

Minutes of the Governance Sub-Group

Meeting 1

4 May 2021 | 9:30 – 14:30

Held via Videoconference (Microsoft Teams)

Status of the Minutes: **Draft**

MEMBERS PRESENT

Angela Day (Chair)	AD	John Vinson	JV	Rupert Redesdale	RR
Christopher Wright	CW	Julian Tranter	JT	Christina Blackwell (CCW)	CB
Elsa Wye	EW	Neil Pendle	NP	Dan Mason (Ofwat)	DM

OTHER ATTENDEES

Adam Richardson (MOSL)	AR	Huw Comerford (MOSL)	HC	Aneesa Rahman (Secretariat)	ATR
Ethan Fleming (MOSL)	EF	Stuart Boyle (MOSL)	SB	Hayley Robinson (Ofwat)	HR
Florentina Monea (MOSL)	FM	Tom Daborn (MOSL)	TD		

1. Welcome and Introductions

- 1.1 The Chair welcomed everyone to the meeting, explained this was the first of four meetings and summarised the agenda.
- 1.2 Each of the members and attendees introduced themselves in turn and stated what they hoped to achieve from the sub-group.
- 1.3 Queries were raised about late papers. It was agreed that papers would be published at least two days prior to the meeting.

2. Governance Review Programme Overview

- 2.1 AR stated that there were 42 recommendations that came out of the independent panel review carried out by Satori. The work in relation to panel purpose would pick up a sub-set of those recommendations and the Panel would be picking up other pieces relating to ways of working with MOSL. The focus for discussions on panel purpose would be about establishing why the panel exists, what value it could add and what that would mean in terms of the code provisions required to support that.
- 2.2 A discussion document which considers the purpose of the panel and a number of illustrative models about panel going forward had been drafted. This document would be available on the MOSL website within the next few days. The intention was to ensure the document would be available ahead of the Strategic User Forum on 10 May where views on panel purpose would be obtained. An update would also be provided at the CEO forum on 12 May. Wider views would be sought from trading parties and stakeholders through May and June, including at the Retailer Wholesaler Group (RWG), Market Performance Committee (MPC) and Disputes Committee (DC).

- 2.3 Members asked whether MOSL had a mechanism to capture views and feed them into the process and whether there was a plan on how to engage with parties who did not usually actively engage and did not have the bandwidth to respond to all consultations. Members were keen to be collaborative and use as many channels as possible to engage parties. Customer groups and customer representatives should also be invited to actively participate.
- 2.4 AR agreed and confirmed where ad-hoc feedback was received from interactions with trading parties or elsewhere this would be brought to the MOSL team dealing with the governance review. There would be a communication push over the next weeks and months to ensure as many views as possible were captured.

3. Sub-Group Deliverables

- 3.1 SB defined the deliverables for the group, explaining that there were three change proposals on the table. Two change proposals were on the composition of the Panel and one was on the principles.
- 3.2 The focus of the meeting today would be on code principles and composition. The purpose of the sub-group meetings on 13 and 14 May would be to outline solutions for the three change proposals and approve what the sub-group would like to consult on. The aim was for a consultation to be sent out on 17 May, which would run until 4 June. Another meeting would be held on 14 June where the recommendation report would be finalised post-consultation. The intention was for the sub-group to make a recommendation to Panel in its meeting at the end of June.
- 3.3 Members agreed that the sub-group meeting in June should be considered as a hard stop, however depending on what comes out of the consultation this may need to be reviewed to see whether making a recommendation to Panel at the end of June was feasible.

4. Code Principles

- 4.1. FM invited sub-group members to discuss what the code principles should be, she would collate this and share with the sub-group following the meeting.
- 4.2. Queries were raised about how the principles would be used and whether the purpose of the discussion was to develop a new set of principles that would replace the existing ones.
- 4.3. The group noted that the Market Operator, Panel and Sub-Committees must have regard to the principles and objectives in making any decisions.
- 4.4. Concerns arose about considering principles before the question of panel purpose had been answered. It was agreed that the sub-group would return to this agenda item later in the meeting.
- 4.5. Potential code principles arising from the discussions throughout the meeting were collated and shared with the sub-group. The principles included driving innovation, customer at the heart, being market led, self-governance, being efficient and effective in process and delivery, non-discrimination, barriers to entry, transparency, simplicity or clarity, being open, forward thinking, proportional and equitable. It was agreed that this would be taken offline, and the document would be circulated to the sub-group for feedback.

Action GSC_01

5. Panel Purpose Discussion Models

- 5.1. TD introduced the item and explained that there were four illustrative 'strawman' models, which were contained in the Panel Purpose Discussion paper (Paper [GSG01_01](#)). These were designed to prompt thinking and were not exhaustive. Elements could be combined or adopted into alternative models. The first option reflected the current panel, the second option provided for an open voting forum, the third option was a technical change board and the fourth option was a strategic panel.

- 5.2. The areas for consideration for each model would need to include terms of appointment, selection of the panel and panel committee members, voting arrangements, quorum, and the role of affiliated members and observers. In evaluating the models, members should keep the evaluation criteria, discussed on page 7 of the paper, in mind.
- 5.3. Members felt that the panel was a decision-making body, but it should also consider other processes, such as how to drive change. A potential solution for this could be to have a separate body to deal with the technical discussions with a more strategic panel having oversight to consider whether the proposed change met the principles or not. The potential benefits could be that it would allow a panel to focus on issues to drive real improvement for customers.
- 5.4. A suggestion was made as to whether a panel could delegate certain types of change proposals to MOSL and triaging which change proposals needed to go back to panel for a recommendation or which could be recommended directly to Ofwat.
- 5.5. Further thought was required on how to balance the composition of the panel. Suggestions included having Ofwat involved at every stage of the process rather than just at the end. One sub-group member suggested consideration was given to self-governance and arrangements under the Balancing and Settlement Code (BSC) and Elexon models although caution was raised about the differences between the electricity and water markets.
- 5.6. Members were mindful about industry resources if an additional body was created, how to improve engagement particularly with smaller companies, and attracting new entrants to the market. Members also felt panel behaviours needed to be considered, whether members needed to be independent and whether self-supply should be a separate category.

6. [CPM021 'Panel Membership and Voting Rights' Solution](#)

- 6.1. CW provided an overview of CPM021, which raised important points about participation, attendance and enfranchisement more broadly. The current issues revolve around panel membership, the way the code change process works, speaking rights and accessibility. CPM021 uses the model of the International Co-operative Alliance. The key principles were to promote active membership by trading parties at panel, and to review the way in which panel members were nominated, elected and voted.
- 6.2. CM also referenced the transparency of appointments under the BSC model noting. Particularly that any trading party could nominate an individual to be on the panel, the individual's expertise and credentials would be made publicly available and all trading parties would vote on nominees.
- 6.3. Members discussed whether the proposals in CPM021 were covered by CPM039 or the four strawman models previously discussed, and if so whether CPM021 could be withdrawn. This would be up to the proposer to decide.
- 6.4. CW had provided some additional thoughts on CPM021 to MOSL, which would be circulated to the sub-group members.

Action GSG_02

- 6.5. Members agreed that the key principles from CPM021 should be kept in mind and considered whether CPM039 could be a place to include them.

7. Areas of Consideration

- 7.1. HC provided a summary of the areas of consideration (Paper [GSG01_02](#)). This was originally written with the proposed solution for CPM021 in mind, however, members noted it would be equally useful for other models. The areas of consideration included: voting, quorum, the rights of trading parties

to speak at Panel, customer representatives and independent Panel members, independence, Panel responsibilities, Panel committees and sub-groups and other governance models.

- 7.2. The members added that engagement and involvement in the market, and costs to the market should also be considered.
- 7.3. There was discussion on the issues and benefits of the CMA model, with the benefits including greater collaboration. Thought given to putting distance between the way change proposals were generated and the way the Panel processed the change proposals. Members felt that one body may not be able to do everything and there could be a board, for example a technical change board with a distinct role and a particular set of expertise, that sat under the Panel who could review the detail of the change proposals and the drafting.

8. [CPM039 'Revisions to Panel Composition' Solution](#)

- 8.1. DM introduced the item and stated that Ofwat were keen to have a panel with more autonomy in terms of how to achieve the strategic vision that Ofwat and Defra set out. This would be a hybrid of model three and four in the Panel Purpose Discussion Paper. There were two main areas, firstly that it would provide a process for code changes but also a more strategic role where such a panel has the ability to shape its priorities and agendas and operationalises the vision and direction set out by Ofwat and Defra.
- 8.2. The model would have a strategic panel with a body that compliments it to look at the changes to codes. A more strategic panel should create a greater focus on non-trading party voices, which would provide the greatest chance of having an objective perspective on what is right for customers in the market. The idea of having less trading party focus at this level would be to create more of a check, challenge and balance mechanism.
- 8.3. DM acknowledged that the proposal did not have a great deal of detail, but it was not intended to at this stage and the sub-group would have a role in developing the solution.
- 8.4. CB provided support, stating that the Panel should have the ability to focus on the big issues impacting customers in the market. Having a strategic Panel should enable that important focus.
- 8.5. A member asked whether CPM039, in suggesting a strategic panel, would be able to address the democratisation of the governance process that was suggested by CPM021. Concerns were presented on how, if the composition suggested a more rebalanced ratio of trading party and non-trading party voices, trading party engagement or views would be sought. In relation to voting, a member observed that it was more about access and whether a trading party knew that their voice would be heard in influencing things.
- 8.6. DM stated the important point was about collaboration, it was unrealistic to expect every trading party to engage. The RWG model was considered to be a good example of what worked in terms of engagement.
- 8.7. Questions were asked about whether Ofwat had considered what their role would be in a change board, with deciding how to prioritise code changes and about the independence of the group. DM explained that Ofwat would want to be visible on the change board and see a role in setting out priorities but not have decision making powers on it. Ofwat could see the panel as being truly strategic and have programmes of work where it needs objective external independent advice.
- 8.8. A member raised issues about the current drafting and enforcement of the codes, stating that a lot of issues had arisen from this. There would need to be clarity in what was or was not enforceable and whether there could be a broad purpose of clarifying the codes going forward.
- 8.9. Thoughts were provided on whether MOSL should be doing a lot of the background work and then the panel making the decision on it coming forward with input from trading parties. Members also discussed what sort of monitoring and enforcement activity MOSL should be undertaking.

- 8.10. AD summarised that there seemed to be general agreement around a hybrid model with a more strategic panel and defining the role of a change or transactional board below that. Members agreed but wanted to be careful in ensuring that the dual approach did not end up with two different groups making recommendations to Ofwat. There needed to be clear principles and processes for each group to ensure governance was not duplicated. Industry resources and costs needed to be considered, particularly as MOSL already had to be careful with resources.
- 8.11. NP noted that he did not support CPM021 in any form and it was materially different from CPM039. More time should be committed to developing clarity in relation to CPM039 as a way forward. This could be achieved by MOSL working up three scenarios namely, strategic code change, industry generated code change and finally, a code change by another sources.

9. Scenario Testing: Strategic Change

- 9.1. SB explained that the purpose of the scenario testing would be to draw out some of the issues. Given the earlier group discussion, the focus was on the hybrid model, with a strategic panel and technical board. The first scenario concerned strategic change and what a more strategic panel would be required to do.
- 9.2. The members discussed the scenario and considered that they would want a group of people that could bring expertise to guide a view. Members agreed that the scenario begged for different roles and responsibilities for different groups.
- 9.3. Strategic development and change could be handled by the strategic panel, including considering the impact of the market, market systems, fundamental changes to the market and costs. If an item was worthy of further discussion and debate or a code change this could be delegated to another group to discuss the detail. There could be a distinction in involvement of strategy for the market and for code changes.
- 9.4. It was felt that the model would need to be tweaked to allow the strategic body to respond appropriately to what the market was saying, but regard should be given to whether issues could be suitably addressed by the code framework and if not whether it was something the panel should be looking at.
- 9.5. Thought needed to be given to the process before it reached the panel and who the work would be delegated to. Proposals could go through a triage process to determine whether it was something the strategic panel needed to address.
- 9.6. AD asked CB about her view on creating another layer and what CCW's role may be in that. CB explained there would likely be different people on the different groups, one focusing on detail with the support of evidence from customer research and complaints and one focusing on strategy.
- 9.7. HC asked the sub-group how considering strategic input would work with CPM021 and an open forum. A member felt the principles raised in CPM021 were good however struggled to see how it would apply to this scenario. Another member stated that it would depend on participation and pondered whether the strategic panel or change panel could have membership of trading parties as a whole.
- 9.8. Group members reflected that any panel that was taking a strategic approach in determining priorities and/or work to be taken forward to address a strategic direction from Ofwat, must engage with stakeholders (particularly trading parties) when making such decisions. The method and approach for ensuring meaningful engagement would be key.

10. Scenario Testing: Code Change

- 10.1. The second scenario related to code change proposals, and what types of code changes would go to the technical board, to the strategic panel or whether some changes would need to go to both.

- 10.2. Members discussed whether a broader overall code change process could cater to the different facets, and whether a triage process could work in considering which proposals needed to go to panel or to a different body. A strategic panel could deal with the issues that have wider implications and if a change proposal was required the detail of that could be passed down to a separate group to review. This could allow a strategic panel to add more clarity about prioritisation of the changes upfront and provide more transparency which could assist with democratisation.
- 10.3. Consideration was also given to whether MOSL should be able to sign off minor things such as administration issues or housekeeping changes and make recommendations directly to Ofwat. It would be important to define the roles and the responsibilities of the different groups.
- 10.4. It was suggested that if there were quarterly meetings, these could be more about confirming the strategic priorities and that actions were progressing, e.g. through considering reports from committees / MOSL and considering the wider strategic inputs as these might arise through the year. A much shorter monthly meeting could be used to crisply decide whether the panel should be pursuing things, whether it should be delegating it to a different body or whether it should be on hold until later. A member raised concerns of how quarterly meetings would enable the panel to keep up momentum and whether this would allow it to be responsive. It was noted any structure would need to provide for urgent changes where these were needed.
- 10.5. A member stated that all trading parties' interests ought to be represented when the panel is settling its strategy rather than with the lower level things. Some trading parties may not want to be involved in issues that did not impact on them but would want input directly into matters that affected the way the codes worked. Another member queried that if trading parties were only commenting on what impacted their organisation how the balance of considering the impacts on the customer would be achieved.
- 10.6. Members discussed the BSC model and what the practicalities of that would look like in this scenario, and whether the model would align with Ofwat's market led focus. The Chair asked whether the BSC model had been sent out to the sub-group. AR confirmed this could be provided.

Action GSG_03

- 10.7. Members added that thought needed to be given to the consultation process as they felt this may not support the model being discussed.

11. AOB and Close

- 11.1. AR summarised that there had been a number of observations throughout the meeting about needing an engagement mechanism that worked for all parties and key stakeholders. This mechanism would be outside the scope of the change proposals that had been put to the sub-group, however, the sub-group was invited to provide views on what a successful engagement mechanism may look like.
- 11.2. AR added that the composition of what the new body may look like or the mechanism for electing panel members had not been touched upon in the meeting, but MOSL could consider the BSC model as a starting point to look at working practices for the next meeting.

Action GSG_04

- 11.3. AR indicated that MOSL would look to put together an articulation of how the developing model may operate ahead of the next sub-group meeting. A member indicated that it may be useful to create a diagram to show how the model may cut down or increase the work on MOSL.

Action GSG_05

Action GSG_06

- 11.4. AD thanked all attendees for their contribution and summarised that the broad consensus was on a hybrid model. Updates from the Strategic User Forum and CEO Forum would be provided to the sub-group next week.

