

Minutes of Code Change Committee Public Session Meeting 26

09 April 2024

MS Teams

Status of the Minutes: FINAL

Anthony Pygram	AP	Independent Chair			
Christina Blackwell	CB	Customer Representative (Alternate for John Vinson)	Steve Creighton	SC	Alternative Customer Representative
Mike Rathbone	MR	Wholesaler Member	Kye Smith	KS	Wholesaler Member
Euan Mitchell	EM	Retailer Member	Matthew Glover	MG	Retailer Member
Ulrike Hotopp	UH	Independent Member	Mike O'Connor	MO	Independent Member

AFFILIATE MEMBERS PRESENT

Sarah McMath	SM	MOSL	Dan Mason	DM	Ofwat
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SECRETARIAT

Adam Richardson	AR	Panel Secretary	Sam Mawby	SMY	Secretariat
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OTHER ATTENDEES

Holly Woodhead	HW	Ofwat	Sasha Pearce	SP	Ofwat
Stuart Boyle	SB	MOSL Presenter (item 3)	Amanda Hinde	AH	MOSL Presenter (item 4)

Evan Joanette	EJ	MOSL Presenter (item 4)	John Gilbert	JG	MOSL Proposer (item 4)
Chris Dawson	CD	MOSL Presenter (item 5)	Trevor Nelson	TN	Business Stream - Observer
Nichola Sampford	NS	MOSL Observer (Item 4)	Oli Robins	OR	MOSL Observer (Item 4)
Janet Judge	JJ	MOSL Observer (Item 4)	Monica Falasca	MF	MOSL Observer (Item 5)
Spencer Mattia	SMA	MOSL Observer (Item 5)			

APOLOGIES

John Vinson	JV	Customer Representative
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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 JV. CB attended as an alternate for JV.
- 1.4. CCC members were asked to declare any potential conflicts of interest in relation to the meeting agenda. None were declared.

2. Minutes and Outstanding Actions

- 2.1. The committee noted the minutes from CCC25 (12 March 2024) which had been circulated for review ahead of the meeting. The minutes were approved subject to a minor change, including the open session minutes for publication.
- 2.2. The CCC agreed that the following actions should remain open:

CCC20_02, CCC21_01 and CCC23_02

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 SB commented that MOSL was currently reviewing all implementation dates to account for potential statutory consultations that Ofwat may need to undertake and the upcoming General Election.
- 3.3 The Code Change Committee:
- **NOTED** the change report.

4. Recommendation – CPM058a and CPW149a Market Performance Framework Reform (Governance)

- 4.1 The Code Change Committee (CCC) considered the draft recommendation report for CPM058a and CPW149a '[Market Performance Framework Reform \(Governance\)](#)'. The change proposal sought to reform the Market Performance Framework (MPF) to ensure it is simple, flexible, effective and powerful in application. This would provide customers and Trading Parties with confidence in the market at reasonable cost.
- 4.2 This change was the first in a series of code changes that formed part of the MPF Reform programme and covered the governance aspects of the new framework. The proposed solution would make the governance of the new MPF more agile and responsive to changes in market behaviour. It would also elevate input from non-trading party voices in performance framework decision-making compared to the current arrangements.
- 4.3 AH outlined the background, scope and benefits of the change as outlined in the draft recommendation report.
- 4.4 AH highlighted a correction to the appendix of the draft recommendation report which set out the various Performance Assurance Committee (PAC) voting scenarios. For scenario four where all trading parties had voted against a proposal and all other members had voted for a proposal, the Chair would hold the casting vote. This would be same for scenario two where all trading parties had voted in favour and all other members had voted against.
- 4.5 In terms of project governance the proposed governance arrangements for MPF had been considered and agreed by the Strategic Panel, the Performance Advisory Group (PAG) and by the Code Advisory Group (CAG) ahead of being submitted to the CCC. CCW (Consumer Council for Water) had also been engaged, having early sight of the documents and an opportunity to submit a response which had been included in the draft recommendation report.
- 4.6 The focus of the CCC's discussion was on the following:

- The creation of the PAC to replace the Market Performance Committee (MPC)
- The appointment of an Independent, voting Chair to the PAC as opposed to a MOSL Chair
- The setting of flexible performance periods
- Composition of the PAC and associated voting rights
- The ability of the PAC to set non KPI performance measures

- 4.7 A CCC member commented that it seemed too early to create a new governance framework when the revised MPF had yet to be fully determined. The member queried whether it would be possible to recruit an appropriately skilled committee if the expectations of the Committee were not completely defined. The member was also concerned regarding what would happen as the development of the MPF continued if it was considered that the governance would no longer be workable and therefore needed adapting.
- 4.8 NS commented that the PAC recruitment would follow a robust process, similar to that used for the Strategic Panel and CCC, and was likely to take place across summer 2024. At that point it was likely that the wider elements of the proposed MPF and any associated requirements for the Committee would be more defined.
- 4.9 A CCC member was concerned that the Committee was being asked to agree a proposed model of governance to enable the programme to move forward when there still many unknowns. EJ acknowledged the concerns and highlighted that Trading Parties were aware of the proposed tools and metrics. The more detailed work on financial incentives further into the programme was not particularly impacted by the composition of the PAC.
- 4.10 A CCC member commented that whilst supportive of establishing the PAC it would have been helpful to see a more comprehensive risk assessment. This assessment would have included the market risks that the revised governance was designed to address and the risks that might arise from the governance arrangements themselves. It was noted that market risks were referenced and published in the market risks and issues tracker which had been developed in the early stages of MPF Reform. A more comprehensive assessment of risk which drew from the published material would be incorporated in future draft recommendation reports.
- 4.11 A CCC member commented that, in their view, the impact to customers of the revised governance arrangements had not been sufficiently evidenced.
- 4.12 A CCC member acknowledged that including additional Trading Parties would add a greater breadth of expertise to the PAC. However, the member asked how the proposed composition of the PAC was consistent with the approach taken for Strategic Panel and CCC where there

were more independent members than Trading Party members, a set-up designed to protect customer interests. If the number of Trading Parties and independent members was equal that could deliver the same solution outlined in the recommendation report. NS responded that the PAG had presented a compelling case for increasing the PAC Trading Party membership partly to provide opportunities for smaller Trading Parties who have different challenges in terms of performance.¹ The voting protection was specifically put in place to protect the independent voice but still retain the breadth of experience. Increasing the number of independents would also add additional costs for the PAC.

- 4.13 A CCC member commented that historically at the MPC the depth of knowledge that had come from Trading Parties had proved very useful in moving performance forwards. The CCC member added that in terms of holding parties to account Retailers would be able to hold Wholesalers to account and vice versa, helping to drive value for customers.
- 4.14 A CCC member asked how it would be possible to guarantee that the breadth of Trading Party expertise needed would come via the proposed recruitment process. NS responded that the focus of the PAC in overseeing a range of metrics that will determine a range of incentives should generate a range of interest in the Trading Party role but acknowledged that this could not be guaranteed. The PAC was also likely to meet on a bimonthly basis which should encourage smaller Trading Parties to participate. A CCC member added that the appropriate candidates may not ultimately come forward, but it was important to provide the opportunity to enable a range of Trading Parties to contribute to the PAC.
- 4.15 A CCC member indicated their preference for an equal number of independent and Trading Party members and that more customer representation would be beneficial. The member asked whether the PAC composition had to be codified and whether including it in the Terms of Reference would allow for greater flexibility in the future, if needed. NS advised that this had been considered. The proposal to codify the composition was designed to provide assurance to the market of the governance structure. NS added that the voting protection would also be codified.
- 4.16 NS added that the current MPC had no voting independent members and one customer representative. The PAC would have three independent members and a customer representative which would significantly increase the independent voice compared to the current provisions and composition.
- 4.17 A CCC member commented that the change was about how self-governance was exercised in the market. The key issues were about the right outcomes in the interests of consumers and

¹ The case put forward by the PAG was included in the paper considered [at Strategic Panel Meeting 13a](#) (p.4)

showing that the market was working in the interests of customers. The independent member had a key role in achieving that and to provide input from a variety of perspectives. However, giving the PAC chair a casting vote to overturn a majority vote rather than having a balance of industry and non-industry members was untested (no precedent for this voting arrangement had been put forward) and felt controversial.

- 4.18 A CCC member commented that Trading Party expertise could be brought to the PAC that was non-voting. This option did not appear to have been considered.
- 4.19 A CCC member commented that it did not seem appropriate to carry a vote with a minority of votes for or against. NS clarified that, in relation to voting protection, where the Trading Parties carried a sole majority and the independents, including customer representative, have voted against the Chair would have the casting vote. The Chair might also suggest that further consideration is given to an issue that was particularly contentious and brought back to the committee. NS added that block voting was a low risk and was not something that happened currently at the MPC.
- 4.20 A CCC member commented that the PAC's scope as outlined in the recommendation report seemed to be too much for one body. The member asked whether there would be a sufficient check and balance on the work of the Committee. EJ responded that the proposed scope for the PAC was not dissimilar to that of the current MPC. The performance review cycle would be considered by the Strategic Panel providing oversight at a senior level. AR added that the governance would be similar to the current arrangements. At PAC level a framework would be in place from which the Committee could select from a pre-approved tool kit with a degree of structured flexibility. Any material changes would need to be considered using the appropriate governance channels and ultimately approved by Ofwat.
- 4.21 A CCC member suggested that the density of proposed PAC business could be reduced by allocating work to other committees e.g. Disputes committee could undertake any appeals. This could help to reduce conflicts of interest and inefficiency in the governance structure.
- 4.22 A CCC member queried whether the Committee should be considering the change on the basis that it was better than the current arrangements or whether it was the optimum solution.
- 4.23 A CCC member asked for clarity regarding how the impact of the change would be reviewed. AH responded that there would be a benefits review conducted for the MPF programme similar to that undertaken for the Bilateral Hub programme. This would be undertaken when the MPF programme concluded. In addition, an effectiveness review for the PAC, similar to

that undertaken for the CCC, would be undertaken approximately 18 months after implementation at the discretion of the Strategic Panel.

4.24 A CCC member commented that taking the change on its own the CCC would effectively be saying that irrespective of whether the revised MPF is implemented the PAC would be recommended to replace the current MPC. This might not be in keeping with what had been consulted on with the market. AR responded that there was no reason to think that the full programme would not be delivered however the change proposed should be considered on its own merits.

4.25 The Code Change Committee:

- **AGREED** (six in favour, three against) that CPM058a & CPW149a better facilitated the principles of the MAC (Market Arrangements Code) and WRC (Wholesale Retail Code);
- **AGREED** (six in favour, three against) to recommend CPM058a & CPW149a to Ofwat for implementation;
- **AGREED** (eight in favour, one against) to recommend that, if approved, CPM058a & CPW149a be implemented at 00:00 hours on:
 - 26 June 2024 if Ofwat approval was received by 24 May 2024, or
 - 12 July 2024 if Ofwat approval was received by 21 June 2024; and
- **AGREED** (five in favour, three against, one abstention) that a separate Post Implementation Review for this change was not required.

4.26 Rationale for voting against:

4.26.1 Two members felt that forming the PAC ahead of understanding the full suite of metrics and tools in the new MPF was too early. This could result in the PAC's remit and skillsets not being appropriately defined and risk subsequent changes in PAC membership. One member voted against the proposed implementation date as they felt that the governance should be implemented together with the rest of the MPF.

4.26.2 One member felt that more analysis was needed to understand the risk of having the PAC formed by this change proposal. They also felt that the PAC could make too many changes to the market performance measures and there did not appear to be enough checks and balances.

- 4.26.3 One member disagreed with the minority representation of independent members on the PAC. The member believed that representation parity would deliver more balanced debate in PAC meetings. The member believed that parity of membership was achievable with both four and six Trading Party members on the PAC, and better facilitated the principles of the MAC and WRC than setting up a voting mechanism that gave the Chair the discretion to overturn the decision of a majority of voting members of the PAC.

5. Recommendation – CPW139f Bilateral Hub (Accredited Entities, Planned and Unplanned events, Additional enhancements, Additional enhancements part 1)

- 5.1 The Code Change Committee considered the draft recommendation report for CPW139f [‘Bilateral Hub’](#). The change proposal set out the proposed code amendments to deliver the sixth implementation of processes into the Bilateral hub under CPW139 & CPM051. This included technical solutions for process J1 ‘Advance notice of activities performed by an Accredited Entity’, process J2 ‘Notifying of activities completed by an Accredited Entity’, process E1 ‘Unplanned events’, and planned and unplanned processes through the existing process F7 ‘General enquiries’.
- 5.2 CD outlined the background, scope and benefits of the change as outlined in the draft recommendation report.
- 5.3 In terms of project governance all code documents had been reviewed and signed off by the Code Advisory Group (CAG) and the Operational Advisory Group had been engaged in looking at the process since June 2023. Trading Parties had had early sight of the pertinent documents in January 2024 and Ofwat in March 2024. CCW had also been engaged, having early sight of the documents and an opportunity to submit a response which had been included in the draft recommendation report.
- 5.4 A CCC member reiterated the customer benefits brought by the increased standardisation particularly in relation to planned and unplanned events. The committee member added that the provision of updates in a standardised format and through a centralised platform would improve the communication to the customers.
- 5.5 A CCC member emphasised the importance of continuously monitoring process F7 (general enquiries), to identify whether its usage increased for a particular issue. Should that be the case, such issues should be reconsidered to assess whether they required a standalone process. CD confirmed that monitoring of this process would be undertaken.
- 5.6 The Code Change Committee:

- **AGREED** (unanimous) that CPW139f better facilitated the principles of the WRC;
- **AGREED** (unanimous) to recommend CPW139f to Ofwat for approval;
- **AGREED** (unanimous) to recommend that, if approved, CPW139f be implemented at 00:00 hours on:
 - 26 June 2024, if Ofwat approval was received by 7 June 2024, or
 - 21 August 2024, if Ofwat approval was received by 26 July 2024; and
- **ENDORSED** (unanimous) the recommended PIR scope.

6. Prioritisation of Changes:

6.1 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 three from earlier CCC meetings. The committee advised Ofwat of its priorities (highest first):

- CPW148 Transfer Read Notifications for Outgoing Retailers
- CPM058(a) and CPW149(a) Market Performance Framework (Governance)
- CPW142 Wholesaler Smart Reads²
- CPW139f Bilateral Hub (Accredited Entities, Planned and Unplanned Events, Additional Enhancements Part One)

7. AOB

7.1 There was no additional business raised for discussion.

CLOSED SESSION:

8. Committee Reflections

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

² Ofwat advised that it had started work on the change but that this was in the very early stages.