

Minutes of the Disputes Committee Meeting Six

21st April 2021 | 10:30 – 13:30 | Via MS Teams

Status of Minutes: FINAL

Present

Member	Abbreviation	Role
Elsa Wye	EW	Chair
Neil Pendle	NP	Committee Member (Retailer)
Peter Strain	PS	Committee Member (Retailer)
Wendy Monk	WM	Committee Member (Retailer)
Patrick McCart	PM	Committee Member (Retailer)
Jesse Wright	JW	Alternate Committee Member (Wholesaler)
Matthew Rix	MR	Committee Member (Wholesaler)
Martin Mavin	MM	Committee Member (Wholesaler)
Dylan Freeman	DF	Committee Member (Wholesaler)
Julian Trantor	JT	Committee Member (Wholesaler)
Markus Lloyd	ML	MOSL
Joe Smith	JS	MOSL (Presenter)
Sarah McMath	SM	MOSL
Ethan Fleming	EF	MOSL (Secretariat)

Apologies

Paul Stelfox	PS	Committee Member (Wholesaler)
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1. Welcome and Introductions

- 1.1. JW had been nominated as an alternate for PS.
- 1.2. SM would be attending the meeting as an observer.

2. Minutes of the Previous Meeting

- 2.1. There had been no comments received on the following minutes:
 - DC05
 - DC05 Confidential Addendum
- 2.2. The minutes of the above meetings were approved as an accurate record.

3. Review of Outstanding Actions

- 3.1. The following actions were presented for closure: A4_01, A4_04, A4_05, A5_01.

4. CPM38/CPW116 Clarification and removal of redundant clauses in the Unified Disputes Process

- 4.1. At the 30th March Panel, MOSL presented the change [CPM038/CPW116: Clarification and removal of redundant clauses in the Unified Disputes Process](#) on behalf of the Disputes Committee. The Panel agreed to defer the change to May to address the proposer concerns. MOSL noted the issues raised and suggested new legal drafting to resolve these issues which was being presented to the committee for information.
- 4.2. It was confirmed that this could not be presented to the April Panel due to the DC meeting being held after the Panel paper day.
- 4.3. A member recommended that section 17.3.3 be adjusted to include both parties rather than the disputing party and IM would seek legal advice on this.

ACTION:06_01

5. Disputes Committee Terms of Reference

- 5.1. The Terms of Reference (ToR's) had been updated to reflect the amendments to CPM038 and highlighted the committee was established under Schedule nine the principle of impartiality was under section 5.7. It was clarified that the ToR was subservient to the MAC. The paper day requirement had been adjusted to reflect that ten business days would only apply to papers relating to a dispute with standard paper distributed on a five-day timescale.
- 5.2. A member noted that it may be difficult for a member individually to gauge when an item was commercially confidential and or breach competition law. This could be mitigated by including the term "where it is deemed confidential" into section eight of the ToR's.
- 5.3. Another member felt that it was the role of the MO to guide committee members, but members should always take a cautious approach to the release of information. This may require wording in section eight as to "with potential to".

ACTION:06_02

- 5.4. A member noted that confidentiality and avoidance of breaching competition law was implicit in all activities of members.
- 5.5. A member noted that Ofwat were due to issue guidance on competition law.
- 5.6. A member asked what indemnities were available to committee members in the event of mistakes being made. It was clarified that the Panel and sub-committees were indemnified under the MAC for decision making. SM would investigate the insurance policy that MOSL maintained on behalf of the Panel and what it did and didn't cover.

ACTION:06_03

- 5.7. Members were asked to submit any final comments on the ToR's by close of business on the 26th.

6. Disputes Committee Procedures

- 6.1. ML presented the document and reported that it was an amalgamation of requirements in a more user-friendly manner and reflected the learnings from DIS0020. MOSL would also be producing internal local workings instructions for the case managers to ensure continuity.
- 6.2. A member commented that it may be useful to outline a hierarchy of documents to provide clarity on what should be referenced in the case of uncertainty.

ACTION:06_04

- 6.3. A member recommended a slower video demonstration with less noise interference.

ACTION:06_05

- 6.4. A member noted that it required other affected parties to be notified and if this should involve a communication to be issued to contract managers for trading parties to determine if they were an affected party. Currently the disputes were listed on the website and not proactively brought to Trading Parties attention and it should not be relied on to them to check the website.
- 6.5. A member noted that a clear, perhaps more descriptive title for the dispute would help for Trading Parties to determine if they were affected.
- 6.6. A member did not support alerting contract managers and it was for the Trading Parties involved to bring in affected parties as they identified them.
- 6.7. It was noted the document was code mandated to be published.
- 6.8. Members were asked to submit any final comments by close of business on the 26th.

7. New Disputes

- 7.1. JS reported that DIS0032 between Castle and Thames had been published and was in the negotiation period.
- 7.2. The dispute between Elis and South West Water continued and MOSL had been notified that this was at director level negotiations.
- 7.3. No other new disputes had been received.
- 7.4. A member asked why the website currently listed 11 outstanding disputes and what was being done to resolve these. JS confirmed that MOSL was in the process of migrating to a new website and the disputes listing would be updated as part of this. Some disputes related to before the establishment of the unified disputes procedure and the parties had not agreed to migration onto the new system and so no further steps could be taken by the MO or the Disputes Committee.

8. AOB

- 8.1. A member asked when the committee would have sight of the annual report. JS confirmed that discussions had begun with the Chair in relation to the report and a draft version would be issued at the next meeting. There was no obligated timescale for the publishing.
- 8.2. A member asked the committee to note that the bilaterals project was examining some areas of code that related to the dispute committee. IM confirmed she was aware of this and would report on anything material to the committee.