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FAO The Panel and the Panel's Governance Sub-group
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MOSL Board response to the Market Governance Review consultations

The MOSL Board welcomes the opportunity to respond to the consultations associated with the Market Governance Review[1].

Overall, the Board believes the proposed solutions set out in the consultation build on principles of good governance and provide opportunities to prioritise action to address strategic challenges, while also creating efficiencies in considering code change and creating the conditions for market self-governance. They have the potential to reduce costs, compared to the current governance structures, and they support the involvement of both industry and customer voices in decision-making. In addition, they emphasise the need for transparency and engagement with all stakeholders.

I am pleased to set out the MOSL Board's response to key points raised in the consultations below. In particular, the Board is of the view that:

- rather than being industry led, governance should be market led by including wider stakeholder voices and needs – in addition to the views of wholesalers and retailers;
- a Panel (and its various committees) has a role in supporting the market in delivering against defined outcomes, by enabling market self-governance;
- all stakeholders' interests need to be represented fairly and Panel composition needs to take this into account – the solutions for both CPM021 and CPM039 that are put forward in the consultation provide a balance between industry, non-industry and customer voices in decision-making;
- any Panel must be outward facing and must have a role to seek engagement, particularly with those less directly represented groups;
- any future arrangement for a Panel (and its associated committees) must not place undue burden on the industry and should be efficient and effective in making timely decisions and delivering higher value / lower cost governance;

[1] That is, those solutions being consulted on under change proposals CPM021, CPM039, CPM040 and CPW121.

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- there must be clarity on the collective task so that MOSL, any Panel and its committees are all working towards the same outcomes and the Principles that have been proposed by Ofwat (CPM040 and CPM121) support this, providing for the appropriate amplification of good end customer outcomes;
- there is an important distinction between a policy and strategy for the market (as directed by Defra/Ofwat) and a strategic approach to maintaining, operating and amending the codes (as overseen by a Panel);
- the direction of travel set out in the consultations for change proposals CPM021 and CPM039 appears appropriate, with Ofwat and Defra setting the policy, strategic direction and desired market outcomes and a Panel taking a strategic approach by engaging with stakeholders, setting priorities and delegating work to address areas for improvement in a way that creates space for high-level discussion on market issues and priorities separately from the day-to-day assessment of changes;
- further efficiency could be provided where changes which may not require much market input could, unless objections are raised, proceed and be managed by MOSL, including housekeeping changes to the codes;
- where any future Panel takes a strategic approach, there are implications for MOSL with respect to setting a business plan and budget in relation to its services and responsibilities for improving the market. MOSL has already developed mechanisms for engaging with the current Panel regarding priorities and focus areas when developing the business plan and would expect these to continue or be built upon; and
- while the solutions proposed under CPM021 and CPM039 have many similarities, on balance, it may be that a selection process, based on clearly prescribed expectations, would provide the best opportunity to ensure that any Panel or committee has the appropriate skills, knowledge and competencies among its membership (as proposed in CPM039).

These core points are further expanded on in the appendix to this letter.

Yours sincerely

Anne Heal
Chair, MOSL

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MOSL Board response to the Market Governance Review consultations - Appendix

The need for a Panel

The MOSL Board believes good governance is an essential component of a well-functioning market.

Good governance provides for active participation of stakeholders and can facilitate earlier resolution of market pain-points. It supports improvement and enables the market to develop for customers' benefit.

The Board supports the principle of self-governance. The Board agrees that, rather than being industry led, governance should be market led by including wider stakeholder voices and needs – in addition to those of wholesalers and retailers.

Code Panels and committees provide a mechanism for supporting self-governance. The Board supports the need for a Panel as a part of market-led self-governance where stakeholders themselves play a role in ensuring that they and their peers are able to shape and evolve the market and hold market participants to account for performance and compliance.

However, the Board believes that any future arrangement for a Panel (and its associated committees) must not place undue burden on the industry and should be efficient and effective in making timely decisions and delivering higher value / lower cost governance.

The detailed definition of roles and responsibilities will be important to ensure clarity between the accountabilities and responsibilities of any Panel, its committees and the Market Operator. There must be clarity on the collective task – i.e. a commonality of overall goal for MOSL, any Panel and its committees. It may be that, going forward, a different terminology should be used to refer to the group that provides this self-governance mechanism so as to mark a clear break between this new group and the current Panel.

The Board believes MOSL is well-placed to support the co-ordination of work and activity through our engagement with a Panel and Trading Parties and various industry groups and forums thus avoiding duplication in any programme.

The overarching purpose of a Panel

The Board agrees that a Panel and its various committees have a role in supporting the market in delivering against defined outcomes by enabling market self-governance.

It is part of Ofwat's role to provide a check and balance on industry self-interest. If Ofwat wishes to delegate more of its regulatory role to the market and move closer to market self-regulation, it needs to be clear on this.

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In the Board's view, rather than simply providing a check and balance on industry self-interest, a Panel should provide for a balanced consideration of all interests. For example, there is a need to protect retailers, who may not be able to afford time and resource to attend meetings and whose interests risk being overridden by those who are able to do so. All stakeholders' interests need to be represented fairly and Panel composition needs to take this into account. Any Panel must have a role to seek engagement, particularly with those less directly represented groups. MOSL has a role to play in supporting a Panel in this regard.

With respect to regulatory intervention in relation to matters directly associated with the market codes, the Board considers that the role of a Panel in supporting and enabling market self-governance should be to aim to reach a position where the regulator only intervenes where there is an egregious issue.

The strategic nature of a Panel

The Board remains mindful that the water market is given effect through an ecosystem of legislation, licenses and other documents. The market codes are a significant part of this framework. The market codes effectively form a standardised contract between Wholesalers and Retailers. Consequently, what they require, and how they evolve, can influence the service that customers receive.

While a Panel's remit and powers may be focused on the market codes, it is important to consider the extent to which a market code Panel might support wider conversations about market issues and how and where these issues might be resolved. Some issues may fall squarely within the scope of the market codes. Others may only be partly resolved through market codes or need resolution elsewhere. An ongoing consideration is where (and how) such matters might be surfaced and discussed and appropriate action flagged, coordinated or determined.

A market code Panel that has regard to these wider aspects when considering matters and making decisions or recommendations in relation to the non-household market codes would and could support the alignment of code-decisions with wider market priorities.

As such, MOSL is looking for a Panel that can support these strategic discussions without hindering the efficient consideration of day to day change. Many changes have comprised bottom-up, tactical change, that is reactive to Trading Parties' issues. However, a strategic approach could build on the recent thinking that has led to the Panel establishing vehicles to consider key strategic issues such as the Metering Committee (which was formed to support the strategic metering review).

The Board considers there to be an important distinction between a policy and strategy for the market (as directed by Defra/Ofwat) and a strategic approach to maintaining, operating and amending the codes (as overseen by a Panel).

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The direction of travel set out in the consultations for change proposals CPM021 and CPM039 appears appropriate, with Ofwat and Defra setting the policy, strategic direction and desired market outcomes. To support this, the overarching principles must be clearly articulated so that any Panel could proceed with its work and make decisions accordingly and consistent with these principles and outcomes.

The Board strongly believes that MOSL and a Panel should work together as critical friends – with each providing the other with challenge and support in relation to the delivery of strategic market outcomes set by Ofwat.

The Board considers that, where a Panel takes a strategic approach, there are implications for MOSL with respect to setting a business plan and managing a budget in relation to its services and responsibilities for improving the market. This is because a Panel is not, in itself, a corporate entity. Its work is funded through Market Operator charges and so the priorities, focus areas and decisions of a Panel will drive costs for the Market Operator (and therefore trading parties – and ultimately business customers) in supporting a Panel in its work. It is therefore important to have in place a transparent mechanism for stakeholders to discuss and consider the resource and cost implications of any such Panel's priorities and decisions and, in addition, to take account of these as part of the Market Operator's business planning engagement and approval process.

MOSL has already developed mechanisms for engaging with the current Panel regarding priorities and focus areas when developing the business plan and would expect these to continue or be built upon. The Board agrees it is right that such a Panel must engage widely with Trading Parties and other stakeholders (potentially via the current Strategic User Forum or some other, re-defined group which may replace that forum) and MOSL would need to support such activity in addition to its own engagement on the MOSL business plan.

In addition to the considerations regarding the Strategic User Forum noted above, if a strategic panel was to be formed, then other high-level groups or industry-led groups may constitute unnecessary duplication, and this would need careful consideration. A review of these groups may be seen as necessary by Trading Parties to achieve the principle of reducing cost and complexity and improve the speed of decision-making.

Responsibilities of a Panel

The current Panel has responsibilities for overseeing changes to the code, monitoring and taking action in relation to the performance of Trading Parties and in resolving disagreements between parties. Overall, the Board considers that this balance of responsibilities is appropriate to deliver on the overarching role to support the market in delivering against defined outcomes and enabling market self-governance.

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Panel Stakeholders

The MOSL Board notes that a code Panel's direct customers include the signatories to those codes (i.e. Trading Parties and MOSL). In particular, it should not be forgotten that retailers are a form of customer within the market, being served by wholesalers.

In addition, the Board feels it is important for a Panel to recognise wider stakeholders. In particular: end-customers who should ultimately be the beneficiaries of the market and the regulator and government whose strategic policy and objectives are delivered (at least in part) through the provisions of the market codes. The Board feels that the Principles as proposed by Ofwat (CPM040 and CPM121) provide for the amplification of good end customer outcomes.

Potential Models

The Board notes that, while the terminology differs, the core structures proposed under CPM021 and CPM039 both provide for a form of strategic Panel with a separate change committee.

The Board believes this approach creates space to enable strategic discussion on market issues and priorities separately from the day-to-day assessment of changes. This has been a challenge for the Panel in the past which the models look to address.

Both changes appear to pre-suppose a greater role for the Market Operator. The Board considers that MOSL's role under both proposals moves closer to that of a pro-active 'code manager' in supporting change and prioritising activity within the change portfolio in partnership with the change committee (having reference to priorities set by the strategic Panel). In addition, MOSL would take on responsibility for efficient development and assessment of certain changes that do not need to be scutinised by committee – with MOSL recommending these directly to Ofwat.

The Board believes this approach makes sense and would provide for efficiency where changes which may not require much market input could, unless objections are raised, proceed and be managed by MOSL.

Overall, the Board believes the proposals build on principles of good governance and provide opportunities to prioritise action to address strategic challenges, while also creating efficiencies in considering code change. They have the potential to reduce costs, compared to the current governance structures, and they welcome both industry and customer voices in decision-making. In addition, they emphasise the need for transparency and engagement with all stakeholders.

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Composition of a Panel and appointment of Panel and committee members

The two change proposals both seek to re-balance Panel composition such that it is closer to an even split between industry and non-industry voices[2]. This supports a direction of travel consistent with ensuring any such Panel can balance the needs of all stakeholders.

The Board understands that the overall costs of providing the proposed revised governance structure would be the same or slightly less than the current approach (taking account of both direct and indirect costs). The Board notes this arises largely as a result of a reduction in the size of these groups compared to the existing Panel and is based on the assumption that a strategic Panel would meet no more than four times a year.

The most material point of difference is in the selection of members. Both proposals rely on a nomination mechanism to identify candidate members so it will be important for the expectations of these Panel and committee member roles to be made clear (including the expected skills, knowledge and competencies). It might be expected that these would be different across a strategic Panel and a change committee.

Both mechanisms should promote participation and be open and transparent. The starting point of election or selection from transparent nominations is therefore important. This forms a strong basis for parties to identify candidates with the appropriate skills, knowledge and competencies, whether this be via election or a selection process.

However, on balance, it may be that a selection process, based on clearly prescribed expectations, would provide the best opportunity to ensure that any Panel or committee has the appropriate skills, knowledge and competencies among its membership as proposed in CPM039.

[2] The current Panel comprises 14 voting members split 9:5 in favour of industry members (nine Trading Party members, three independent members, one customer representative member and an independent chair).