

Minutes of Disputes Committee Meeting 38

10 January 2024

Via MS Teams

Status of the Minutes: Approved

MEMBERS PRESENT

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|---------------|----|-------------------------------|--------------|----|-----------------------------|
| Rick Hill | RH | Chair | Wendy Monk | WM | Committee Member (Retailer) |
| Dylan Freeman | DF | Committee Member (Wholesaler) | Neil Pendle | NP | Committee Member (Retailer) |
| Matthew Rix | MR | Committee Member (Wholesaler) | Peter Strain | PS | Committee Member (Retailer) |

OTHER ATTENDEES

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|----------------|----|----------------|-----------------|----|--------------------|
| Andrew Johnson | AJ | MOSL Presenter | Alexander Cowie | AC | Disputes Secretary |
| Charles Unvala | CU | MOSL Presenter | Sarah McMath | SM | MOSL Observer |
| Markus Lloyd | ML | MOSL Observer | | | |

APOLOGIES

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|----------------|----|-------------------------------|----------------|----|-----------------------------|
| Julian Tranter | JT | Committee Member (Wholesaler) | Patrick McCart | PM | Committee Member (Retailer) |
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1. Welcome and Introductions

Purpose: For Information

- 1.1. The Chair welcomed all attendees to the Disputes Committee (“Committee”) Meeting 38 and noted that apologies for absence were received and accepted from Julian Tranter and Patrick McCart. The Chair confirmed that the meeting was quorate.
- 1.2. The Chair drew attendees’ attention to the need to comply with applicable law, notably competition law and that any actual or perceived conflicts of interest should be declared at

the start of the meeting or at such point as it becomes apparent to any member that there may be a conflict. No conflicts of interest were declared.

2. Recruitment Update

Purpose: For Information

- 2.1. AJ provided an update on the recruitment process that was currently ongoing for new Committee Members. This had received additional focus during the latest round of recruitment, which had included a letter from RH, in his capacity as acting Chair of the Strategic Panel to trading party CEOs reminding them of the important role played by the Committee and requesting their assistance in nominating potential new members of the Committee, which has a maximum capacity of ten members (with five Retailer and five Wholesaler representatives). AJ noted that five nominations had been received and that these had been reviewed by the Disputes Committee Nominations Panel (which had been established by the Strategic Panel to oversee the recruitment process). These five were viewed as strong candidates and had been progressed to the interview phase. AJ further noted that should these candidates be appointed their terms of office would commence from 1 April 2024.
- 2.2. Following a request for clarification on the position of existing members, AJ confirmed that without any further action current members terms of office would expire on 31 March. Should existing members wish to be considered for another full term, their nominations would be welcome via the usual formal channels. Members who did not wish to serve another full term, but who were willing to remain on the Committee for an interim period to provide continuity and to help ensure that the Committee remained able to function ahead of the appointment of sufficient new members to fill all the available positions, were asked to indicate this by email to AC and RH. It was noted that all new appointments and extensions to terms of office would be subject to Strategic Panel approval.
- 2.3. AJ noted that the rationale behind the proposals to introduce 'Supplemental Members', which would be discussed further under the next agenda item, was designed to mitigate the risk of the Committee being unable to operate should insufficient standing members be in place.
- 2.4. The Chair thanked AJ for his update and expressed his thanks to the existing members of the Committee for their commitment to the Committee and willingness to make themselves available far beyond their initial terms of office to continue to make the Disputes process a viable solution for the market.

3. Changes to the DC Terms of Reference and Disputes Guidance

Purpose: For Decision

- 3.1. CU provided an overview of the proposed changes to the Committee's Terms of Reference and the Disputes Guidance that were described in paper DC38_01, which had been circulated in advance of the meeting.
- 3.2. CU noted that the changes to the Committee's Terms of Reference broadly fell within three headings: changes to the existing model coming out of the Disputes Process Review; changes to support the introduction of Supplemental Members; and changes to align the Committee's Terms of Reference with those of the Strategic Panel and other Committees. The proposed changes to the Committee's Terms of Reference were:
 - To reduce the number of scheduled DC meetings from 12 per year to two.
 - To allow unscheduled DC meetings to be arranged to hear non-urgent Disputes.
 - To require the disputes secretary to establish a 'Register of Expertise' of Strategic Panel and members of its formal Committees to support the selection of Supplemental Members where required.
 - To enshrine the expectation that any non-Disputes hearing business other than the review and approval of the Committee's annual report to the Strategic Panel will be conducted by email ex-Committee.
 - To introduce a requirement for a compliance reminder to be included at the start of every Committee meeting.
 - To introduce a new category of Supplemental Members who would be called up from any Strategic Panel or formal Strategic Panel Committee on a Dispute-by-Dispute basis to provide additional expertise and ensure that the Committee is able to continue to operate where insufficient permanent Members are in place.
 - To remove the distinction between Associated and Unassociated Retailer Members, in line with the Strategic Panel and other committees.
 - To extend Committee Members' terms of office for new appointments from one to two years, in line with the terms of office of members of the Strategic Panel and other committees.

- To clarify the requirement for alternates and Supplemental Members to provide the standard ‘confirmation’ letter (stating acceptance of the role and commitment to act impartially) and ‘release’ letter (from an appointee’s employer releasing them from their obligations as an employee while acting in their role as a Strategic Panel or other committee member).

3.3. The proposed changes to the Disputes Guidance were:

- To update Committee Meeting timings to 20 Business Days for the standard referral process, in line with changes to the Terms of Reference.

3.4. The Committee briefly discussed the proposed changes to the Terms of Reference and Disputes Guidance, noting the following key points:

- References within the Terms of Reference to “the Panel” should be updated to “the Strategic Panel” and within the new section on Supplemental Members, the language should be updated to define the pool from which Supplemental Members could be drawn as being from “the Strategic Panel and its formal Committees”.
- The ‘Register of Expertise’ to support the Chair in identifying the individuals best suited to act as Supplemental Members for a Dispute would not be publicly available and would be held and run by the Secretariat team. The Register of Expertise would look to set out the relevant skills or areas of expertise that would be applicable to the Committee and then match members of the Strategic Panel and its formal Committees with these. Feedback that the Register of Expertise should take into account the difference between industry experience in a given area and genuine expertise was noted.
- One Committee Member questioned whether the requirement for those serving on the Panel and Panel Committees to additionally be available to serve as Supplemental Members might dissuade some applicants. This risk had been considered; however, it was felt that, on balance, the risk was very low as the time commitment for Supplemental Members would be minimal and these individuals could not, and would not, be compelled to act as Supplemental Members.
- The introduction of Supplemental Members was to provide a robust safety net should the Committee find itself in a position where it had insufficient members to operate. In an ideal world, there would be sufficient standing members of the Committee for Supplemental Members not to be required.

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3.5. Following discussion, the Committee:

- **AGREED** to endorse the future structure and composition of the Committee and proposed changes to the Committee's Terms of Reference, and to recommend them to the Strategic Panel; and
- **AGREED** to approve the updated Disputes Process Guidance.

4. Any Other Business (AOB)

Purpose: For Information

- 4.1. The Committee briefly discussed whether, in light of the continued shortfall in membership below the ten-member maximum on the Committee, a Code change should be raised to reduce the number of members specified. However, it was agreed that the preferred option was for a continued push for new Committee Members but that a future Code change to reduce the membership of the Committee should be considered if finding new members continued to prove challenging and the shortfall was not offset by the introduction of Supplemental Members.
- 4.2. The Chair put on record his thanks to all the existing members for their time and expertise in support of the Committee over an extended period, noting that the success of industry self-governance was dependent on the continued commitment of industry representatives.
- 4.3. There being no further business the Chair closed the meeting.

The next Disputes Committee meeting is scheduled for: 08 May 2024 via MS Teams