



Credit Committee Terms of Reference Additional Remit

Meeting Name:	Panel
Paper Number:	P38_09
Meeting Date:	10 December 2019
Purpose of Paper:	Decision
Classification:	Public
Synopsis:	This paper seeks approval for additions to the Credit Committee's Terms of Reference's remit.

RECOMMENDATION:	The Panel is invited to: <ul style="list-style-type: none">• AGREE the additions to the Credit Committee's Terms of Reference's remit.
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Appendix: Credit Committee Terms of Reference v2.0

1. Background

The Credit Committee's Terms of Reference were approved by the Panel in August 2018. This paper proposes to add a further area to the Credit Committee's remit to those proposed by KPMG and supported by Ofwat following its review of credit arrangements for the non-household retail market in June 2018.

Castle Water's Change Proposal CPW079 Protections for Credit Support Security seeks to address the concern that a Wholesaler under financial stress could potentially draw the credit support lodged with it by a Retailer. The Change Proposal contained two parts: Part A where a Wholesaler draws down more credit support than it is owed and due and Part B where a Wholesaler's credit rating falls below investment grade. The proposer modified their Change Proposal to withdraw Part B on the understanding that the Credit Committee would consider the issues relating to that part of the Change Proposal and the general issue of the security of Retailers' credit support which the Change Proposal was seeking to resolve.

The revised Credit Committee Terms of Reference with an expanded remit to consider the security of Retailers' credit support are attached.

2. Credit Committee Workplan

The Credit Committee is currently dealing with two substantial areas of work in CPW080 Simplification of the Default and Termination Process, which needs considerable alteration following industry consultation and CPW061 Unsecured Credit Allowance reflecting payment history, which following its return by Ofwat, requires further assessment, evidence gathering and external advice before going back to the Panel. It is anticipated that these Change Proposals will occupy the Credit Committee and the Panel Secretariat in the coming months.

Even so, work on the security of Retailers' credit support may start in January. The issue has been separated into three areas: (a) Wholesalers' creditworthiness and dealing with their insolvency; (b) securing credit support funds; and (c) elements of delivery. Area (a) is to consider the impact of Wholesalers' creditworthiness and possible measures to deal with Wholesaler insolvency. Area (b) is to look at how to secure Retailers' credit support funds considering options such as escrow accounts and using trusts. Area (b) and possibly area (a) will require external advice. Area (c) will depend on the outcomes of the first two but is currently to look at how a proposed solution would work in terms of dealing with disputes, disapplying part of the Business Terms and providing clear methods for Wholesalers to return Retailers' credit support funds.

Given the scope of this work, if a change proposal is to be developed from the analysis undertaken, the plan would be to present it to the Panel in June. However, this is dependent on workload in other areas which may mean that the Panel has to determine what it wishes to prioritise in the first half of 2020.

3. Next Steps

If the Credit Committee's Terms of Reference are expanded to include the security of Retailers' credit support, this area will be added to its programme of work.

4. Recommendation

The Panel is invited to:

AGREE the additions to the Credit Committee's Terms of Reference.

Credit Committee Terms of Reference v~~21~~.0

The Credit Committee has been established by the Panel in accordance with Sections 5.2.1 (p) and Schedule 12 of the Market Arrangements Code (MAC).

Unless otherwise stated, words and expressions that are used in the Terms of Reference (ToR) shall have the meanings and application attributed to them under the MAC and Wholesale Retail Code (WRC).

Changes to the ToR can be proposed to the Panel at any time. All changes to the ToR will be voted on, in line with the Panel operating procedures.

1. Overview

On 15 June 2018 Ofwat published the results of its review of credit arrangements for the non-household retail market, which it had commissioned KPMG to undertake in December 2017. The review sought to establish whether the current arrangements create undue and unfair barriers to entry, in particular how they affect smaller new entrants, and whether any areas could be clarified or improved.

KPMG made a number of recommendations, described as proposals, for areas of work for the Panel to take forward which Ofwat has supported.

These KPMG proposals are:

- Proposal 1: Ensure greater transparency of PCGs and alternative credit arrangements;
- Proposal 2: Reflecting payment history in order to access an unsecured credit allowance;
- Proposal 4: Clarifications around credit assessment scores;
- Proposal 5: Review of termination, default and interim supply processes; and
- Proposal 8: Pooled credit models.

Ofwat has asked the Panel to focus on:

- Taking forward the transparency aspect of the PCG and Schedule 3 alternative credit arrangements-related proposal with a future request for the Panel to gather evidence and to assess whether all retailers are able to compete, specifically whether associated retailers are deriving an unfair advantage from PCGs (Proposal 1).
- Recommendations that relate to the use of credit scores and unsecured credit allowance for payment history potentially packaging these together given the interdependencies (Proposals 2 and 4).
- Taking forward work relating to the timelines for default and termination following initial testing of interim supply processes by Ofwat and MOSL (Proposal 5).

2. Objectives and Principles

The purpose of the Credit Committee is to best manage the areas of work on improving the credit arrangement set out by KPMG and supported by Ofwat for the Panel including its committees to take forward.

Following the publication of CPW079, the purpose of the Credit Committee is to include in its work on improving the credit arrangements the issue of security of Retailers' credit support funds and consideration of methods of ring-fencing them as well as of the creditworthiness of Wholesalers.

The objectives of the Credit Committee are to:

- Carry out required investigation and evidence gathering from trading parties and others;
- Engage with third parties, i.e. credit rating agencies, as necessary;
- Liaise with Ofwat regarding the review of the Retail Exit Code, if appropriate; and
- Make recommendation on code Change Proposal to the Panel.

The Committee shall comply with the Objectives and Principles of the Codes, set out in Schedule 1, Part 1 of the Wholesale Retail Code.

3. Role and Functions

The Credit Committee shall investigate and analyse the issues outlined by Ofwat's review and assess the risks and impacts on the market codes of its solutions to these issues.

The Panel has delegated the following functions to the Committee:

- Provide expert advice on the current credit arrangements and any proposed changes;
- Provide detailed and expert impact assessment on the current and proposed credit arrangements;
- Provide detailed and expert reports to the Panel and/or the Authority; and
- Make recommendations to the Panel on any related changes to the market codes.

4. Membership

4.1 Chair and Secretary

The Market Operator shall appoint the independent Chair of the Credit Committee (who may be an employee of MOSL), subject to prior consultation with the Panel. The Chair's role will be to chair meetings, facilitate discussions, and encourage consensus but shall have no casting vote.

The Credit Committee shall have a Secretary who shall be a person provided by the Market Operator. They will be responsible for taking the minutes, agreeing and circulating agendas, scheduling meetings and producing the papers and reports, on behalf of the Committee. The Secretary will also attend meetings to support the activities of the Committee and advise on the market Codes and change control matters.

The Secretary will neither vote nor be a member of the Committee.

4.2 Voting Members

The Credit Committee shall comprise of 10 voting members of five (5) wholesalers and five (5) retailers, made up of the following pool of experts in the field of:

- Wholesalers (with experience of credit and other related financial services); and
- Retailers (both Associated and Unassociated, with experience of credit and other related financial services).

Each Credit Committee Member shall act impartially and independently of the interests of their employer and of any person or class of persons, in exercising the functions under Schedule 12 of the MAC.

Before being appointed as a Credit Committee Member, each Member shall provide a Member confirmation to the Market Operator that they agree to being a Credit Committee Member. Members must also provide a letter from their employer agreeing that they may act as a Credit Committee Member, in accordance with Schedule 5.7.1 of the MAC.

4.3 Non-Voting Members

The following non-voting members are entitled to attend, to speak but not vote at the Credit Committee meeting:

- The Chair;
- The Market Operator;
- An observer representing Ofwat; and
- Panel Sponsor.

The Credit Committee Chair may invite any individual to attend a meeting of the Credit Committee in order to speak to particular items on the agenda, but they shall have no vote in the Committee.

4.4 Alternates

If a Credit Committee Member cannot attend, the Member may propose an Alternate. The Alternate can be any individual notified to the Secretary in good time before the meeting. Alternates should possess sufficient knowledge and expertise to act as a Member.

Subject to the approval of the Credit Committee Chair, the Alternate may attend the meeting and vote and speak as a Member.

A person appointed as an Alternate is bound by the provisions of the code and this ToR. Alternates must act impartially, in the best interests of the market and should not be representative of or have regard to the interests of anybody or person, including the Credit Committee Member that appointed them.

If an Alternate attends a meeting as well as their standing Credit Committee Member, he or she attends only as an Observer and will have no voting rights.

5. Quorum and Decision Making

No business is to occur at the meeting unless a quorum is present. A quorum is a minimum of at least six (6) voting Credit Committee Members of which three (3) shall be Wholesalers and three (3) shall be Retailers.

Credit Committee Members must inform the Secretary if they or their Alternate is unable to attend at least five (5) WorkingBusiness Days prior to the meeting.

If a Quorum of Credit Committee Members has not confirmed attendance, the Credit Committee Chair may determine that the meeting should be cancelled, and a notification be issued to Credit Committee Members no later than five (5) WorkingBusiness Days prior to the meeting. The meeting will be deemed as cancelled if no Credit Committee Members has notified the Secretary that he or she objects to the cancellation, not later than three (3) WorkingBusiness Days before the meeting.

If a meeting of the Credit Committee Members is convened, and a quorum is not present within one hour, the meeting will be adjourned and re-scheduled by the Secretary at the earliest convenience.

A meeting shall be quorate if the necessary members are present in person at the meeting or are contactable by telephone conference call.

5.1 Voting Procedure

Votes will not be attributable to individual Members. Any decision made by the Credit Committee shall be decided by a simple majority of voting Members

When voting on any one decision, each Credit Committee Member shall be entitled to exercise one (1) vote.

6. Secretariat

The Market Operator will provide Secretariat services and appoint the Credit Committee Secretary. The Secretary will neither vote nor be a member of the Committee. The Secretary is the officer of the Committee that is responsible for its administration. The Secretary must have integrity and must not only be, but also be seen to be, impartial and free from proximity to vested interests. The work of the Secretary encompasses:

- Convening of Credit Committee meetings, provision of relevant papers and materials and taking minutes of meetings;
- Maintaining registers of Committee Members, interests, contracts and agreements;
- Communicating with the Panel, Trading Parties and Ofwat on behalf of the Credit Committee;
- Management and administration of the Committee Member appointment processes; and
- Supporting the Credit Committee Chair in ensuring compliance with regulations and obligations by Committee and Panel Members (and the Committee and Panel as a whole).

7. Proceedings of the Meeting

7.1 Frequency of Meetings

The Credit Committee will meet as and when required, but meetings may be cancelled if there is insufficient business on the agreement of the Credit Committee Chair. In such cases, the Secretary will notify Members (and confirm on the website) that the meeting is cancelled not later than five (5) WorkingBusiness Days prior to the meeting. The meeting will be deemed as cancelled if no Credit Committee Member has notified the Secretary that he or she objects to the cancellation, not later than three (3) WorkingBusiness Days before the meeting.

Additional meetings may be held at such a time and place as notified to the members by the Secretary, in accordance with these ToR.

Unless otherwise decided by the Panel, the Secretary shall convene the Credit Committee meetings by giving notice via email at least five (5) WorkingBusiness Days prior to the proposed meeting, accompanied by publishing an agenda and any non-confidential papers on the website, as necessary. A copy of such notice and papers shall also be sent to any Alternate appointed.

The custom practice is that there will be no late papers issued outside of the agreed meeting notice period. From time to time, there may however be a need for additional matters or late papers, and the approach will be agreed by the Chair on a case by case basis. The Secretary will provide notice to the Committee members and the other persons entitled to receive notice, as soon as reasonably practical. Late papers will only be considered upon the agreement of Credit Committee members.

7.2 Urgent Meetings

Where the Secretary, with the agreement of the Committee Chair, is of the opinion that an urgent meeting is required, the five (5) WorkingBusiness Day notice period shall be waived.

The Secretary will notify Committee Members by email and/or telephone as soon as reasonably practical prior to the calling of an urgent meeting.

7.3 Meetings via Teleconference

A meeting of the Credit Committee may consist of a tele- or video-conference between members. A Committee member taking part in such a conference or telephone call is deemed to be present in person and is entitled to vote and be counted in the quorum accordingly.

7.4 Minutes of Meetings

The Secretary shall minute the discussions and resolutions of the meetings, including the names of those in attendance. Draft minutes will be circulated to Credit Committee Members as soon as reasonably practical after the meeting, where approval will be sought at the next meeting. Following Credit Committee Members approval, the minutes will be published on the Market Operator's website.

To facilitate transparency, the Secretary may, at the discretion of the Committee Chair, publish a Headline Report listing the decisions within three (3) ~~WorkingBusiness~~ Days of the meeting. The Credit Committee has delegated authority to the Committee Chair to approve the Headline report.

The Secretary will also provide regular updates to the Panel on the activities of the Credit Committee, in the form of a monthly (or otherwise agreed) Committee Report, as determined by the Panel and agreed by the Credit Committee Chair.

7.5 Recording and Broadcasting

For transparency, audio and/or video recording may be made of Credit Committee meetings. Additionally, the open session of committee meetings may be broadcast by webinar. The agreed policy regarding recording and webinar broadcasting is as approved by the Panel and published on the Market Operator website.

8. Transparency and Confidentiality

The Credit Committee meetings are open and public. While custom practice will be to allow any person to attend the open session of Credit Committee meetings, provided that the Secretary is notified, and prior consent of the Credit Committee Chair is required (and that such approval will not be unreasonably withheld), exceptions may apply which call for a closed meeting session. Such exclusions include where confidential information will be considered shall be held in confidence.

There is a preference of all agenda items to be taken in open sessions where at all possible.

In the event of closed session papers, the necessary paperwork will be circulated to Credit Committee Members and will not be published on the Market Operator's website.

9. Conflict of Interest

Credit Committee Members shall declare in advance any actual or perceived conflict of interest.

In the event of any conflict of interest is declared by a Credit Committee Member, the Member shall notify the Secretary for the matter to be discussed at the next appropriate Credit Committee meeting. At the Credit Committee meeting, the Members shall decide the most appropriate course of action.

10. Expenses

Any Credit Committee Member who is not employed by the Market Operator can claim reasonable expenses incurred in attending meetings or otherwise conducting business. The agreed Panel and Committee Expenses Policy is published on the Market Operator's website.

11. External Communication

Credit Committee Members may be approached by members of the press or requested to speak at public events either on behalf of the Credit Committee or in personal capacity. The agreed Communication Policy is as approved by the Panel and published on the Market Operator's website.