



Determination of Trading Disputes by the BSC Panel

1 Introduction

In certain circumstances the [Balancing and Settlement Code \(BSC\)](#) provides that the BSC Panel may determine Trading Disputes which have been referred to it. [Section W3.5.4](#) of the BSC provides that the BSC Panel shall adopt such procedures as it sees fit for the purposes of determining such Trading Disputes.

This Procedure ("the Procedure") has been established by the BSC Panel in connection with its consideration and determination of these Trading Disputes and, if applicable, the Panel's role in any necessary consequential adjustments to Settlement.

This Procedure sets out procedural matters relating to the making of Referrals and the conduct of Panel hearings. It does not seek to repeat or replace Section W of the BSC. It also does not apply to disputes which are not Trading Disputes.

2 Definitions and Interpretation

2.1 In this procedure unless otherwise stated:

- (a) unless otherwise defined in this procedure, words and expressions used in this procedure shall have the meanings attributed to them under the BSC. The BSC definitions of certain terms are, however, included for ease of reference among the definitions contained in paragraph 2.2 of this procedure;
- (b) references to Sections are references to the BSC;
- (c) in the event of any conflict between this Procedure, and the BSC or any Code Subsidiary Document, the BSC or, as the case may be, the Code Subsidiary Document shall prevail;
- (d) references to the singular shall include references to the plural and vice versa; and
- (e) words or expressions importing the masculine shall include the feminine and neuter and, in each case, vice versa.

2.2 In this Procedure, unless the context otherwise requires, the following words and expressions will bear the following meanings:

- (a) "[Referring Party](#)" shall mean the Party or as the case may be the Trading Disputes Committee (TDC) who referred the matter to the Panel pursuant to [BSC Section W3.5.1](#) and shall include where relevant, the Party's representative(s);
- (b) "[Referral](#)" shall mean the referral of the relevant matter to the Panel in accordance with [BSC Section W3.5.1](#);

- (c) "Referral hearing" shall mean the Panel hearing (or reconvened hearing) at which the Referral is heard;
- (d) "affected Party" shall in accordance with BSC [Section W3.1.1\(d\)](#) mean any Party the Trading Disputes Committee (or, before the Trading Disputes Committee has considered the matter, BSCCo or the Disputes Secretary) considers to be particularly affected by the relevant Trading Dispute;
- (e) "Disputes Secretariat" means the person or persons appointed by BSCCo to present the Referral to the Panel;
- (f) "Trading Dispute" and "Settlement Error" are defined by reference to BSC [Section W](#) paragraphs 1.3.1 and 1.3.2:
- (g) "days" refers to Business Days unless otherwise stated.

2.3 For the purposes of a Referral:

- (a) the Chairman, in all matters relating to the referral, will be the Panel Chairman unless there is a conflict of interest arising from the Chairman so acting or the Panel Chairman is unable to assume the role of Chairman. In this case the Panel's Deputy Chairman will assume the role of Chairman in all matters relating to the Referral; and
- (b) where, for any reason, the Panel's Deputy Chairman is unable to assume the role of Chairman, the provisions of BSC Sections B4.2.3(b) and B4.2.4 shall apply with the exception that only the following Panel Members shall be eligible to assume the role of Chairman in all matters relating to the Referral:
 - i) any independent Panel Member appointed by the Panel Chairman; or
 - ii) any Panel Member appointed by Citizen's Advice or Citizen's Advice Scotland; and
- (c) all references to "the Chairman" in this document shall refer to the person appointed under paragraph 2.3 (a) or (b) above.

3 Variation

- 3.1 The Chairman may from time to time at his discretion vary or supplement this Procedure. Where the Chairman considers it is appropriate to vary or supplement this Procedure he shall, wherever practicable, consult with Panel Members in advance of doing so and give sufficient notice to BSC Parties of any change.
- 3.2 A review of this procedure must be carried out from time to time and in any event after each Panel Referral hearing by the Panel Secretary and published on the [BSC Website](#).

4 Jurisdiction

- 4.1 Subject to the provisions of the BSC paragraph W1.2.1, all Trading Disputes shall be dealt with and decided in accordance with Section W.
- 4.2 The Panel has jurisdiction under Section W of the BSC to:
 - (a) determine in accordance with Section W1.2.3 that on the application of the Trading Disputes Committee or (provided such application is made reasonably promptly after the relevant query, dispute or difference arose) a Party in relation to a

Trading Dispute, that there are disputed matters connected to that dispute which fall outside the scope of a Trading Dispute. In such a case the Panel may decide in relation to such disputed matters that Section W1.2.1 shall not apply or that Section W should be varied and if the Panel so determines, the Trading Dispute shall not be determined in accordance with Section W1.2.1 or the procedures in Section W shall be varied in relation to the Trading Dispute;

- (b) determine in accordance with Section W1.3.4 any question or disagreement as to whether or not a query, difference or dispute is a Trading Dispute. Any reference to the Panel pursuant to Section W1.3.4 must be made within the time required by Section W1.3.4(a). For the avoidance of doubt a Trading Dispute shall not include those matters referred to in Section W1.3.2(c) nor shall a Trading Dispute be raised in respect of the matters set out in Section W1.7.2;
- (c) determine Trading Disputes referred to the Panel by a Party or the Trading Disputes Committee where a Party disagrees with the determination of the Trading Disputes Committee or where the Trading Disputes Committee has failed to reach a majority decision in respect of a Trading Dispute in accordance with Section W3.5.1; and
- (d) decide in accordance with Section W3.5.3, of its own initiative or on application of any Party, that a Trading Dispute shall not be referred to the Panel in which case the Panel Secretary shall notify such decision to the Party, each relevant BSC Agent and the BSC Auditor in accordance with Section W3.5.3, and the Party may refer the dispute to arbitration in accordance with Section W3.6.1.

5 Communications

- 5.1 All communications made pursuant to this Procedure shall be in accordance with BSC Section H9.2.
- 5.2 All communications from a Referring Party (or affected Party) shall be addressed to the Panel Secretary.

6 Referral to the Panel

- 6.1 A Referring Party shall give notice to the Panel Secretary that it wishes the Panel to determine a Trading Dispute in accordance with BSC Section W3.5.1 ("the Referral Notice") no later than 30 calendar days after the notification given by the Disputes Secretary under BSC Section W3.4.A.1 (see Section W3.5.2).
- 6.2 The Referral Notice shall include the following information:
 - (a) the name, address and contact details of the Referring Party;
 - (b) if the Trading Disputes Committee raised the Referral and considered that there was an affected Party in relation to the dispute, the name, address and contact details of the affected Party;
 - (c) brief details of the Trading Dispute (including the appropriate reference number where applicable) which is the subject of the Referral; and
 - (d) confirmation of whether the Referring Party requests an oral hearing.
- 6.3 Within 3 days after receipt of the Referral Notice the Panel Secretary shall acknowledge receipt to the Referring Party and notify any affected Party that the Trading Dispute has been referred to the Panel. This notice to affected Parties shall include brief details of the

Trading Dispute (including the appropriate reference number where applicable) which is the subject of the Referral.

- 6.4 Within 10 days after receipt of the acknowledgement referred to in paragraph 6.3 the Referring Party shall send written points of claim to the Panel Secretary stating in sufficient detail the grounds for its Referral ("Points of Claim"). Such Points of Claim may where relevant attach signed written witness statements as to fact. Where the Trading Disputes Committee has raised the Referral, the approved minutes of the TDC shall constitute the Points of Claim.
- 6.5 Following receipt of the Points of Claim, and no later the day following the next scheduled Panel Meeting, the Panel Secretary shall establish the date of the Referral hearing in consultation with the BSC Panel Chairman and BSC Panel Members. Consideration shall be given to the complexity of the matters raised and whether an oral hearing has been requested. Unless otherwise determined, Referrals shall be considered at extraordinary meetings rather than at regular, scheduled meetings of the BSC Panel.
- 6.6 Within 3 days after the BSC Panel Chairman has confirmed the date of the Referral, the Panel Secretary shall notify the Referring Party and any affected Party of the date of the Referral hearing. For the avoidance of doubt, in the absence of a request for an oral hearing, the Referral hearing shall be considered by the Panel on the documents alone subject to paragraph 9.3 and the provision of any advice from BSCCo or external advisers in accordance with paragraph 7 as directed by the Chairman.
- 6.7 The Panel Secretary shall collate a bundle of papers relating to the Trading Dispute ("the Referral Papers") which shall contain:
- (a) a summary prepared by the Disputes Secretariat which will provide an overview of the Trading Dispute in issue, the basis of the TDC determination and any relevant documents ("Case Summary");
 - (b) the Referral Notice;
 - (c) the Points of Claim;
 - (d) documents provided to or considered by the Trading Disputes Committee (including any reports prepared by BSCCo);
 - (e) relevant excerpts from the minutes of the Trading Disputes Committee;
 - (f) the Trading Disputes Committee finding form;
 - (g) any response from BSCCo pursuant to a request in accordance with paragraph 7.1, excluding any privileged legal advice as provided for in paragraph (16); and
 - (h) any further documentation deemed by the Panel Secretary to be appropriate to the Panel's consideration of the Referral.
- 6.8 No later than 60 days prior to the date of the Referral hearing and where the Referring Party is not the Trading Disputes Committee, the Panel Secretary shall send the Referral Papers to the Referring Party.
- 6.9 No later than 40 days prior to the Referral hearing the Referring Party (where the Referring Party is not the Trading Disputes Committee) may submit written comments on the Referral Papers, to which the Disputes Secretariat will provide a response (if appropriate) no later than 30 days prior to the Referral hearing.

- 6.10 No later than 25 days prior to the Referral hearing, slides and any other presentational documents, shall be provided to the Panel Secretary.
- 6.11 No later than 20 days prior to the Referral hearing the Panel Secretary shall send the Referral Papers, including slides and any other presentational documents to the Panel Members together with any comments provided pursuant to paragraph 6.9. Any requests for an extension of the time periods referred to in this paragraph 6 shall be sent to the Panel Secretary together with reasons for the request. The Panel Secretary shall consider any such request and, unless instructed otherwise by the Chairman, shall decide whether to grant the request and, if necessary as a consequence, whether the date of the Referral hearing needs to be postponed.
- 6.12 The Panel Secretary may also decide as a consequence of the comments made in accordance with paragraph 6.9, or by reason of other documentation or information of which they become aware and considers should be submitted to the Panel as part of the Referral Papers, that it is appropriate for the date of the Referral hearing to be postponed.
- 6.13 Where the Panel Secretary decides that a postponement of the Referral hearing is appropriate in accordance with paragraph 6.12 the Panel Secretary may invite the Referring Party to provide further comments. Any such comments shall be made by the Referring Party within 5 days after receipt of the notification and any attached relevant information or documentation in accordance with paragraph 6.12.
- 6.14 In the event that the Panel Secretary decides pursuant to paragraphs 6.10 or 6.11 that the date of the Referral hearing shall be postponed, the Panel Secretary shall notify the Referring Party and any affected Party accordingly.

7 Role of BSCCo.

- 7.1 Without prejudice to the generality of BSC Section B paragraphs 1.2 and 3.1, BSCCo shall provide the following services to the Panel, and notify the Referring Party:
- (a) secretarial and administrative services in connection with the Referral;
 - (b) subject to a request from the Chairman, the provision of advice and expertise during the Referral hearing in connection with technical or other issues and/or processes, from appropriate BSCCo personnel with the relevant technical or other expertise;
 - (c) subject to paragraph 7.2, the provision of legal advice to the Panel; and
 - (d) subject to a request from the Chairman, procure the services of external firms of advisers (including legal advisers) and consultants and/or the attendance at meetings of such advisers.
- 7.2 Where a Referral includes an allegation that an act or omission by BSCCo has directly contributed to the alleged Settlement Error which is the subject of the Trading Dispute:
- (a) BSCCo shall continue to provide administrative and secretarial support to the Panel in connection with the Referral;
 - (b) BSCCo shall continue to procure the services of external advisers (including legal advisers) and consultants and/or the attendance at meetings of such advisers on behalf of the BSC Panel in accordance with paragraph 7.1(d);

- (c) The Panel Chairman, where he is also the Chairman of the Board of BSCCo, Panel Members who are employees or directors of BSCCo shall absent themselves from the Referral hearing;
- (d) Subject to paragraph 7.2(e), representatives of BSCCo shall absent themselves from the Referral hearing. For the avoidance of doubt, the Panel Secretary and an additional minute-taker shall remain and perform their duties throughout the duration of the Referral hearing. Subject to the performance of its duties pursuant to paragraph 9.3, the Disputes Secretariat shall absent itself from the Referral hearing;
- (e) Notwithstanding paragraph 7.2(c) and 7.2(d), in the event that the Referring Party:
 - (i) does request an oral hearing pursuant to paragraph 6.2(d) and the Chairman makes a request pursuant to paragraph 7.1(b), the BSCCo representative shall attend the Referral hearing for the purpose of providing the advice or information requested, and shall leave the Referral hearing once the Chairman is satisfied that the technical issue or process has been dealt with to the satisfaction of the Panel. The Referring Party shall be entitled to make representations to the Panel in relation to any advice or information received from BSCCo;
 - (ii) does not request an oral hearing in accordance with paragraph 6.2(d) or withdraws such a request, any written request from the Chairman pursuant to and any written response from BSCCo shall to the extent possible form part of the Referral papers. In any event the Referring Party shall be given an opportunity to provide written comments on any such response from BSCCo prior to the Referral hearing;
 - (iii) in the circumstances described in paragraph (ii) where a written request by the Chairman is not made prior to the Referral hearing, the Chairman may adjourn the Referral hearing and in his discretion require whatever arrangements in relation to the obtaining of any written advice on the relevant technical issue or process and any response from the Referring Party as he deems fit and/or he may require an adjournment to an oral hearing dealing with the Referral generally or the specific technical issue or process in relation to which the Panel Secretary will request that the Referring Party attends and addresses the relevant technical issue or process.

7.3 For the avoidance of doubt, a Referral which contains allegations that a Settlement Error was caused by the failure of a BSC Agent or BSC Systems shall not be deemed to be a circumstance to which the provisions of paragraph 7.2 apply; and

7.4 A Party who proceeds with a Referral to the Panel without raising an objection to BSCCo's involvement in this Procedure shall be deemed to have irrevocably waived its right to object in this respect.

8 Party Representation

- 8.1 In the event the Referring Party has requested an oral hearing in accordance with paragraph 6.2(d), the Referring Party shall notify the Panel Secretary no later than 10 days prior to the Referral hearing of the names of all representatives of the Referring Party that will be in attendance at the Referral hearing and the capacity in which they will be attending.
- 8.2 A Referring Party may be represented by legal representatives at the Referral hearing.
- 8.3 If the Referring Party is represented at the Referral hearing by a legal representative, an appropriately authorised officer or employee of the Referring Party shall also be present at the Referral hearing.

9 The Referral Hearing

- 9.1 If the Referring Party has in accordance with paragraph 6.2(d) requested an oral hearing of the Referral and has not withdrawn this request, the Referring Party shall be entitled to make oral representations to the Panel concerning the Referral. This may include slides where the Panel Secretary is notified in advance of the meeting.
- 9.2 At the commencement of the Referral hearing the Chairman shall (to the extent they have been raised or he considers appropriate) deal with any procedural matters including without limitation, issues relating to jurisdiction, conflict of interest and the involvement of BSCCo.
- 9.3 The Disputes Secretariat shall then by reference to the Case Summary, summarise the background to the relevant Trading Dispute and the decision of the TDC. The Disputes Secretariat shall not be expected to address questions other than from Panel Members and only in relation to matters of fact or clarification of the Case Summary.
- 9.4 Following the summary from the Disputes Secretariat and subject to paragraphs 9.1 and 9.2, the Referring Party may make oral representations to the Panel in explanation of its case. Such representations may be the subject of questions by Panel Members. In the absence of exceptional circumstances and unless the prior approval of the Chairman has been received, the Panel shall not hear oral witness evidence at the Referral hearing.
- 9.5 During the course of the Referral hearing the Panel may seek assistance on technical or other issues from BSCCo or other external advisers in accordance with paragraph 7. The Referring Party is entitled to hear such technical or other assistance and may make representations to the Panel in response but they are not entitled to cross examine the BSCCo representative or external adviser as the case may be.
- 9.6 When the Referring Party has completed its representations and the Panel is ready to commence its deliberations the Referring Party and its representatives will be asked to leave the Referral hearing. Subject to paragraph 9.7, no person who is not a Panel Member may take part in the Panel's deliberations.
- 9.7 Subject to paragraph 7.2, the Panel may take legal advice from BSCCo or as the case may be its external advisers to assist it in its deliberations.
- 9.8 The Panel shall not consider any alleged Settlement Error which did not form part of the Trading Dispute raised before the Trading Disputes Committee.
- 9.9 Notwithstanding anything else in this Procedure, the Chairman may in his discretion regulate the conduct of the Referral hearing as he deems necessary.
- 9.10 The Referral hearing shall be held in closed session in accordance with BSC Section B 4.5.2.

10 Conflict of Interest

- 10.1 Without prejudice to the generality of BSC Section B2.8, each Panel Member shall act fairly and impartially and shall not be representative of, and shall act without undue regard to, the interests of any particular person or class of persons (including his employer).
- 10.2 Each Panel Member shall disclose to the Chairman at the commencement of the Referral or, as soon as they become aware of, the existence of any interest which in the Panel Member's reasonable opinion constitutes an actual or potential conflict of interest with their participation in the Referral.
- 10.3 Without limitation such circumstances referred to in paragraph 10.2 may include:
- (a) the Referral concerns the Panel Member's employer or any company in the same corporate group as the Panel Member's employer; or
 - (b) the Referral concerns the Panel Member's future employer, when notice has been given to the existing employer; or
 - (c) the Referral concerns a company or matter in which the Panel Member has a material or significant commercial interest; or
- 10.4 Following receipt of a disclosure pursuant to paragraph 10.2, or where the Chairman otherwise considers it appropriate, the Chairman shall consider the circumstances giving rise to an actual or the potential conflict of interest for a Panel Member and either:
- (a) decide that no material conflict exists;
 - (b) should not participate in considering the Referral and that the Panel Member should decide that the actual or potential conflict of interest is such that the Panel Member absent themselves from the Referral hearing; or
 - (c) draw the conflict of interest to the attention of the Referring Party and ask the Party to state whether or not it objects to the Panel Member participating in the Referral hearing and:
 - (i) if the Party objects to the Panel Member participating in the Referral hearing the Panel Member shall absent themselves from the hearing; or
 - (ii) if the Party does not object to the Panel Member participating in the Referral hearing the Panel Member shall, remain on the Panel for the purposes of participating in the determination of the Referral. The Referring Party will be deemed to have irrevocably waived its right to object thereafter to the participation of that Panel Member in the determination of the Referral.

11 Adjournment

- 11.1 Subject to paragraph 11.2, the Chairman may adjourn the Referral hearing if:
- (a) new evidence or information is raised at or prior to the Referral hearing (and does not form part of Referral Papers sent to the Panel) and which the Chairman considers is such that the Panel requires additional technical assistance or other advice; or
 - (b) the complexity or importance of the Referral is such that the Chairman considers that it is necessary to obtain additional legal advice or technical assistance; or

- (c) the Chairman considers that there is insufficient time available for the Referral to be properly dealt with or otherwise considers it proper and appropriate to adjourn the Referral hearing; or
 - (d) pursuant to paragraphs 7.1(c) and/or 7.2(e); or
 - (e) any time periods have been extended in accordance with paragraph 6.10 and the Chairman determines that such extension(s) necessitate an adjournment.
- 11.2 The Chairman may in his discretion refuse the late admission of evidence or information submitted by the Referring Party or any affected Party where in his view the Referring Party or any affected Party knew or ought to have reasonably known of the existence of such evidence or information prior to the Referral hearing and/or which is unlikely to be of relevance to the determination of the Referral.
- 11.3 The Panel Secretary shall notify the Referring Party and any affected Party of the adjournment.
- 11.4 The Panel Secretary shall notify the Referring Party and any affected Party of the date of any adjourned hearing within 5 days of the date for such an adjourned hearing being set together with any additional directions given by the Chairman concerning the conduct of the Referral or the Referral hearing (including in relation to the provision of additional documentation which is to be submitted or representations which may be made to the Panel).

12 Withdrawal of Referral

- 12.1 At any time after the Referring Party has submitted a Referral Notice but prior to the Panel's determination the Referring Party may give written notice to the Panel Secretary of the withdrawal of its Referral.
- 12.2 The Panel Secretary will as soon as practicable notify the Panel, the TDC and any affected Parties that notice of withdrawal has been received.

13 Decision

- 13.1 Decisions of the Panel taken at the Referral hearing shall be made in accordance with BSC Section B4.4.
- 13.2 Subject to paragraph 11.1, the Panel Secretary shall notify the Referring Party and any affected Party in writing of the Panel's decision within 3 days of the Referral hearing.
- 13.3 The Panel will produce a confidential Case Summary, including the rationale supporting the Panel's decision, and will share this with the TDC within 3 months of the Referral hearing.
- 13.4 A non-confidential Case Summary will be published on the [BSC Website](#) within 3 months of the Referral hearing.

14 Remedies

- 14.1 If a matter is referred to the Panel pursuant to BSC Section W3.5.1(a) and the Panel determines that a Settlement Error has occurred the matter shall be remitted to the Trading Disputes Committee in accordance with Section W4.1.1A, and the Trading Disputes Committee shall decide what changes in data, processes or the application of the rules are appropriate to correct the Settlement Error and determine the materiality of the error in accordance with Sections W3.4.3(b)(ii) & W3.4.3(b)(iii) and any relevant determination under Section W4.1.1.

- 14.2 Where the Panel determines in relation to an affected Settlement Period that a Trading Dispute was raised by the Dispute Deadline or the Panel decides to exercise its discretion in accordance with BSC Section W3.2.4, the Panel Secretary shall notify the decision to the Disputes Secretary and it may remit the matter back to the Trading Disputes Committee for a decision under Section W 3.4.3(b) or it may determine if a Settlement Error has occurred under Section W3.4.3(b)(i), and if a Settlement Error has occurred it shall remit the matter back to the Trading Disputes Committee for those determinations outlined in paragraph 14.1.
- 14.3 If a matter is referred to the Panel because the Party disagrees with the determination of the Trading Disputes Committee pursuant to BSC Sections W3.4.3(b)(ii) or W3.4.3(b)(iii), the Panel shall determine the matter in accordance with Section W3.4.3(b)(ii) and/or W3.4.3(b)(iii) and then remit the matter back to the Trading Disputes Committee for any relevant determination under Section W4.1.1.
- 14.4 Where a matter has been referred to the Panel pursuant to BSC Section W3.5.1(b) because the Trading Disputes Committee has sought but failed to reach a majority decision in respect of a Trading Dispute, the Panel shall make a determination on such Trading Dispute in accordance with Section W3.4.3. The Panel shall remit the matter back to the Trading Disputes Committee for any relevant determination under Section W4.1.1.
- 14.5 If a matter is referred to the Panel pursuant to BSC Section W3.5.1(c), the Panel shall determine such matter pursuant to Section W4.1.1 and in accordance with Section W3.5.5A a decision of the Panel in this regard shall be final and binding on all Parties.

15 Confidentiality

- 15.1 Documentation or information which forms part of the material produced for or in connection with the Referral shall be deemed to be Confidential Information for the purposes of the BSC.
- 15.2 Notwithstanding 13.4 the contents of the Referral hearing are confidential to Panel Members attending the hearing and shall not be disclosed outside of the Referral hearing

Need more information?

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