

Minutes of Code Change Committee Public Session Meeting 27

14 May 2024

MS Teams

Status of the Minutes: FINAL

Anthony Pygram	AP	Independent Chair			
John Vinson	JV	Customer Representative	Steve Creighton	SC	Alternative Customer Representative
Mike Rathbone	MR	Wholesaler Member	Kye Smith	KS	Wholesaler Member
Trevor Nelson	TN	Alternate 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 (joined the meeting at 10:00)
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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)	Ivy Mandinyenya	IM	MOSL Presenter (item 4)

Andrew Johnson	AJ	MOSL Proposer (item 4)	Abu Rashid	ARA	MOSL Presenter (item 5)
John Gilbert	JG	MOSL Proposer (item 5)	Monica Falasca	MF	MOSL Presenter (item 7)
Huw Comerford	HC	MOSL Presenter (item 8)	Suzannah Maddock	SMK	Southern Water - Proposer's Representative (item 8)
Oli Robins	OR	MOSL Observer (item 5)	Evan Joanette	EJ	MOSL Observer (item 5)
Janet Judge	JJ	MOSL Observer (Item 5)	Amanda Hinde	AH	MOSL Observer (Item 7)
Peter Strain	PS	Castle Water Observer			

APOLOGIES

Euan Mitchell	EM	Retailer Member	Dan Mason	DM	Ofwat
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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 EM and DM. TN attended as an alternate for EM.
- 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 CCC26 (09 April 2024) which had been circulated for review ahead of the meeting. The minutes were approved 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 regarding PIP184 'Interim Supply: Customer Data – Enduring', MOSL was not convinced that there was a business case for using CMOS (Central Market Operating System). However, PIP215 'Unplanned Event Contact Details' was currently being considered and could potentially deliver a solution that would also address PIP184.
- 3.3 A CCC member acknowledged the need to keep the Codes in good order. However, in relation to the prioritisation of code changes the member asked what the likelihood would be of any housekeeping code change being prioritised sufficiently to be able to complete the change process. SB commented that a housekeeping change tended to encompass a number of areas and would in likelihood be submitted to the CCC once a year. SP added that from Ofwat's perspective if there was a small amount of capacity that became available it would be possible to use this to look at a housekeeping change as this type of change could be put through a fast-track process. SP added that it was important to ensure that the Codes were in good shape.
- 3.4 A CCC member noted that the change pipeline was not particularly busy in the short to medium term. The member asked whether there was a sense of the quantity and quality of potential changes in the pipeline in the longer term. SB responded that most of the current changes were coming out of MOSL led programmes e.g. MPF (Market Performance Framework) Reform and the Bilateral Hub. There was potential for the RWG (Retailer Wholesaler Group) to raise a change in the area of settlement but in general terms most of the current change activity was being generated by MOSL, Committees or other working groups.
- 3.5 A CCC member asked whether the strategic roadmap for the market was highlighting areas for potential change. SB responded that the latest iteration of the Flourishing Market Roadmap was due to be considered by the Strategic Panel at its next meeting (16 May 2024). AR added that the roadmap would set out the various market conditions that the Strategic Panel would like to see achieved and identify the work that would be needed to achieve that. AR noted that some of this work was already underway (Water Efficiency workstream, National Metering Strategy etc.). When the roadmap had been finalised, it would provide the direction for the coming years. The aim was to consult the market on the roadmap over the course of the summer following the discussions at the next Strategic Panel meeting. It was anticipated

that the roadmap would be published in the autumn taking account of any feedback. The CCC would be kept up to date on the progress of the roadmap as it moves forward.

3.6 The Code Change Committee:

- **NOTED** the change report.

4. Change Plan - CPM059 Market Arrangements Code (MAC) and MOSL Articles Duplication

- 4.1 The Code Change Committee (CCC) considered the change plan for CPM059 '[MAC and MOSL Articles Duplication](#)'. The change proposal sought to remove duplication and overlap between the Market Arrangements Code (MAC) and MOSL's Articles of Association related to membership, voting and the appointment of directors. The change proposal also sought to remove and update the outdated distinction between Associated and Un-associated Retailers which is inconsistent with the approach of the Strategic Panel and its committees.
- 4.2 IM outlined the background to the change and the associated plan, as articulated in the paper circulated in advance of the meeting.
- 4.3 A CCC member noted that the change proposal would be consulted on at the same time as the consultation on the change to the Articles of Association. The member asked whether the change would still come forward if there was insufficient support for the proposed changes to the Articles of Association. IM and AJ confirmed that if the consultation feedback indicated that there was insufficient support from members to change the Articles of Association, MOSL would reconsider the options and seek to reject the change proposal noting this would require an Ofwat decision. The CCC member commented that the change plan being submitted at this point was effectively ahead of confirmation that it was actually required. AJ responded that both potential changes needed to be progressed in parallel and it made sense to run the consultation on the code change and the Articles of Association simultaneously.
- 4.4 A CCC member asked how realistic it would be for the business plan to fail if the proposed changes to the Articles of Association did not go ahead. AJ responded that the business plan had not failed to date but had come very close to failing in terms of reaching the necessary quorum. AJ commented that historically there was a high level of support for the business plan based on those who voted.
- 4.5 A CCC member noted the growing imbalance in the membership where there were very low numbers of associated retailers and an increasing number of self-supply retailers and how that impacted the voting arrangements. AJ commented that where associated retailers were a distinct category, even if all the wholesalers and un-associated retailers voted in favour of the

business plan it could still fail if insufficient numbers of associated retailers voted (six associated retailers with four of these needing to vote to achieve quorum).

- 4.6 A CCC member commented that it was MOSL's role to ensure that a corresponding change was raised to ensure the Codes aligned with the Articles of Association. AJ observed that there was a robust mechanism in place to make any changes to the Articles of Association and that it was a very strictly controlled process governed by company law. Removing the requirement around this from the MAC would therefore not pose any risk and would reduce the level of bureaucracy. AJ added that in company law the Members had the right to decide to change the Articles of Association and that it seemed unusual to have a dual process in place.
- 4.7 A CCC member queried section 5.1 of the change proposal where the draft solution proposed sought to remove the sections in the MAC that currently prescribed the categories of Members and how the directors were appointed and removed. If the change proposal was approved and there was a change of Market Operator in the future would that mean that Ofwat would not be able to provide a check and balance on any new organisation and how it appointed its directors. AJ responded that Ofwat would still have the same powers if the change was approved and could opt to amend the change if it saw there was a need to do so. SP commented that in considering the change Ofwat would seek a legal view as to any impact to Ofwat's current powers.
- 4.8 A CCC member asked whether the change impacted further areas of the Codes. AJ responded that no further areas of the Codes would be impacted. If approved, the MAC would state that director appointments would be made in line with the MOSL Articles of Association. The WRC (Wholesale Retail Code) would remain unaffected.
- 4.9 The Code Change Committee:
- **AGREED** (unanimous) that CPM059 met the Acceptance and Prioritisation Criteria;
 - **AGREED** (unanimous) the change plan; and
 - **AGREED** (unanimous) that there was no requirement for a Post Implementation Review.

5. Recommendation – CPM058b and CPW149b Market Performance Framework (MPF) Reform (Non-Financial Tools)

- 5.1 The CCC considered the draft recommendation report for CPM058b and CPW149b '[Market Performance Reform Non-Financial Tools](#)'. The overarching 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.

- 5.2 The CCC noted that this was Part B of the change. It would refine and enable non-financial tools (Trading Party Audit; Additional Metric Monitoring; and Rectification and Escalation) which would form part of the proposed new Market Performance Framework.
- 5.3 ARA outlined the background to the MPF programme to date. This included the governance in place to consider each element of the change prior to it being submitted to the CCC for consideration and the journey of the non-financial tools element to date, including stakeholder engagement.
- 5.4 ARA advised the CCC that this element of the change was designed to build on what already worked in the current framework and make improvements to enhance its simplicity and transparency.
- 5.5 ARA confirmed that in terms of code principles the tools should facilitate more informed understanding of performance to drive the correction of poor performance in the best interests of improved customer outcomes.
- 5.6 ARA highlighted the Consumer Council for Water's (CCW) view of the change which it had not been possible to include in the draft recommendation report. CCW had been heavily involved in the development of the change primarily via the Performance Advisory Group (PAG). CCW indicated that it supported the design and formalisation of the proposed non-financial tools with the market codes. CCW agreed that the tools aligned with its principles for a revised Market Performance Framework and that the proposed tools would have a positive impact on customers. CCW also welcomed clarity on the circumstances where Ofwat might take action against a trading party who failed to improve through the rectification and escalation process. However, it still had a concern that this may not happen quickly enough if the PAC (Performance Assurance Committee) was struggling to assess whether a potential code breach had taken place or had not gathered sufficient evidence of the customer impact. For this tool to be effective, the PAC would need to gather evidence of this impact throughout the process both through its engagement with the affected trading party and working with other stakeholders. The PAC would then be in an informed position to recommend escalation to Ofwat should performance fail to improve.
- 5.7 A detailed discussion followed on range of themes:

Additional Metrics:

- 5.8 A CCC member questioned the development and usage of additional metrics and how performance would be benchmarked. ARA responded that additional metrics were intended to be a diagnostic tool. Therefore, they would be developed when a performance issue was identified to understand underlying causes, rather than to compare trading parties' performance. The intention would be for data collection and analysis to be automated or semi-automated where possible using CMOS and Bilateral Hub data which would also reduce the reporting workload for Trading Parties. This should allow performance to be benchmarked against historic data.
- 5.9 The CCC member also queried if risks would be introduced by parties self-reporting metrics. The committee heard that no additional risks would be introduced as a result of the change. Risks would be consistent with those associated with the current Operational Performance Standards which, until the associated processes were recently transferred into the Bilateral Hub, were self-reported by wholesalers. Furthermore, practicality would be considered as part of any new metric introduction and there was an expected affinity for centrally generated metrics.

Transparency:

- 5.10 The CCC questioned the increased transparency brought by the additional metric monitoring tool. ARA confirmed that currently Additional Performance Indicators, which have some equivalence to additional metrics, were outlined in the annual Market Performance Operating Plan. The additional metric monitoring tool included notifying trading parties of new metrics, with a code-mandated minimum notice period of one month. Therefore, this tool would increase transparency of metric measurement and usage.
- 5.11 A CCC member queried whether the information and learning gathered from audits would be made available to customers commenting that it would be important to do this. ARA confirmed that the codified process would be for the auditor and the PAC to agree next steps following receipt of audit findings. This could include making information available to consumers and public bodies if deemed beneficial. ARA noted that the reformed MPF sought to increase transparency and improve customer outcomes. Other actions could include changes to the market codes, discussions and collaboration with groups e.g., CCW, and creating market metrics. ARA confirmed that the codes were drafted intentionally to allow for a range of possible actions after audits are completed.
- 5.12 A CCC member questioned the function of requests for information included within the trading party audit tool. ARA confirmed that these enabled the auditor to request key areas of

information from a business, and whether the business was satisfied it was compliant with its code obligations. ARA reiterated that the audit tool would be the mechanism through which continued assurance of market operation would be sought, and that the code drafting allowed for that in various forms. The CCC heard that letters of assurance from an authorised signatory had been carefully considered. However, the PAG (Performance Advisory Group) had advised that these were too onerous. A CCC member expressed their surprise at this, suggesting that trading parties ought to be able to assure the MPC (Market Performance Committee) of their compliance with the codes.

5.13 A CCC member queried a number of elements in the legal drafting which resulted in the following clarifications:

Legal text clarifications:

5.14 CSD 0002 Section 1.2 (f) – MOSL clarified the intent for Trading Party Audits to relate to key risks and under-performance but not to require both to be present for an audit to be conducted.

5.15 CSD 0002 Sections 8.6.4 & 8.6.10 – MOSL clarified that the detail of a Performance Rectification Plan could be confidential. However, the Trading Parties which had such plans and summaries of progress against them would be published.

5.16 CSD 0002 Section 9.1.2 – MOSL clarified that either the Market Operator or PAC could decide additional audits were required.

5.17 The Code Change Committee:

- **AGREED** (unanimous) that CPM058b & CPW149b better facilitated the principles of the MAC (Market Arrangements Code) and WRC (Wholesale Retail Code);
- **AGREED** (unanimous) to recommend CPM058b & CPW149b to Ofwat for implementation;
- **AGREED** (unanimous) to recommend that, if approved, CPM058b & CPW149b be implemented at 00:00 hours on:
 - The day after the Transitional Period specified in the Performance Assurance Committee (PAC) Governance Transitional Arrangements schedule proposed by CPM058a expired, if Ofwat approval was received by 12 July 2024; or
 - The date the Strategic Panel informed MOSL that the PAC would be active from; and

- **AGREED** (unanimous) that a separate Post Implementation Review for this change was not required.

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 five from earlier CCC meetings.
- 6.2 The committee advised Ofwat that it did not believe that CPM058b and CPW148b 'MPF Non-Financial Tools' should take greater priority over the changes that Ofwat was already working on.

7. Post Implementation Review – CPW126 Settling of Post RF Primary Charges

- 7.1 The CCC considered the Post Implementation Review for CPW126 '[Settling of Post RF Primary Charges](#)'. MF outlined the background to the change and the lessons learned, as articulated in the paper.
- 7.2 A CCC member asked regarding future changes was there anything that should be approached differently. MF responded that the lessons learned in relation to materiality thresholds and the importance of detailed and timely analysis as outlined in the paper would be important to take account of in future changes. The CCC member also asked whether the change should be revoked as it had not achieved its objective. MF responded that to revoke it would cost more in resources and that to leave it in the Codes would not be a significant issue as the process had no disbenefit and would not be triggered very often.
- 7.3 A CCC member commented that the materiality threshold continued to be an issue and noted that the RWG (Retail Wholesale Group) were looking at this in the Settlement sub-group in addition to reruns and dead zones.
- 7.4 A CCC member noted that although the change had not achieved its objective that did not mean that there was not an issue to address. The CCC member added that there seemed to be an underlying data issue which could be resolved via smart metering but was likely to be an enduring issue until such time as the meter rollout was complete. A CCC member responded that smart metering would resolve some of the issues but not all.
- 7.5 The Code Change Committee:
- **Noted** the post implementation review.

8. Post Implementation Review – CPW085 Premises Vacant Transaction Link to DPID

- 8.1 The CCC considered the Post Implementation Review for CPW085 '[Premises Vacant Transaction Link to DPID](#)' which had been tabled for questions.
- 8.2 HC introduced SMK who was attending the meeting on behalf of the proposer (Southern Water).
- 8.3 A CCC member noted that trading parties could benefit from greater clarity regarding how to approach historic vacant DPIDs as the report indicated that that the issue still existed. HC noted that MOSL have been assisting with several trading party queries that had been received in relation to historic sites.
- 8.4 SMK commented that an area to potentially look at was the accuracy of the data relating to the percentage failed for not meeting the 12-business day SLA (Service Level Agreement) for terminations. HC responded that the data would be reviewed.
- 8.5 A CCC member commented that the lack of visibility of performance was a real problem. HC responded that this has been highlighted as a potential addition to the Bilateral Hub in the future. HC also noted that the Bilateral Hub did not exist when the change was originally raised.
- 8.6 The Code Change Committee:
 - **Noted** the post implementation review.

9. AOB

- 9.1 SMY advised CCC members that a diversity questionnaire would be circulated later in May for completion. This followed the discussion at the March CCC where members agreed that it was important to explore how greater diversity could be achieved across the market governance groups.

CLOSED SESSION:

10. Committee Reflections

- 10.1 The committee members shared their learning from other market governance committees and groups they participated in and reflected on the meeting.