

Minutes of Code Change Committee

Meeting 12

08 February 2023

MS Teams

Status of the Minutes: FINAL

Anthony Pygram	AP	Independent Chair	Ulrike Hotopp	UH	Independent Member
Mike O'Connor	MO	Independent Member	Kye Smith	KS	Wholesaler Member Alternate (for Paul Stelfox)
Mike Rathbone	MR	Wholesaler Member	Matthew Glover	MG	Retailer Member
Trevor Nelson	TN	Retailer Member Alternate (for Claire Yeates)	Christina Blackwell	CB	Customer Representative
Steve Creighton	SC	Alternative Customer Representative			

AFFILIATE MEMBERS PRESENT

Sarah McMath	SM	MOSL Affiliate Member	Dan Mason	DM	Ofwat Affiliate Member
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SECRETARIAT

Adam Richardson	AR	Panel Secretary	Sam Mawby	SMA	Secretariat
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OTHER ATTENDEES

Stuart Boyle	SB	MOSL Presenter (item 3)	Sasha Pearce	SP	Ofwat
Phoebe Nixon	PN	MOSL Presenter (item 4)	Oli Robins	OR	MOSL Presenter (item 5)
Darren Hayes	DH	Ofwat (Proposer – item 5)	Huw Comerford	HC	MOSL Observer
Amanda Hinde	AH	MOSL Observer			

APOLOGIES

Claire Yeates	CY	Retailer Member	Paul Stelfox	PS	Wholesaler Member
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1. Welcome and Introductions

- 1.1. The Chair welcomed members to the Code Change Committee (CCC) meeting.
- 1.2. It was confirmed that the meeting was quorate.
- 1.3. Apologies were received and accepted from CY and PS. TN attended as an alternate for CY and KS attended as an alternate for PS.
- 1.4. Code Change Committee members were asked to declare any potential conflicts of interest in relation to the meeting agenda and there were no declarations.

2. Minutes and Outstanding Actions

- 2.1. The Committee noted the minutes from CCC11 (12 January 2023) which had been circulated for review with the agenda and meeting papers for CCC12. There were no additional comments, and the minutes were approved.
- 2.2. The Code Change Committee agreed that the following actions should remain open:
CCC01_08, CCC02_01 and CCC03_01

3. Change Report

- 3.1. SB presented a summary of the change report. This highlighted the current delivery programme, the upcoming changes, the changes that were currently on hold, those in the pipeline, consultations and Ofwat decisions.

- 3.2. SB confirmed that CPW067 'Bulk Submissions of Service Requests via MS Excel' had now been withdrawn.
- 3.3. A member queried the potential for clustering or bundling changes to ensure a co-ordinated approach to related changes where possible e.g., theme of Retailer exit. DM commented that the Strategic Panel had considered a paper detailing the programme of work that Ofwat and MOSL would take forward in relation to Retailer exit. This helped to show how specific issues around a theme were interconnected although not all issues would necessarily lead to a code change being required. The paper shared with Strategic Panel would be circulated to Code Change Committee members for information.

Action CCC12_01

- 3.4. A member commented that in relation to individual changes the committee would need to assess how strategic an issue was. In order to do that effectively the committee would need to be aware of the wider context and understand how that change would add value within wider programmes of work. SB responded that each individual change when submitted to the committee would need to clearly articulate how it fitted into the strategic programme of work. The committee would also need to be able to consider how to prioritise potentially competing strategic priorities.
- 3.5. The Code Change Committee:
 - **NOTED** the change report.

4. Change Plan – CPW138 – Housekeeping Change post CPW070 and CPM043

- 4.1 The Code Change Committee considered the change proposal plan for [CPW138](#) '[Housekeeping Changes post CPW070 & CPM043](#)'. The change sought to make a series of amendments to the Code Subsidiary Documents & Operational Subsidiary Documents, to improve the clarity and consistency of code drafting effected by CPW070 & CPM043 and ensure that these accurately reflected the build of the Bilateral Hub. It also sought to address a range of other low materiality errors unrelated to CPW070 and CPM043.
- 4.2 PN asserted that the changes that CPW138 proposed were non-material in that they would not affect market participant behaviour and only updated the code documents to better reflect current working practices. PN added that the change proposal supported the strategic priority of 'getting the basics right' as it contributed to market efficiency and facilitated transparency and clarity within the code documents.

- 4.3 A member queried whether all of the documentation associated with the change proposal had been submitted to the committee as it was not clear in all cases whether a proposed change could be potentially contentious. PN advised that a spreadsheet had been developed and circulated with the meeting papers to summarise the changes to avoid sending out excessive documentation to members.
- 4.4 Another member commented that it was difficult to see if a proposed change may require consultation. PN responded that 46 areas of change had been identified in the circulated spreadsheet, which were predominantly typographic or grammatical changes. Those relating to Bilateral Hub processes had been socialised with the CAG (Code Advisory Group) and OAG (Operational Advisory Group) before submission to the Code Change Committee (CCC) for consideration. A small number of changes which had involved re-phrasing text had also been reviewed by MOSL's legal team.
- 4.5 Members noted that it was important that suggested clarifications to the codes did not have any unintended consequences.
- 4.6 Two Trading Party members commented that the changes did not seem to impact any working practices and looked like suitable clarifications and corrections.
- 4.7 A member queried whether the housekeeping changes related to the Bilateral Hub could have been identified prior to the implementation of CPW070 and CPM043. PN responded that the suggested changes relating to the Bilateral Hub reflected the pace of the programme's delivery and the significant number of documents that had been generated throughout the Bilateral programme. The number of housekeeping changes arising represented a very small proportion of the extensive set of new and amended provision introduced through the Bilateral programme. PN made members aware that MOSL held a log of potential housekeeping changes and had identified an opportunity to submit a bulk update of typographic and grammatical changes which had resulted in CPW138.
- 4.9 Members agreed that it would be useful to consider the most appropriate way to approach housekeeping changes going forward including developing a definition for what constituted a housekeeping change.

Action: CCC12_02

The Code Change Committee:

- **AGREED** (unanimous) the Change Proposal Plan;

- **AGREED** (unanimous) to delegate CPW138 to MOSL to submit a recommendation directly to Ofwat for decision.

5. Change Plan and Recommendation – CPW136 Drawing credit following Retailer Exit

- 5.1 The Code Change Committee considered the change proposal plan and recommendation for [CPW136 'Drawing credit following Retailer exit'](#). The change proposal sought to introduce a new clause into the Business Terms to permit Wholesalers to draw on credit support in relation to un-invoiced amounts following unplanned Retailer failure and exit, in line with Ofwat's policy.
- 5.2 OR outlined the background to the change that had been raised by Ofwat, making committee members aware that the Market Codes prevented the full and proper application of a recent Ofwat decision to permit Wholesalers to recover un-invoiced revenue following unplanned Retailer exit. Ofwat had considered and consulted the market on this issue during 2021 and published a decision in November 2022 which included this mechanism.
- 5.3 OR commented that Ofwat's policy position outlined that Wholesalers should first fully exhaust all credit securities and protections to offset any outstanding balances before any monies were recouped via the price control reconciliation process. This approach would reduce the need for Wholesalers to make upward adjustments to customer bills to recover the un-invoiced revenue. As currently articulated the WRC (Wholesale Retail Code) inhibited Wholesalers ability to draw on credit for owed, but un-invoiced amounts, and therefore exposed customers, in the context of unplanned Retailer exit, to increased bad debt costs.
- 5.4 OR added that Ofwat, at the consultation stage in 2021, had made it clear that this would serve as the official code consultation for a subsequent change proposal. Most respondents supported the proposal and subsequently Ofwat had worked closely on the legal drafting with MOSL to address the small number of concerns raised and remove any scope for ambiguity. The proposed solution would introduce a new clause into the Business Terms to align it with Ofwat's current policy.
- 5.5 OR noted that the proposed solution would have no immediate impact on Wholesalers and Retailers although trading parties might wish to review and potentially amend their credit security arrangements to reflect the change, should it be implemented.

- 5.6 A committee member queried why the change proposal and recommendation had been presented at the same meeting. DH, in his capacity as Proposer, responded that this primarily related to a timing issue. The work that Ofwat needed to undertake in relation to the REC (Retail Exit Code) had meant that it was not possible to confirm and publish the Ofwat policy decision until November 2022. Whilst there was no evidence to suggest that an unplanned Retailer failure was likely Ofwat felt it was prudent to address the issue as soon as possible. SB added that the timing of the change proposal being received had meant that it was not presented as a Gate 1 change proposal at the January Code Change Committee meeting, however, it was flagged in the Change Report. The legal text and consultation responses had been carefully considered and a decision made that it was appropriate to bring the change proposal and recommendation forward to the Code Change Committee simultaneously.
- 5.7 A detailed discussion followed with committee members raising a number of points including:
- Members considered whether it was possible to gauge the impact of the proposed change. Ofwat indicated that impact would be hard to quantify and would be dependent on the size of the Retailer and a variety of other factors, but in all circumstances of retailer failure there would be an impact on customers.
 - Members considered how much additional protection customers would have if the change was implemented in light of existing protections in place, to try to assess the likely customer benefit. Members had mixed views as to whether there was a significant benefit to customers but were supportive of the change proposal as it would ensure that customers would not be disadvantaged.
 - Members noted that the proposed change would not modify the current default arrangements relating to Retailers failing to pay, would not alter the profile of risk sharing between Retailers and Wholesalers, would not permit a Wholesaler to draw on credit support in excess of what is owed, and only related to Retailer failure.
 - Members considered whether there would be a direct cost to a Retailer that might have to be borne by the customer to support the cost of credit support. Members noted that the cost of credit had increased recently due to external factors but this change would not affect the scale of existing credit requirements. Therefore it would not introduce any new burden to a Retailer and in turn Retail customers.

- Members noted that the change proposal effectively allowed for the full execution of an existing arrangement in line with Ofwat policy, and noted that the problem statement should be considered in that light.
- The issue of whether the proposed change could be deemed to be inconsistent with insolvency law was raised. Ofwat commented that it was not aware of any inconsistencies and nothing had been flagged during the consultation period.

5.8 DH indicated that the impact of CPW136 would be hard to quantify and would be dependent on the size of the failed Retailer and a variety of other factors, but in all circumstances, the negative impact on customers of Retailer failure would be greater without CPW136 being implemented (given the potential for bad debt to be covered by increases to customer bills). Research also indicated that in very specific instances, and with specific Retailer Wholesaler pairings, this difference in terms of customer impact could be quite significant. Given that context and Ofwat's wider policy work it was important to ensure that there were no gaps between the WRC and Ofwat's policy position as soon as possible.

The Code Change Committee:

- **AGREED** (unanimous) the proposed change plan;
- **AGREED** (unanimous) that CPW136 better facilitated the Principles of the WRC (Wholesale Retail Code);
- **AGREED** (unanimous) to recommend CPW136 for implementation;
- **AGREED** (unanimous) to recommend that, if approved, CPW136 be implemented on 07 April 2023 if Ofwat approval was received by 31 March 2023.

6. AOB

6.1 Code Change Committee Terms of Reference:

- 6.1.1 The Code Change Committee considered the committee Terms of Reference, which was due for its annual review. There were a small number of relatively minor changes that could be made at this stage to align with current working practices but members were mindful that, following the completion of the review of the Code Change Mechanism a detailed review of the committee Terms of Reference would need to take place.
- 6.1.2 Sma made the committee aware that the Strategic Panel was comfortable with receiving an updated Terms of Reference for approval or waiting until a more detailed review took place.

6.1.3 A member queried whether the replacement of CSD with Code Subsidiary Document was because the Strategic Panel hadn't delegated responsibility for other types of documents e.g. OSDs (Operational Subsidiary Document). SM responded that at this point the change only related to ensuring that the document was articulated in plain English. At the point where the Terms of Reference for the committee was reviewed any further subsidiary documents would be included, if appropriate, to the document.

6.1.4 Members agreed that the current committee Terms of Reference should continue to be used until the completion of the review of the Code Change Mechanism at which point the Terms of Reference would be reviewed in detail.

6.2 Committee Member Sharing of Information:

6.2.1 The Chair proposed a standing item for each meeting agenda from March 2023 where committee members who participate in other committees and groups could share useful non-confidential feedback, relevant to code change matters, for the knowledge and understanding of committee members. The Chair suggested that this was likely to take place in the closed session.

6.3 CPW137 Working Group Update:

6.3.1 AR updated the committee on the recruitment for the CPW137 working group. Unfortunately, despite extending the nomination window, it had not been possible to attract sufficient interest from trading parties to fully populate the group. The membership currently included a Wholesaler member, CCW representative in a voting capacity with a Retailer nomination pending approval. An Ofwat representative would also be in attendance as a non-voting member.

6.3.2 The sub-group of CCC members responsible for approving the membership of the CPW137 working group would meet following the conclusion of the Code Change Committee to consider the most appropriate way forward.

CLOSED SESSION:

7. Reflections on Verbatim Responses from Change Process Consultation (PIP103)

- 7.1 The committee discussed a summary of the consultation responses relating to the review of the Change Process.