

# Guidance

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## **Draft Guidance on appeals to Ofgem of determinations made by the Data Integration Platform (DIP) Change and Advisory Board (DCAB)**

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This draft document provides guidance on how the Authority proposes to manage appeals made to it about determinations made by the Data Integration Platform (DIP) Change and Advisory Board (DCAB). The draft guidance is aimed primarily at DIP Participants - that is, the DIP Manager, the DIP Service Provider and DIP Users - and prospective DIP Users as they are the parties most likely to be affected by DCAB determinations.

The proposed guidance outlines the procedure that appeals of DCAB's determinations will normally follow. However, such appeals will be dealt with on a case-by-case basis. The form for submitting appeals is in appendix 1 and a Word version of this form is available on the Ofgem and the DCAB Secretariat websites. Any decision by Ofgem in respect of such an appeal shall be final and binding for the purposes of the DIP Rules.

**Guidance** – Draft Guidance on appeals to Ofgem of determinations made by the Data Integration Platform (DIP) Change and Advisory Board (DCAB)

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## 1. Introduction

### Establishing the Data Integration Platform governance framework

- 1.1 In April 2021, Ofgem decided to introduce half-hourly settlement across the electricity retail market. A key feature of the new settlement arrangements is the Data Integration Platform (DIP). The DIP is an industry-wide real-time message exchange. Market participants use the DIP to share data, including half-hourly consumption data, with each other.
- 1.2 In April 2022, Ofgem directed Elexon (formally, the Balancing and Settlement Code Company, or BSCCo) to develop proposals under the Balancing and Settlement Code (BSC) for the ongoing operation, funding and governance of the DIP. After extensive consultation with industry, Ofgem decided to approve<sup>1</sup> the proposals - known collectively as the 'DIP Rules' - on 11 September 2024. The DIP Rules came into effect on 1 October 2024.

### Managing changes to the DIP Rules

- 1.3 The DIP Rules state that the DIP Manager is responsible for the operation of the DIP, including managing changes to the DIP and to its governance processes. Proposals to modify the DIP Rules are called DIP Change Requests ('DIP CRs'). There are three types of DIP CR. These are as follows:
- a change to the DIP Supplement or Code Embedded DIP Rules, for which the standard modification process under section F of the BSC shall apply;
  - a 'Tier 1' DIP CR for material changes to a DIP Subsidiary Document; and
  - a 'Tier 2' DIP CR for all other changes to a DIP Subsidiary Document.
- 1.4 Paragraph 5.3.1 of the DIP Supplement states that Tier 1 DIP CRs are DIP CRs that "have a material effect on how DIP Users interact with the DIP and/or how Messages are shared, where the criteria for determining whether a DIP CR is material shall be established in accordance with DSD004 'DIP Change and Document Management'.
- 1.5 DSD004, which sets out the process for managing Tier 1 and Tier 2 DIP CRs, states at paragraph 2.1.5 that the "criteria for a DIP CR to be considered as material, and therefore a Tier One DIP CR, shall include:

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<sup>1</sup> [Decision to approve Authority Led BSC Modification Proposal P474 | Ofgem](#). This modification established the DIP Supplement and Code Embedded DIP Rules as part of the BSC and a series of DIP Subsidiary Documents.

- an implementation cost greater than £500,000 for the DIP Manager and/or £250,000 for DIP Users;
- placing new obligations on DIP Users and/or the DIP Manager that will require a change to the DIP User's business operating model;
- an Implementation Date will be more than 24 months after the date on which the decision is made".

## **DIP Manager and DCAB determinations**

- 1.6 The DIP Supplement states that the DIP Manager shall make determinations on whether or not to:
- (a) permit DIP On-Boarding;
  - (b) carry-out DIP Off-Boarding;
  - (c) raise a DIP CR and, for each Tier 2 DIP CR, whether to approve it; and
  - (d) permit DIP Manager Data publication and/or sharing.
- 1.7 The DIP Supplement further states that the DIP Change and Advisory Board (DCAB) shall determine whether to approve or reject Tier 1 DIP CRs.
- 1.8 All DIP Manager and DCAB determinations of whether to approve or reject a DIP CR shall be made on the basis of whether the DIP CR better facilitates the DIP Applicable Objectives. Paragraph 1.3.1 of the DIP Supplement states that the DIP Applicable Objectives are to:
- provide accurate and timely support for the sharing of applicable market data;
  - further consumer interests through the appropriately governed sharing of data; and
  - facilitate competitive change and innovation through the efficient and economic delivery of reliable and adaptable services".

## **Appeals to the Authority of DCAB determinations**

- 1.9 DIP Manager determinations may be appealed to the DCAB and DCAB determinations may be appealed to Ofgem.<sup>2</sup> The DIP Subsidiary Document on 'Governance' (DSD001) sets out at paragraph 5.1.3 that "Persons wishing to

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<sup>2</sup> The DIP Rules refer to the Authority. However, in this guidance, references to the "Authority", "Ofgem", "we" and "our" are used interchangeably. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work.

appeal a DCAB determination (including a determination by the DCAB in their capacity as appeal adjudicator) may appeal to the Authority, in which case the Authority shall be the appeal adjudicator”.

- 1.10 In taking decisions in relation to appeals of DCAB determinations, Ofgem shall have regard to the DIP Applicable Objectives and, as appropriate, to its wider statutory duties. As stated in paragraph 1.8.4 of the DIP Supplement, “any decision by the Authority in respect of an appeal of a DCAB determination shall be final and binding for the purposes of the DIP Rules”.
- 1.11 The DIP Supplement also states that the Authority may determine any appeals “in such manner and using such procedures as it considers fit”. This guidance provides clarity about how Ofgem expects to handle such appeals. It applies to all appeals of DCAB determinations, including those relating to Tier 1 DIP CRs. The guidance is aimed primarily at DIP Participants - that is, the DIP Manager, the DIP Service Provider and DIP Users - and prospective DIP Users, since they are the parties most likely to be directly affected by DCAB determinations. However, the guidance is also intended to be of use to any other person that may be considering whether to appeal a DCAB determination.
- 1.12 In producing this guidance, Ofgem has had regard to its 2024 guidance on discharging appeals against self-governance modification decisions.<sup>3</sup> Nevertheless, the guidance on appealing DCAB determinations is consistent with the DIP Rules, including the DIP Supplement and the DIP Subsidiary Documents on ‘Governance’ (DSD001) and ‘DIP Change and Document Management’ (DSD004). These documents are available here [Data Integration Platform - Elexon Digital BSC](#).

## General feedback

- 1.13 Consultation is at the heart of good policy development. We are keen to receive comments about this guidance and your answers to these questions:
- Do you have any comments about the overall quality of this guidance?
  - Do you have any comments about its tone and content?
  - Was it easy to read and understand or could it have been better written?
  - Do you have any further comments?
- 1.15 Please send any general feedback to [industrycodes@ofgem.gov.uk](mailto:industrycodes@ofgem.gov.uk).

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<sup>3</sup> [Self-governance modification appeals process](#), December 2024.

## **2. Guidance on appeals of DCAB determinations**

- 2.1 This guidance applies to all appeals of DCAB determinations, including those relating to Tier 1 DIP CRs. Please use the DCAB Determination Appeal Form in appendix 1 to submit your appeal. (A Word version of the form is also available on the DCAB Secretariat website.)

### **Who is eligible to appeal a DCAB determination?**

- 2.2 Any person affected by a DCAB determination may appeal to Ofgem. In practice, we expect that appeals are most likely to be made by DIP Participants and prospective DIP Users, as they are most likely to be affected by DCAB determinations. 'DIP Participants' is a defined term in the DIP Rules referring to the DIP Manager, the DIP Service Provider and DIP Users. 'DIP User' is also a defined term in the DIP Rules referring to any organisation that has completed DIP On-boarding and which fulfils one of the DIP Roles listed in DSD002 'DIP Connection and Operation'.

### **On what grounds can such an appeal be made?**

- 2.3 A party may appeal against a DCAB determination if:
- the appellant is, or is likely to be, unfairly prejudiced by the DCAB determination, for example relating to the implementation or non-implementation of a DIP CR; or if
  - the appellant reasonably believes that a DIP CR that is to be implemented may not better facilitate achievement of at least one of the DIP Applicable Objectives; or if
  - the appellant reasonably believes that a DIP CR that is not to be implemented may better facilitate achievement of at least one of the DIP Applicable Objectives;
- and if the appeal is not raised for reasons which are trivial or vexatious, and the appeal has a reasonable prospect of success.

### **When and how can an eligible party make an appeal?**

- 2.4 Paragraph 1.8.3 of the DIP Supplement states that appeals against any decision of the DCAB, "which cannot be resolved by discussion", shall be to Ofgem. In

the event that discussions do not resolve the matter, “all appeals must be submitted to the DCAB Secretary within 30 calendar days of a determination being published, regardless of whether the appeal is to the DCAB against a DIP Manager decision, or to the Authority in respect of a DCAB decision”.

- 2.5 Completed appeal forms should be submitted to the DCAB Secretary at [DIPManager@elexon.co.uk](mailto:DIPManager@elexon.co.uk).
- 2.6 The DCAB Secretary shall check that all the necessary information has been provided. The DCAB Secretary will then forward the written rationale for DCAB’s determination (for example as set out in the minutes of the DCAB meeting in which the determination was made), the completed DCAB Determination Appeal Form and any other relevant documentation to Ofgem’s Industry Codes and Licensing Team at [industrycodes@ofgem.gov.uk](mailto:industrycodes@ofgem.gov.uk). The DCAB Secretary shall be clear in the title of the email that the subject is a DCAB determination appeal.

## What information must be submitted as part of an appeal?

- 2.7 The appellant should complete the ‘DCAB Determination Appeal Form’ providing as much detail as possible and submitting all relevant documentary evidence with the form in support of its case.
- 2.8 Paragraph 5.2.1 of DSD001 sets out that the documentation in support of any appeal of a DCAB determination must include, at minimum:
- the reason for the appeal, setting out why the appellant thinks the wrong determination was made (that is, why the determination unfairly prejudices the interests of the appellant and/or why the determination is incorrect with respect to facilitating achievement of at least one of the DIP Applicable Objectives);
  - details of what the appellant wants to happen in order to address what they believe to have been prejudicial and/or incorrect);
  - proposed timescales post-decision assuming that the appeal is upheld, specifying when the appellant thinks any actions should occur and/or implementation should occur; and
  - any other relevant supporting evidence that the appellant thinks will support its claim that the determination was incorrect.
- 2.9 We have incorporated these requirements within the Appeal Form in appendix 1. In addition, the appellant **must** provide the following details on the form:



- the name and role of the appellant, including the contact details of a designated representative of the appellant for the purpose of the appeal. An alternate representative's details are also required;
- the name and reference number of the DCAB determination against which the appellant is appealing, the date on which that determination was published, and a copy of that determination;
- the ground or grounds on which the appeal is being made, by reference to the eligible grounds for appeal;
- the reasons for the appeal in as much detail as possible, along with any supporting evidence. This is important because it will inform Ofgem's decision as to whether the appeal should proceed;
- an explanation of the impact on the appellant of the DCAB determination and how a successful appeal would resolve the matter.

2.10 In signing and dating the DCAB Determination Appeal Form, the appellant verifies that it believes that the facts stated in the form are true and that the form was submitted within the 30 calendar day deadline stipulated in DSD001.

### **What is the process after an appeal is made?**

- 2.11 Ofgem's Industry Codes and Licensing Team will by email acknowledge receipt of the appeal paperwork specified at 2.6 above within 2 working days of receiving it.
- 2.12 Ofgem will then review the paperwork and consider both the validity of the appeal and whether Ofgem requires any further information in order to make a decision on it. We will aim to confirm whether we consider the appeal to be valid, and whether we have all the information we need to consider the matter, within 10 working days of receiving the appeal paperwork from the DCAB Secretary. If we consider the appeal to be valid, we will publicise that fact and set out next steps.
- 2.13 If we need further information (whether from the appellant, the DCAB Secretary, the DIP Manager or from any other party), we will request it via email. We expect that parties will normally be given up to 5 working days to submit any additional information we request. However, the specific deadline that we set in any particular appeal will take into account the urgency of the appeal and the information initially submitted on the DCAB Determination Appeal Form. Where appropriate, we will set out specific questions.

- 2.14 If we decide that an appeal is not valid, for example because we consider that the appeal does not meet any of the grounds for appeal, we will explain why. If we decide that an appeal is vexatious, frivolous or has no reasonable prospect of success, we shall give notice of such finding and dismiss the appeal.
- 2.15 If more than one appeal is made against the same DCAB determination, these appeals will initially be assessed on their own merits. If allowed to proceed, these appeals may be dealt with together as one matter.
- 2.16 When Ofgem makes its decision, that decision will be published as an open letter. The open letter will state the reasons why Ofgem has reached its decision and, where appropriate, will direct further action to be taken by a specified date.

### **Will Ofgem publish the DCAB Determination Appeal Form and any other information submitted?**

- 2.17 All documents submitted in relation to an appeal will be published on the Ofgem website unless clearly marked as confidential. All documents submitted should be relevant to the appeal and, where appropriate, respond to the specific questions raised by Ofgem.
- 2.18 Any confidential material submitted in relation to an appeal must be clearly marked as such and a non-confidential summary of that information must be provided for publication.

### **When would the Authority be able to make a decision?**

- 2.19 We will aim to issue our decision in a timely manner. The timetable may vary depending upon the circumstances of the appeal and on whether Ofgem considers that further information is required in order to make a decision.
- 2.20 We will publish the Expected Decision Date (EDD) for the appeal as soon as possible after satisfying ourselves that we have all the information necessary to consider it. On that basis, it may be possible to indicate the EDD when confirming publicly that an appeal is valid.
- 2.21 Ofgem will liaise with the DCAB Secretary as necessary in relation to the progression timeline and EDD. The DCAB Secretary will, in line with DSD001, publish the EDD on its website.

## **What are the potential outcomes of a DCAB determination appeal?**

2.22 The following outcomes may result from an Ofgem decision on a valid appeal:

### **1. Ofgem rejects the appeal and upholds the DCAB determination**

2.23 In that event, the DCAB's determination stands and, as necessary, shall be implemented on a date that will be specified in Ofgem's decision. For example, if the DCAB determination was that the proposed DIP CR should be approved, the DIP CR will proceed to implementation on the date so specified by Ofgem. On the other hand, if the DCAB determination was that the proposed DIP CR should be rejected, the proposed DIP CR will lapse immediately.

### **2. Ofgem upholds the appeal and quashes the DCAB determination**

2.24 In that event, the Authority may, if the DCAB determination was that the proposed DIP CR should be rejected

- a) determine that the DIP CR should be approved and be implemented on a date that will be specified in Ofgem's decision; or
- b) send back a DIP CR for reconsideration and redetermination<sup>4</sup>.

2.25 Alternatively, if the DCAB determination was that the proposed DIP CR should be approved, determine that the proposed DIP CR should be rejected and thereby immediately lapse.

## **Can a party appeal a decision by Ofgem?**

2.26 As noted above, paragraph 1.8.4 of the DIP Supplement states that "any decision by the Authority in respect of an appeal of a DCAB determination shall be final and binding for the purposes of the DIP Rules". On that basis, no further appeal on the merits of Ofgem's decisions shall be possible. Parties may, however, seek to challenge our appeal decisions on procedural grounds via judicial review.

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<sup>4</sup> This is consistent with paragraph 5.2.7 of DSD001 which states that Ofgem may consult, or require the DIP Manager to consult, or take other steps that it may take for the assessment and progression of a DIP CR in the normal way in order to implement a DIP CR that was originally rejected.

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## Appendices

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## Appendix 1 – DCAB Determination Appeal Form

A1.1 If you wish to appeal a determination by the DCAB, including in relation to a Tier 1 DIP CR, please complete and submit the following form to the DCAB Secretary. You must submit the DCAB Determination Appeal Form within 30 calendar days of the date on which the relevant DCAB determination was published.

A1.2 On receipt of a DCAB Determination Appeal Form, the DCAB Secretary shall ensure that all the information required has been submitted. Once the DCAB Secretary is satisfied in this respect, it shall:

- i) publicise the fact that a DCAB determination has been appealed and
- ii) forward the DCAB Determination Appeal Form, and the DCAB's written rationale for the determination, to Ofgem.

A1.3 Ofgem will then discharge its responsibilities as the Appeal Adjudicator.

DCAB Determination Appeal Form
<b>Name and reference of the DCAB determination which you are appealing (please provide a link to the determination with this form):</b>  [Insert name, number and link]
<b>Date on which the DCAB determination was published:</b>  [Insert date]
<b>On which ground or grounds are you appealing the DCAB's determination? This section, further to paragraph 5.2.1 of DIP Subsidiary Document DSD001, should set out the reason for the appeal and why you believe the wrong determination was made. <i>Explain why the determination unfairly prejudices your interests and/or why it is incorrect with respect to facilitating achievement of at least one of the DIP Applicable Objectives</i></b>

<p><b>Further to paragraph 5.2.1 of DSD001, please set out <i>what you want to happen</i> to address what you believe was prejudicial and/or incorrect.</b></p>
<p><b>Further to paragraph 5.2.1 of DSD001, please indicate here any <i>relevant timescales</i> (assuming that the appeal is upheld) for implementation and for any other actions to address what was prejudicial and/or incorrect.</b></p>
<p><b>Further to paragraph 5.2.1 of DSD001, please provide here <i>any other relevant supporting evidence</i> you believe will support your claim that the DCAB determination was prejudicial and/or incorrect.</b></p>
<p><b>Finally, please indicate if you consider there to be <i>any other person or persons affected</i> by this determination.</b></p>

<p><b>Details of Appellant:</b></p> <p>Organisation's Name:</p>	
<p><b>Capacity in which the Appeal is raised:</b></p> <p>(eg, DIP Manager, DIP Service Provider, DIP User – if the latter, state which type)</p>	
<p><b>Details of the Appellant's Representative:</b></p> <p>Name:</p> <p>Organisation Address:</p> <p>Telephone Number:</p> <p>Email Address:</p>	

<b>Details of the Representative's Alternate:</b>  Name:  Organisation:  Telephone Number:  Email Address:	
<b>Are you supplying attachments to this form? Yes/No</b> *delete as appropriate	<b>If 'Yes'</b> Please provide the title and number of pages of each attachment and whether it is confidential or not:
<b>Statement of truth</b>  The appellant believes that the facts stated in this form are true.	Name: .....  Position: .....  Signature: .....
<b>Date:</b>	

**Notes:**

You should attach *relevant* detailed documentary evidence only for appeal purposes. If you wish to submit evidence which is confidential, please mark this accordingly and provide a non-confidential summary with it.

Confidentiality is subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. If the information you give us contains personal data under the Data Protection Act 1998, the Gas and Electricity Markets Authority will be the data controller. We use the information in performing our statutory functions and in accordance with section 105 of the Utilities Act 2000.

**Completed appeal forms should be submitted to the DCAB Secretary at [DIPManager@elexon.co.uk](mailto:DIPManager@elexon.co.uk).**