

Disputes Committee Procedure

Disputes Process – Stage by Stage Outline

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Document Change control

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1. Introduction

1.1. Background

The Disputes Committee approved this document as a Disputes Committee Procedure (under the Market Arrangements Code (MAC) Schedule 9, 1.10) on 21 April 2021.

1.2. Purpose of this document

The purpose of this document is to guide parties through the process of a Dispute by setting the expectations for parties engaged in a Dispute for each stage of that process. The intention is not to summarise key sections of the [MAC](#), the Wholesale-Retail Codes ([WRCs](#)) Business Terms or the Disputes Committee's Terms of Reference ([TORs](#)). However, the key sections of these documents are identified in the footnotes below. In addition, a process map detailing the process is available ([Vertical Disputes Process](#)).

2. Stages

2.1. Stage 1 [Engagement and activity pre-Dispute](#)

It is important to note the differences between inter-party disagreements, challenges, and discussions and a Dispute (specifically spelt with a capital "D"). Trading Parties may invest significant amounts of time and resource in resolving a disagreement before it becomes a formal Dispute. Although a Dispute can be raised to the Market Operator (MO) (acting as disputes secretary), in other words, MOSL, without mutual agreement, there must be evidence of bilateral attempts to work towards a resolution of the subject on which the parties disagree before it is formally established as a Dispute¹.

There are three stages to the formal raising of a Dispute to the MO:

- a. Discussions and attempts at resolution between two (or more) Trading Parties²
- b. The formal announcement, via email, by one party to another that it intends to raise the matter as a Dispute to the MO³

¹ In the case of Trading Disputes, only concerning an error in a Data Item, this must be raised within twenty-eight (28) calendar months from and including the date of publication of the final Settlement Report in which the alleged error in the Data Item occurred.

² See Section 17.2 of the MAC.

³ Under Section 17.3.2(b) of the MAC, formal notification is a validation criterion. The other validation criteria are that the raising party (the Claimant) has sought to resolve the issue through the informal dispute resolution procedures in the MAC and WRC and in the case of a dispute involving the MO that it has failed to provide a rectification plan.

- c. The actual raising of the Dispute to the MO by using Kissflow (supported by a demonstration video [here](#))⁴.

In order to raise a Dispute, Trading Parties visit the Kissflow website and select the form “Raise a Dispute”. This will populate a form in which the Trading Party should populate details of the Disputing Party, the Dispute outline, declaration and provide any relevant attachments. Once the form has been populated the Trading Party should select “Submit”, sending the form to the MO.

Once the Dispute has been raised, the MO will confirm that the first two stages have taken place and the party raising the Dispute should ensure that the required evidence for this is made available to the MO. If the MO determines that it is a valid Dispute, it will publish the Dispute on the website within 5 BDs of receipt of notice via Kissflow⁵.

Any party which considers that it is affected must contact the MO within seven (7) Business Days (BDs) of the publication and the Disputes Committee (DC) will take account of it as an affected Disputed Party in making its decision⁶. The party is required to complete and comply with any Disputes Committee Procedures. In addition, the MO (acting as disputes secretary) before the DC considers the Dispute or the DC may decide that a Disputing Party is affected⁷.

2.2. Stage 2 The resolution period

The date of publication initiates the twenty (20) BDs resolution period (the Initial Negotiation Period). Both parties are required to arrange a meeting to specifically address the Dispute within the first ten (10) BDs. At any point during the twenty (20) BDs period either party can unilaterally initiate an escalation to the (DC). This can be as a request for an Urgent escalation to the DC, or as a standard request, as set out below.

If the Dispute is unresolved after the twenty (20) BDs period and the parties have not agreed to extend it further and have notified that to the MO⁸, then there are two outcomes:

- The Dispute is escalated to the DC at the request of at least one of the parties
- The Dispute is closed by the DC following referral to it by the MO if neither party confirms what further action it wishes to take⁹.

Parties should confirm any time extensions within Kissflow. Within the form Trading Parties will be able to provide any update regarding the dispute to the MO including escalating the Dispute to the DC.

⁴ See Section 17.3.2 of the MAC.

⁵ See Section 17.3.4 of the MAC.

⁶ See Section 17.3.5 of the MAC.

⁷ See Section 17.1.1(b)(i)

⁸ See Sections 17.3.8(a) and 17.3.9(a).

⁹ See Sections 17.3.11-13.

2.3. Stage 3 Urgent escalation to the DC

A party can mark the Dispute as “Urgent” at any stage of the process. This request should be accompanied by additional evidence which demonstrates how the party is being materially impacted by the ongoing situation or other Urgency Criteria¹⁰ including a material and immediate risk of causing a significant impact on the development and/or operation of the business retail market. This will initiate a process in which the DC Chair will either direct the DC Secretary to convene an extraordinary DC meeting or add it to the agenda of the next DC if the meeting is within the next three (3) BDs¹¹.

At this point any DC Members who are employed by either of the parties involved in the Dispute or otherwise have a conflict of interest will recuse themselves from the Dispute¹². They will not receive invitations, evidence or correspondence from the MO relating to the Dispute.

The purpose of the extraordinary DC Meeting is to determine whether it meets one or more of the Urgency Criteria including a current or imminent issue that if not resolved will have a material impact on at least one of the parties. Two courses of action will follow this:

- The DC confirm that the nature of the Dispute is urgent. the DC secretary shall promptly update the Dispute on the Market Operator’s website to show the status as urgent and ensure that all affected Trading Parties to the Dispute are informed of the change in status to urgent, and provided the opportunity to submit their evidence. It will also lay out bespoke timeframes for an early hearing
- The DC do not agree that the nature of the Dispute is urgent and the Dispute will follow normal timeframes (although following this, a party can present further evidence of urgency to support its case, the DC’s decision with regards to this further evidence on urgency will be final).

2.4. Stage 4 Standard escalation to the DC

The standard escalation process focuses on two key timeframes:

- The MO requires five (5) BDs to collate evidence from all parties which it will present to the DC¹³
- The DC requires ten (10) BDs to consider the evidence ahead of the scheduled DC Meeting¹⁴.

If a party wishes to escalate a Dispute to the DC, it should note that if the last date of these two timeframes falls after the next scheduled Committee Meeting, then the Dispute cannot be heard until the following Committee Meeting.

¹⁰ See DC ToR, Section 6.3 Urgency Criteria.

¹¹ See DC ToR, Section 6.2 Urgent Meetings.

¹² See DC ToR, Section 9 Conflict of Interest.

¹³ See Section 17.4.5 of the MAC.

¹⁴ See Section 17.4.7 of the MAC.

As previously mentioned, the method of escalating the Dispute is through KissFlow.

Evidence. When the Dispute is escalated, the MO will ask each party to submit the evidence which supports its position. There is no specific format for the evidence pack: it can be a number of files, including SPID lists or it could be a single page statement. As a general rule, the evidence should make the party's position clear in relation to the grounds for the Dispute.

Timescales. The MO will use the five (5) BD period to collate the information and may seek clarification if it does not understand a point made in the presentation of evidence. It is important to note that the MO will not provide guidance on the preparation of evidence. The MO will always remain neutral. There will be no opinion or direction provided by the MO if the evidence is not clear. It is the responsibility of each party to present clear and concise evidence to support its case.

The DC will use the ten (10) BD period to understand the evidence. Members may ask the MO to seek clarification if they don't understand any part of the evidence.

Ahead of the meeting the applicable evidence will be shared with each of the Disputing Parties.

2.5. Stage 5 Hearing the Dispute at the DC

The hearing may be at a scheduled DC Meeting or at an extraordinary DC Meeting.

If the hearing is virtual (e.g. held on a Teams link), then the affected Disputing Parties will be asked to wait on a separate Teams link (a Waiting Room). This allows the DC to bring both (or possibly more) parties into the hearing simultaneously. Parties are encouraged to continue their dialogue inside the Waiting Room.

The DC will send a representative into the Waiting Room and the Disputing Parties will be asked to join the Committee undertaking the hearing on the main Teams link, which will be pasted into the Waiting Room chat.

If this is being held as a face to face session then the same principles will apply, the difference being that two separate rooms will be used.

Within the hearing, the Committee Members will initially address their questions to the Disputing Party who raised the Dispute (the Claimant). Each Member will have a maximum of five (5) minutes to present their questions. If a Member feels that an answer is taking up a disproportionate amount of time then they may ask the Disputing Party to cut its response short before moving to the next question. Parties should note that such behaviour is indicative of nothing more than limited time.

There will be no opportunity for any Disputing Party to cross examine another. Any inter-party discussion should be conducted before the hearing or in the Waiting Room.

After the Members of the DC have questioned the Claimant or "raising party" they will address their questions in the same way to the "responding party".

After the DC Members have put their questions to the Disputing Parties, the DC Chair will ask the Disputing Parties to leave the Meeting, before the Committee Members discuss the Dispute.

2.6. Stage 6 Deliberation and Decision

After the Disputing Parties have left, the DC Chair will summarise the requirements of the DC, drawing attention to the need to consider the compliance of both parties with the Codes. In considering a decision the DC may decide to make such enquiries as it sees fit or require the MO to procure additional information or data to make its decision and so may defer its decision¹⁵.

For each Dispute, the DC will decide:

- which Trading Parties are affected by the Dispute; and
- whether there has been a breach of the Codes for Non-Trading Disputes and MAC Disputes, whether the MO has met its requirements in relation to an MO Dispute and for a Trading Dispute, having been raised by the deadline, the requirements to resolve the issue have been met¹⁶.

The DC Chair will conclude deliberations with a vote to determine whether the DC uphold the complaint raised. If the DC is unable to come to a majority decision the Dispute will be referred to arbitration¹⁷.

The DC will then decide on the content of the following communications:

- Communications to the Panel
- Communications to the affected Disputing Parties notifying them of all the affected Disputing Parties.
- Communications and distribution list for the market
- Communications to be posted within the Dispute on the Disputes Website.

The MO will publish the finding on the Disputes Website within five (5) BDs of the meeting.

The decision will be final and binding unless an affected Disputing Party refers it to arbitration within twenty (20) BDs. Any failure by a party to comply with the decision will be deemed to be in breach of the Codes or if applicable its Licence¹⁸.

For Trading Disputes, following a DC decision Trading Parties will correct a Data Item as soon as practicable unless they are referring the decision to arbitration. Following this there may be a Dispute Settlement Run for which the DC will allocate the costs in its decision¹⁹.

¹⁵ See Sections 17.4.9-10 of the MAC.

¹⁶ See Section 17.4.9.11 of the MAC.

¹⁷ See Section 17.4.12 of the MAC.

¹⁸ See Sections 17.4.14-16 of the MAC.

¹⁹ See Section 17.5 of the MAC.

2.7. Stage 7 Arbitration

The use of Arbitration is the right of any Disputing Party if they do not agree with the findings of the DC. When referring the Dispute to arbitration within twenty (20) BDs of the decision, the Disputing Party must also notify the MO and other affected Disputing Parties (of which they are aware).

MOSL does not play an active role beyond monitoring the arbitration process once the Dispute has been escalated to that stage. Responsibility remains solely on a Trading Party to organise, communicate to MOSL, and undergo the arbitration process, which must be raised under London Court of International Arbitration (LCIA) rules.

The arbitration process to be followed is set out in Section 18 of the MAC. Each party that is a Claimant or Respondent at an arbitration tribunal must send the MO (acting as disputes secretary) and Ofwat a copy of the determination.