed consideration as part of the legal text but thought it would be useful to provide guidance for future Workgroups where this may become relevant. The Workgroup member noted that there could be a legal challenge if the Authority expresses an opinion and it is not clear as to whether it is doing so as the Proposer or as an observer. The member suggested that the Authority might want to send two people, one as the Proposer and one as an observer. ELEXON suggested that it could add requirements into generic Workgroup terms of reference. This could expand on the legal text and include an express requirement that where Ofgem sends one person, the Ofgem's representative must state when it is making a statement as the Proposer (the Authority's representative) or as an observer. The member agreed and suggested that the Final Modification Reports should also include specific reference to when the Authority has expressed a view as Proposer and as an observer. The Workgroup agreed with this approach.

Adoption of SCR Processes

The Workgroup agreed with the approach of adopting the SCR Modifications legal text as appropriate with respects to areas of the Licence that are silent, namely:

- as per the usual Modification process, the involvement of the applicable Panel in such Modifications in agreeing and setting the Workgroup's terms of reference and its ability to decide when the Modification is progressed to the next phase;

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- the adoption of withdrawn Modifications by Parties providing that the Authority has given permission for the withdrawal;
- the amalgamations of these Modifications subject to the prior consent of the Authority; and
- allowance for the non-fettering of the views of Workgroups and the voting rights and recommendation of the Panel.

Amalgamation

With respects to amalgamations the Ofgem representative noted that he understands why the Workgroup may want to include provisions in the legal text, but noted that the Licence is silent on these aspects.

ELEXON and a Workgroup member both made the point that because the Licence is silent, should the question of amalgamation come up in the future then there would be nothing in the Licence or the applicable BSC that would prevent or limit an amalgamation of such a Modification.

Non-fettering

With respects to the non-fettering of the views of Workgroups and the voting rights and recommendation of the Panel, the Ofgem representative noted that he understands why the Workgroup may want to include provisions in the legal text, but noted that the Licence is silent on these aspects.

The Workgroup member pointed out that this could also be the case with respects to any 'fettering'. As such, the Workgroup felt that it was necessary to add something in the BSC for the avoidance of doubt.

The Ofgem representative wanted to ensure that the legal text for non-fettering was unambiguous and did not create any legal uncertainty. The Workgroup agreed with the point and clarified the legal text with respects to where the Authority reasonably considers that a Licensee raised Modification is a European Required Modification; and with respects to a European Required Modification raised by the Authority or directed by it to the Licensee.

Definitions

The Workgroup believed that the legal text needn't contain a 'short-hand' definition (such as "European Required Modifications") within BSC Section X – Annex X-1 and CUSC Section 11, but it would be appropriate for National Grid and ELEXON to adopt one for use in their Modification Reports. In addition, the Workgroup agreed that definitions of the "Agency", the "Electricity Regulation" and the "European Commission" should be included within BSC Section X – Annex X-1.

Changes to Configurable Items

The Workgroup agreed that no other changes were required to Configurable Items.

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Views on Alternative Solutions

The P298 Workgroup has not identified or developed any Alternative approaches.

Implementation Approach

ELEXON and the Proposer recommended to the Workgroup that the Implementation Date for P298 should be 10 Working Days following the Authority's decision. A Workgroup member asked ELEXON how much P298 would cost to implement. ELEXON advised the Workgroup that as this would only require document changes, this would take approximately one WD each, so the costs would be minimal. The Workgroup agreed with the proposed implementation approach, with one Workgroup member commenting that 10WDs allows for sufficient time for the industry to implement and accounts for situations where the recipient of the notice may be on leave.

Other considerations

A Workgroup member asked if the "Agency" has or will have the power to make any legally binding decisions. The Ofgem representative and a Workgroup member agreed that it would, with the Workgroup member believing that the Authority would determine if any decision was legally binding prior to any Modification being raised or directed. The Ofgem representative agreed with this view. The Workgroup concluded that if the Agency didn't have the power, then (i) the Licence or Act wouldn't have included it and (ii) the Authority would not be able to raise (or direct) a Modification as the ACER decision would not be legally binding.

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7 Workgroup's Conclusions

Workgroup's views against the Applicable BSC Objectives

The Workgroup unanimously agreed that the P298 would overall better facilitate the Applicable BSC Objectives compared with the existing baseline and should be approved.

The following table contains the Workgroup's final views against each of the Applicable BSC Objectives for P298:

Does P298 better facilitate the Applicable BSC Objectives?		
Obj	Proposer's Views	Other Workgroup Members' Views[4]
(a)	• Yes – the proposed solution will ensure that the BSC correctly reflects the conditions under which the Authority can raise or direct the Licensee to raise Modifications relating to electricity regulation.	• Yes (unanimous), for same reasons as Proposer.
(b)	• Neutral – No impact	• Yes (unanimous), for same reasons as Proposer.
(c)	• Neutral – No impact	• Yes (unanimous), for same reasons as Proposer.
(d)	• Yes - the proposed solution will ensure that the BSC accurately reflects the provisions set out in Licence covering the circumstances and processes to be followed in relation to Authority raised Modification Proposals. Therefore, it will ensure that such Modifications proposals are progressed efficiently and effectively.	• Yes (unanimous), for same reasons as Proposer.
(e)	• Yes - the proposed solution will ensure that the BSC complies with changes resulting from the Electricity and Gas (Internal Markets) Regulations 2011 and enabling the BSC to be aligned with any future electricity regulation.	• Yes (unanimous), for same reasons as Proposer.

The three responses to the Assessment Procedure Consultation all agreed with the Workgroup's unanimous view that P298 would better facilitate Applicable BSC Objective (a), (d) and (e). You can find the full responses to the Assessment Consultations in Attachments B respectively.

Recommendation

The P298 Workgroup recommends the approval of P298.

What are the Applicable BSC Objectives?

(a) The efficient discharge by the Transmission Company of the obligations imposed upon it by the Transmission Licence

(b) The efficient, economic and co-ordinated operation of the National Electricity Transmission System

(c) Promoting effective competition in the generation and supply of electricity and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity

(d) Promoting efficiency in the implementation of the balancing and settlement arrangements

(e) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency [for the Co-operation of Energy Regulators]

[4] Shows the different views expressed by the other Workgroup members – not all members necessarily agree with all of these views.

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8 Recommendations

The P298 Workgroup invites the Panel to:

- **AGREE** that P298:
  - **DOES** better facilitate Applicable BSC Objective (a);
  - **DOES** better facilitate Applicable BSC Objective (d); and
  - **DOES** better facilitate Applicable BSC Objective (e);
- **AGREE** an initial recommendation that P298 Proposed Modification should be **approved**;
- **AGREE** an initial Implementation Date of 10 Working Days following the Authority's decision;
- **AGREE** the draft legal text;
- **AGREE** that P298 is submitted to the Report Phase; and
- **NOTE** that ELEXON will issue the P298 draft Modification Report (including the draft BSC legal text) for a 17 Working Day consultation and will present the results to the Panel at its meeting on 12 June 2014.

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Appendix 1: Workgroup Details

Workgroup's Terms of Reference

Specific areas set by the BSC Panel in the P298 Terms of Reference	Section reference
Should P298 adopt the legal text for SCR Modifications, where applicable and relevant; and does not contravene the Licence? If not, what are the Workgroup's views on the legal text required?	3 and 6
How should the BSC define amalgamations of Modifications with respects to a Modification that implements Electricity Regulations and any legally binding decisions from Europe? (Consider scenarios where two or more of these types of Modifications could be amalgamated; and where one of these with one or more other Modifications).	3 and 6
How should the BSC define the Panel's voting rights and its Modification Reports, with respects to the Authority's direction on a Modification that implements Electricity Regulations and any legally binding decisions from Europe? (This includes the setting of the terms of reference and when to progress a Modification from one phase to another e.g. from Assessment Procedure to Report Phase).	3 and 6
How should the BSC define the influence of the Authority's conclusions and directions on the relevant Workgroup's views?	3 and 6
What provisions or restrictions, if any, should there be on the adoption of a Modification that implements Electricity Regulations and any legally binding decisions from Europe by BSC Parties?	3 and 6
What other areas of the Transmission Licence are silent and need to be considered for inclusion in the BSC?	6
What changes are needed to BSC documents, systems and processes to support P298 and what are the related costs and lead times? (Section X: Annex X-1, BSCP40)	6
Standard Areas of Consideration: • Are there any Alternative Modifications? • Does P298 better facilitate the Applicable BSC Objectives than the current baseline?	3, 6 and 7

Assessment Procedure timetable

P298 Assessment Timetable	
Event	Date
Panel submits P298 to Assessment Procedure	12 Dec 13
Workgroup Meeting 1	6 Jan 14
Workgroup Meeting 2	20 Jan 14
Assessment Procedure Consultation	6 – 27 Feb 14
Workgroup Meeting 3	4 Mar 14

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P298 Assessment Timetable	
Event	Date
Panel considers Workgroup's Assessment Report	10 Apr 14
Report Phase Consultation	11 Apr – 9 May 14
Present Draft Modification Report to Panel	12 Jun 14
Issue Final Modification Report to Authority	13 Jun 14

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Workgroup membership and attendance

P298 Workgroup Attendance				
Name	Organisation	6-Jan-14	20-Jan-14	4-Mar-14
David Barber	ELEXON *(Chair)*	✓	✓	✓
Simon Fox	ELEXON *(Lead Analyst)*	✓	✓	✓
Emma Radley	P298 *(Proposer)*	☎	☎	☎
Esther Sutton	E.ON UK	✓	☎	☎
James Anderson	ScottishPower Energy Management	✓	☎	☎
Garth Graham	SSE	✓	☎	☎
Phil Russell	Redholm Informatics	✗	☎	✗
Lisa Waters	Waters Wye Associates	✗	✗	✗
Attendees				
Tina Wirth	ELEXON *(Lead Lawyer)*	✓	☎	☎
Abid Sheikh	Ofgem	☎	☎	☎
Stacey McLanaghan	National Grid	✓	✗	✗
Andrew Poppleton	National Grid	✗	☎	✗

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