

# Minutes of Code Change Committee Public Session Meeting 20

11 October 2023

MS Teams

Status of the Minutes: FINAL

Anthony Pygram	AP	Independent Chair	Steve Creighton	SC	Alternative Customer Representative
Mike O'Connor	MO	Independent Member	Kye Smith	KS	Wholesaler Member
Ulrike Hotopp	UH	Independent Member	Matthew Glover	MG	Retailer Member
Neil Pendle	NP	Retailer Member Alternate (for Claire Yeates)	Christina Blackwell	CB	Customer Representative
Mike Rathbone	MR	Wholesaler Member	Jesse Wright	JW	Wholesaler Member Alternate (for Mike Rathbone – item 4 only)

## AFFILIATE MEMBERS PRESENT

Sarah McMath	SM	MOSL	Dan Mason	DM	Ofwat
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## SECRETARIAT

Adam Richardson	AR	Panel Secretary	Nichola Vincendeau	NV	Secretariat
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## OTHER ATTENDEES

Holly Woodhead	HW	Ofwat	Sasha Pearce	SP	Ofwat
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Stuart Boyle	SB	MOSL Presenter (items 3, 6 and 10)	Amanda Hinde	AH	MOSL Presenter (item 4)
Fallon Wilkinson	FW	RWG Proposer (item 4)	Ray Porter	RP	RWG (item 4)
Monica Falasca	MF	MOSL Presenter (item 5)	Andrew Johnson	AJ	MOSL (item 5)
Christopher Wright	CW	Castle Water Proposer (item 6)	Judith Grant	JG	Castle Water (item 6)
Huw Comerford	HC	MOSL Presenter (item 7)	Claire Stanness	CS	Wave Utilities Proposer (item 7)
Phoebe Nixon	PN	MOSL Presenter (item 8)	Steve Formoy	SF	MOSL Proposer (item 8)
Jessica Prior	JP	MOSL (item 11)	Spencer Mattia	SMA	MOSL (item 11)

#### APOLOGIES

Claire Yeates	CY	Retailer 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. NP attended as an alternate for CY. JW attended as alternate for MR for item 4 only.
- 1.4. CCC members were asked to declare any potential conflicts of interest in relation to the meeting agenda. MR declared a conflict of interest for item 4 (see previous point).

## 2. Minutes and Outstanding Actions

- 2.1. The committee noted the minutes from CCC19 (13 September 2023) which had been circulated for review with the agenda and meeting papers for CCC20. The minutes were approved, including the open session minutes for publication.
- 2.2. The CCC agreed to close the following actions:

CCC13\_01 and CCC19\_01

2.3. The CCC agreed that the following actions should remain open:

CCC03\_01 and CCC18\_01

### 3. Change Report

- 3.1. SB presented a summary of the change report. This highlighted the current delivery programme, the context of the Strategic Panel priorities, upcoming changes, changes in the pipeline, consultations, trading party requests, post-implementation reviews and Ofwat decisions.
- 3.2. A question was raised about the process for quality assurance around legal drafting for code changes within MOSL. AJ confirmed that the legal team work closely with the analyst and that the process is robust. The Panel Secretary agreed to look at whether the CCC's Terms of Reference need to clarify that the responsibility for legal drafting rests with MOSL and not with the Committee.

**ACTION CCC20\_01**

3.3. The Code Change Committee:

- **NOTED** the change report.

### 4. Change Plan – CPM056 Resource Support to Industry Groups

- 4.1 The Code Change Committee considered the change plan for CPM056 '[Resource Support to Industry Groups](#)'. The change proposal sought to allow the Market Operator to provide resources to industry groups such as the Retailer Wholesaler Group (RWG) to support them in developing solutions to improve customer outcomes.
- 4.2 The Committee was keen to ascertain how many groups could be supported by this resource and what the cost would be in terms of staffing and how this would be funded by MOSL as there was a concern about the cost of the change. It was noted that the costs would be an ongoing MOSL cost rather than a change cost and that, dependent on the request by an industry group, the resource would be included in the Market Operator's Business Plan.
- 4.3 It was noted by the Committee that work is already being undertaken by the RWG Steering Group and its sub-committees; this change would bring some efficiency to the process and facilitate a fairer spread of the workload and cost across the market.
- 4.4 The Committee noted that CCW has representation within the RWG Committees and that the Customer Representative is supportive of the work of the RWG in relation to end customers.

- 4.5 The CCC agreed that, as the change appeared simple, that the assessment should include an objection window. This would enable the change to progress efficiently and minimise trading party effort that might be involved in a detailed consultation, but still provide an opportunity for Trading Parties to raise any concerns.
- 4.6 The Code Change Committee:
- **AGREED** (Unanimous) to progress the change to assessment;
  - **AGREED** (Unanimous) the Change Proposal Plan; and
  - **PROVIDED** views on the proposed Post-Implementation Review rationale.

## 5. Recommendation – CPM054 & CPW145 Deductions and Withholdings Under Formal Disputes Process

- 5.1 The Code Change Committee considered the draft recommendation report for CPM054 and CPW145 '[Deductions and Withholdings Under Formal Disputes Process](#)'. The change proposal sought to bring the deductions and withholdings currently allowed by [Section 9.7.2 of the Business Terms](#) under the formal Disputes Process.
- 5.2 The Committee was largely supportive, but concerns were raised about timescales being set for informally resolving disputes and that this would push more disputes through a formal process.
- 5.3 The Committee noted that, under the proposal, bilateral resolution between parties could continue to run for as long as both parties agreed this was beneficial. Members observed that transparency in this area would be of benefit to the whole market and not just to the trading parties involved in individual cases.
- 5.4 The Committee was concerned about the possibility of only having a Post Implementation Review at 24 months as set out in the paper and therefore it asked for an initial Post Implementation Review at 12 months regardless of the number of disputes heard by the Disputes Committee.
- 5.5 The Code Change Committee:
- **AGREED** (eight in favour, one against) to recommend CPM054 and CPW145 for implementation;
  - **AGREED** (eight in favour, one against) the rationale that CPM054 & CPW145 better facilitated the principles of the MAC (Market Arrangement Code) and WRC (Wholesaler Retail Code);

- **AGREED** (eight in favour, one against) to recommend that, if approved, CPM054 & CPW145 be implemented at 00:00 hours on:
  - 18 December 2023, if Ofwat approval was received by 15 November 2023, or
  - 16 February 2024, if Ofwat approval was received by 10 January 2024.
- **ENDORSED** (eight in favour, one against) the recommended PIR scope and revised the trigger so that the first PIR took place 12 months after implementation regardless of the number of disputes heard with an option for a second PIR at 24 months (if needed).

5.6 The member voting against did so primarily on the grounds that a solution already existed where it was possible to raise a Dispute where an issue was deemed to be vexatious. Implementing the change would serve to generate a higher number of Disputes at an earlier stage in the process than was necessary.

## 6. Recommendation - CPW132 Credit Support and Wholesaler Credit Ratings

- 6.1 The Code Change Committee considered the draft recommendation report for CPW132 '[Credit Support and Wholesaler Credit Ratings](#)'. The change proposal sought to relieve retailers of the obligation to provide credit support to wholesalers who do not have a credit rating of BBB/Baa2 or higher (the level agreed by Ofwat as the revised cash lock-up trigger in wholesaler licences).
- 6.2 The Committee heard that declining wholesaler credit ratings could increase cost and reduce the availability of credit support when this was renewed. The proposer advised that if a wholesaler drew down credit for amounts not owed, this was effectively early payment of Primary Charges which the retailer may not be able to finance and could lead to poor outcomes for Non-Household customers.
- 6.3 The Committee noted that letters of credit are in standard form, irrevocable and unconditional; there could be no conditions included on their being drawn or revoked without the agreement of the beneficiary wholesaler. The Committee also noted that there are other credit options available and that retailers take a view which options to provide depending on circumstances.
- 6.4 The Committee noted the proposer's concerns about it becoming harder to re-finance and the appetite to lend to the water sector is lower than at market opening. However, the Committee was clear that primary legislation would not allow a wholesaler to knowingly draw down credit as illustrated in the proposal.

- 6.5 The Committee observed that as well as not being permitted by the codes, a wholesaler drawing down credit for amounts not yet owed would be contrary to the statutory responsibilities of their directors. Implementing this change could muddy the waters between legislation and the codes.
- 6.6 The Committee also noted that the proposal would change the balance of risk between wholesaler and retailer.
- 6.7 The Code Change Committee:
- **AGREED** (eight in favour, one abstention) to recommend CPW132 be rejected by Ofwat.
  - **AGREED** (eight in favour, one abstention) that CPW132 did not better facilitate the principles of the WRC;
  - **AGREED** (eight in favour, 1 abstention) to recommend that if approved, CPW132 be implemented at 00:00 hours on
    - 18 January 2024, if Ofwat approval was received by 18 December 2023, or
    - 1 March 2024, if Ofwat approval was received by 1 February 2024.
  - **ENDORSED** the recommended Post Implementation Review scope and trigger.
- 6.8 The majority of members opposed CPW132 on the basis that the codes, and also legislation, addressed the risk of a wholesaler drawing credit for amounts not owed, that the change may introduce risks to all wholesalers' customers, and change the balance of risk between trading parties.
- 6.9 The member abstaining did so on the basis that the materiality of the risks to customers and of systemic market failure were not clear.

## 7. Recommendation - CPW141b Clarifying Meter Chamber Responsibilities

- 7.1 The Code Change Committee considered the draft recommendation report for CPW141b '[Clarifying Meter Chamber Responsibilities](#)'. The proposed change sought to clarify meter chamber ownership and repair/replacement responsibilities in the codes and remove inconsistencies in trading parties' and meter reading providers' differing approaches to those responsibilities.
- 7.2 The Code Change Committee:
- **AGREED** (Unanimous) to recommend CPW141b for implementation;

- **AGREED** (Unanimous) the rationale that CPW141b better facilitated the principles of the WRC;
- **AGREED** (Unanimous) to recommend that, if approved, CPW141b be implemented at 00:00 hours on:
  - 16 February 2024, if Ofwat approval was received by 24 January 2024, or
  - 5 April 2024, if Ofwat approval was received by 8 March 2024; and
- **ENDORSED** (Unanimous) the recommended PIR scope and trigger.

## 8. Recommendation - CPW147 Market Performance Standard (MPS) 18 and 19 Clarification

- 8.1 The Code Change Committee considered the draft recommendation report for CPW147 '[MPS 18 and 19 Clarification](#)'. The proposed change sought to confirm how successful and failed meter reads are counted for MPS 18 and MPS 19. This would confirm the incentive to provide regular meter reads on all meters and provide all customers with non-estimated bills.
- 8.2 The Committee was keen to understand why no Post Implementation Review was required and the impact on behaviours that the change could have. The discussion highlighted the importance for the Committee to have a deeper understanding of market performance. MOSL agreed to share the Annual Market Performance Report (AMPR) with the Committee in place of a Post Implementation Review and the Committee would be briefed on the Market Performance Framework at their meeting in January.

**ACTION CCC20\_02**

- 8.3 The Code Change Committee:
- **AGREED** (Unanimous) to recommend CPW147 for implementation;
  - **AGREED** (Unanimous) that CPW147 better facilitated the principles of the WRC;
  - **AGREED** (Unanimous) to recommend that, if approved, CPW147 be implemented at 00:00 on
    - 18 January 2024, if Ofwat approval was received by 18 December 2023;
    - 16 February 2024, if Ofwat approval was received by 16 January 2024;
    - 22 March 2024, if Ofwat approval was received by 22 February 2024; and
  - **AGREED** (Unanimously) that no PIR was required on the understanding that the CCC would receive a copy of the (AMPR) on publication.

## 9. Prioritisation of Changes

9.1 The Code Change Committee considered the changes with Ofwat for decision. The committee noted that Ofwat would decide the order in which it considered recommended changes and that it was currently working on four from earlier CCC meetings. Of the remaining changes and those recommended following this meeting, the committee advised Ofwat of its priorities (highest first):

- CPW144 MPF Incremental Improvements
- CPM054 & CPW145 Deductions and Withholdings under dispute process
- CPW132 Credit Support and Wholesaler Credit Ratings
- CPM055 CMOS Data Escrow
- CPW141b Clarifying Meter Chamber Responsibilities
- CPW147 MPS18 & 19 Clarification

## 10. CPM053 Change Process Improvements Implementation Steps

10.1 The Code Change Committee noted the documents that would support the Change Process Improvements which, subject to Ofwat approval, were expected to be implemented in December. Templates will be presented to the committee at future meetings.

## 11. Data Cleanse Project Update

11.1 The Code Change Committee noted that the Data Cleanse Project is up and running. [A Data Cleanse Webinar](#) was held on 5 October 2023. The working group will look at the next phase starting on 18 October. There is the prospect of a Data Assurance Audit forming part of the new Market Performance Framework and the Committee expressed an interest in looking at the key learning from that. It is anticipated that there will be an update for the Committee in late Spring / early Summer 2024.

## 12. Code Change Committee Effectiveness Review

12.1 The Code Change Committee considered the plans for the forthcoming Effectiveness Review. The process laid out in the papers for this meeting was agreed and it was also agreed that the effectiveness review findings will be presented at CCC24 in February 2024.

## 13. AOB

13.1 There were no addition items of business raised.



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## CLOSED SESSION:

### 14. Committee Reflections

14.1 The committee shared their learning from other market governance committees and groups they were involved in, and reflected on the meeting.