



Governance Sub-Group (2021)

Terms of Reference v1.1

The Panel received an independent governance review from Satori Board Review in January 2021. The Panel intends to implement recommendations in this report which will require changes to the Market Arrangements Code (MAC) and Wholesaler Retail Code (WRC). The Governance Sub-Group (2021) will be established to advise the Panel on these changes.

The Governance Sub-group is a Sub-group of the Panel in accordance with Sections 6.3.4 and 7.2.5 of the Market Arrangements Code. Unless otherwise stated, words and expressions that are used in these Terms of Reference (ToR) shall have the meanings and application attributed to them under the MAC and WRC. Changes to these ToR can be proposed to the Panel which the Panel will vote on, in line with Panel operating procedures.

1 Purpose

The Governance Sub-group will develop and advise on Change Proposals related to governance on behalf of the Panel. The Panel will determine the scope of each Change Proposal assigned to the Sub-group and it may, in consultation with the Governance Sub-group and the Governance Steering Group, set timescales for completion, issues for consideration and specific stakeholders to be consulted. The Panel may also refer to the Sub-group for advice on other governance matters.

2 Change Proposals

The Panel will determine which Change Proposals are assigned to the Sub-Group. It is envisaged that these will include:

- Reforming Panel membership and voting arrangements to increase engagement, enable effective change and improve representation.
- Reviewing Panel and Committee structures, responsibilities, composition and voting arrangements, to facilitate the agreed Panel purpose.
- Consequential changes to nomination and appointment processes to reflect changes in Panel and Committee composition and skills required.
- Updating the principles underlying the Panel's decision making, to reflect the priorities of the market and its stakeholders.

3 Deliverables

The Sub-group will work with MOSL to deliver a Draft Recommendation Report for each Change Proposal assigned to it. The Sub-group will ensure:

- Draft Recommendation Reports are proposed to the Panel within the timescales set by the Panel.
- Proposed and alternative solutions are robust.
- The Sub-group is confident that the expected benefits of Change Proposals will be realised.



- Stakeholders are consulted and their comments taken into account and this is appropriately evidenced.
- The impact of the solution(s) on customers and the industry are identified and taken into account.

Draft Recommendation Reports should include:

- A proposed solution to deliver the intent of the Change Proposal including assessment of how it would further the MAC Principles and WRC Principles and Objectives.
- Any alternative solutions considered by the Sub-group worthy of further consideration to deliver the intent of the Change Proposal including assessment of how each solution would further the MAC Principles and WRC Principles and Objectives¹.
- The Sub-group's recommendation whether to implement the proposed or an alternative solution and rationale for this recommendation.
- Any other solutions considered but rejected by the Sub-group and rationale for their rejection.
- A full description of the proposed and alternative solution(s).
- Legal text changes to the MAC and WRC to deliver the proposed and alternative solution(s).
- Evidence of consultation with stakeholders.
- The Sub-group's views, and if different the proposer's views, on consultation comments.
- Assessment of the cost, impact and benefits to customers and the industry of the proposed and alternative solution(s) with evidence and quantification where possible.

4 Success Criteria

The success of the Governance Sub-group will be measured by:

- Delivery of Draft Recommendation Reports to the Panel in agreed timescales
- Assessment of issues identified by the Panel when Change Proposals are assigned to the Sub-group
- Inclusion of rationale and evidence to enable the Panel to make a recommendation and Ofwat to make a decision.

5 Duties of Sub-Group Members

Sub-group members should commit to achieving the deliverables and success criteria in these ToR. They will be expected to make themselves available for and prepare for meetings. Sub-group members should use their expert knowledge and skills to engage with other Sub-group members and provide constructive challenge to achieve the deliverables and success criteria.

Consistent with Section 5.7 of the MAC a person appointed as a Sub-Group Member:

- a) shall act impartially, in the best interests of the market as a whole and shall be guided by the Principles and Objectives, as described in Part 1 of the WRC
- b) shall not be representative of and shall act without regard to the particular interests of the company, body or person by whom they were nominated, elected or appointed.

¹ The MAC Principles are defined in [Market Arrangements Code](#) Schedule 1.

The WRC Principles and Objectives are defined in [Wholesale Retail Code Schedule 1 Part 1](#)



Members must have integrity and must not only be, but also be seen to be, impartial and free from proximity to vested interests. Before being appointed as a Sub-group member, each member shall:

- a) confirm to the Panel Secretary in writing that they agree to be a Sub-group Member and fulfil these ToR.
- b) provide the Panel Secretary with a letter from their employer agreeing that they may act as a Sub-Group Member and that the requirements of these ToR and Section 5.7 of the MAC shall prevail over their duties as an employee when acting as a Sub-group Member.

Sub-group Members shall inform the Sub-group Chair if they do not wish to continue as a Sub-group member.

6 Membership

6.1 Sub-group Chair

The Sub-group Chair shall be appointed by the Panel. They will chair meetings, facilitate discussions and encourage consensus but shall have no vote. In the event of the Chair not being available for any meeting, the Sub-group members present will elect a Chair, who shall have no vote and not be counted in the quorum, to conduct that meeting.

6.2 Sub-group Secretary

The Market Operator shall provide a Sub-group Secretary. They will be responsible for recording agreed decisions, conclusions and actions, agreeing and circulating agendas, scheduling meetings and producing papers and reports, on behalf of the Sub-group. Other Market Operator personnel may attend meetings to support the Sub-group Secretary, provide analysis and advise on the market Codes and Change Proposal matters.

6.3 Voting Members

The Sub-group shall comprise the following voting members:

- Six industry experts appointed by the Panel
- A Consumer Representative nominated by CC Water.



The Panel shall appoint the industry experts from nominations provided by Trading Parties and Panel members whilst ensuring an appropriate cross-section of the following knowledge and experience:

- The Panel and its Committees
- Operation of the Non-household water market
- Performance frameworks in the Non-household water market
- Services provided to customers by the Non-household water market
- Governance in utility markets.

6.4 Non-Voting Members

The following non-voting members are entitled to attend and speak but not vote at any Sub-Group meeting:

- Sub-group Chair
- Sub-group Secretary including supporting Market Operator personnel
- Proposers, or their nominated representative, of Change Proposals assigned to the Sub-group for consideration until such time as their proposal is recommended to Ofwat by the Panel
- Independent experts, invited by the Sub-group Secretary with the prior agreement of the Sub-group Chair to advise, assist or facilitate the Sub-group
- Ofwat representative.

6.5 Alternates

Voting members should be actively engaged and are therefore encouraged to attend all Sub-group meetings. However, if a voting member cannot attend a meeting, then they may nominate an Alternate. The Alternate can be any individual notified to the Sub-group Chair and the Sub-group Secretary before the meeting. Alternates should possess sufficient knowledge and expertise to act as a voting member. Subject to the approval of the Sub-group Chair, the Alternate may attend the meeting and act as if a voting member. If a voting member and their Alternate both attend a meeting, the Alternate will be treated as an Observer, will have no voting rights and be allowed to speak only with the agreement of the Sub-group Chair.

A person appointed as an Alternate is bound by the provisions of the code and this ToR including Section 5 and the requirement to provide confirmation and employer letters.

6.6 Observers

With the prior consent of the Sub-group Chair, other individuals may attend as Observers. An individual wishing to observe a meeting should notify the Sub-group Secretary who will seek the consent of the Sub-group Chair. Observers shall not vote and may only speak at the invitation of the Sub-group Chair. Observers are requested to advise the Sub-group Chair in advance of the meeting of the matters they wish to speak about.



7 Quorum and Decision Making

No business shall occur at the meeting unless it is quorate. A meeting shall be quorate if at least five voting members or their Alternates are either present in person or participating by teleconference or videoconference.

A quorate meeting may decide a matter by vote. Such matters will be decided by a simple majority of votes cast by voting members or their Alternates. If a voting member is also the Proposer of a change proposal assigned to the Sub-group, they shall abstain from voting on their proposed Change Proposal.

An abstention shall not count as a cast vote but shall count towards the quorum unless they are the Proposer of the change being voted on. Votes and abstentions will not be attributable to individual Sub-group members.

The Sub-group shall decide by vote whether the proposed solution and each alternative solution furthers the Objectives and Principles¹ and which solution to recommend for implementation. These votes will be recorded in the Draft Recommendation Report including rationales for, against and for abstaining.

8 Solution Ownership

The Proposer of each Change Proposal shall own the proposed solution and their consent is required for any change in the proposed solution. The Proposer will be invited to provide views on how their solution furthers the Principles and Objectives¹ and respond to consultation comments.

The Sub-group may propose alternative solutions if they agree by simple majority that they further the Principles and Objectives and are better than the proposed solution. Alternative solutions will be owned by the Sub-group who will provide views on how they further the Principles and Objectives.

9 Consultation

Input from Trading Parties and other relevant stakeholders identified by the Panel, the Governance Steering Group or the Governance Sub-group will be sought on each Change Proposal under the Sub-group's consideration. Stakeholders will be invited to input on design, cost, benefit and impact of Change Proposals and issues with their implementation.

Consultation comments will be made public or provided confidentially to the Sub-group and Panel unless respondents specifically request they are not provided to the Sub-group and Panel or to do so would breach data privacy or competition legislation. All responses will be provided to Ofwat.

The Proposer and Sub-group will be invited to respond to non-confidential consultation comments.

10 Reporting

The Sub-group will provide monthly updates on progress and risks in meeting agreed timescales to the Panel and the Governance Steering Group.

The work of the Governance Sub-group is expected to be of significant interest to stakeholders. Therefore the Sub-group will agree and publish headline minutes of its meetings describing matters discussed,



decisions and next steps within 10 business days on the Market Operator's website. The Market Operator will also publish Change Proposals, consultation materials and non-confidential reports on its website.

11 Frequency of Meetings

Meeting dates and times will be determined by the Sub-group Chair, in consultation with the Sub-group Secretary and Sub-group members, with regard to the timescales for each Change Proposal set by the Panel.

Unless otherwise agreed by the Sub-group, the Sub-group Secretary shall give notice of meetings via email and circulate agendas and papers five Working Days prior to the proposed meeting. Custom and practice is that there will be no late papers issued after this but the Sub-group may agree to consider late papers.

12 Recording and Broadcasting

Audio and/or video recordings may be made of Sub-group meetings. The Panel Recording and Broadcasting Policy shall apply to these recordings.

13 Confidentiality

Sub-group Members shall ensure that confidential information provided to the Sub-group is kept secure and not shared or discussed outside of Sub-group members, the Panel and MOSL.