

# Minutes of the Governance Sub-Group Meeting 2

13 May 2021 | 13:30 – 16:30

Held via Videoconference (Microsoft Teams)

Status of the Minutes: **Final**

## MEMBERS PRESENT

Angela Day (Chair)	AD	John Vinson	JV	Rupert Redesdale (from 2pm)	RR
Christopher Wright	CW	Julian Tranter (until 4pm)	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	Andrew Johnson (Secretariat)	AJ
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 that this was the second of four scheduled meetings, and summarised the agenda. She thanked the MOSL team for their work in preparing the papers.
- 1.2 AJ introduced himself, and that he was acting as Secretariat for this meeting.
- 1.3 DM advised that he might not be able to attend the next scheduled meeting on the 14 May.

## 2. Group Business

- 2.1 AR summarised where the sub-group was at following its first meeting. The Panel purpose discussion had been agreed by the Strategic User Forum on the 10 May. The meeting would aim to focus on the two composition change proposals, CPM039 and CPM021, as well as draft principles, under CPM040.
- 2.2 Members questioned the sub-group's final objective, which was confirmed as preparing the two change proposals for consultation for Monday 17 May. The sub-group was not being asked to approve the Panel purpose.
- 2.3 It was highlighted by sub-group members that the Panel purpose would impact on the change proposals and not all sub-group members were in agreement with the Panel purpose, as currently stated in the paper, [GSG02\\_01](#).
- 2.4 The sub-group members further challenged if going out to consultation on two composition changes simultaneously might not be the most effective method. It was suggested that a hybrid of the two change proposals (CPM039 and CPM021) might be preferable, however, not all sub-group members agreed, as CPM021 would not necessarily coalesce with CPM039.

- 2.5 It was agreed that a hybrid change proposal should remain under consideration as the work progressed.

**Action GSG02\_01**

### 3. Panel Purpose

- 3.1 AR noted the point raised regarding the link between the Panel purpose and the change proposals under discussion. A key challenge was around what was meant by strategic change and what would the role of a strategic panel, or similar, be? This was an important point as it would inform the model recommended in the consultation.
- 3.2 The sub-group members debated the question of what the strategic goal was and indeed whether the solution being discussed should be around a strategic approach to the market or a strategic approach to code change. The current Panel was a 'creature of the code' and was confined to the codes, whereas a market strategy would need change outside of the code, such as legislation.
- 3.3 With this question remaining open, the sub-group moved to discuss CPM039.

### 4. CPM039 – Revisions to Panel Composition

- 4.1 TD introduced the proposed change, which envisaged a strategic panel and a code change board. The latter would operate in a similar way to the current Panel. It would triage and assess code change against defined principles.
- 4.2 The code change board would be able to make change recommendations direct to Ofwat but would also be able to refer change to the strategic panel for assessment. It was clarified that the proposed design envisaged the code change board as subservient (a defacto committee) to the strategic panel.
- 4.3 In terms of whether the design was 'top-down' or 'bottom-up', TD clarified that it was primarily the latter, with changes raised by industry, although the strategic panel would also be able to raise changes itself. AR suggested the strategic panel role would include establishing and declaring its objectives, at least on an annual basis, and the code change board would work to these objectives and within the defined parameters of its delegation from the strategic panel.
- 4.4 An example would be strategic metering, which might be a strategic objective, and the code change board would be empowered to develop the changes. It was further clarified that, in this example, a strategic metering expert committee could develop the change and the code change board would assess the solution.
- 4.5 On the question of obtaining industry feedback, Trading Parties would nominate members to the strategic panel and industry groups would input into the code change board and the strategy of the strategic panel.
- 4.6 Some sub-group members questioned the need for the separation of the existing Panel into two bodies and raised concerns about excessive hand-offs between groups. Additionally, the earlier point about having a clear Panel purpose was discussed and if the principles currently being discussed were clear enough to move onto developing the bodies to deliver strategic change.
- 4.7 It was noted that the governance landscape diagram omitted customers input. This would be updated.

**Action GSG02\_02**

- 4.8 In answer to the concerns raised, it was counter-argued that the current Panel was attempting to do two very different things with the same set of people, and it wasn't working. There was a need to separate out strategy from lower level code change. Ofwat had set out a strategy and saw the strategic panel's role as working to transform this into action.

- 4.9 A sub-group member challenged if the solution was overly bureaucratic and if the code change board would be properly democratic, with only limited Trading Party membership, and that these would be required to be technical experts, thus restricting who could be members.
- 4.10 A further sub-group member suggested that MOSL could undertake code change triage and could bring expertise and speed to the change process, so that the proposed solution could be presented to the code change board and strategic panel as a properly worked up solution. The current Panel had also failed to be representative as smaller retailers could not devote the time to participate fully and so were not engaged.
- 4.11 There was broad agreement that the current Panel had become bogged down in the details, and needed to delegate code changes, much as it had done already for business as usual market performance management. Engagement should be factored in, and strategic matters dealt with at the top level.
- 4.12 It was stressed that Trading Parties were paying for market governance, as were customers, and both needed to be well represented in any solution. Just having CCW's input was probably not sufficient and it was noted there were other customer voices with appetite to be heard. The Major Energy User' Council (MEUC), which was an energy membership body, and had a role as a sounding board in that industry, was given as an example of a means of obtaining broader industry and customer engagement.

## 5. CPM039 – Revisions to Panel Composition

- 5.1 Costs were cited as critical to any consideration. Any increase would be open to challenge from Trading Parties and would need a strong cost benefit argument to be justified.
- 5.2 For the strategic panel composition, the proposal was for an even balance between industry and non-industry voices, of 50/50, it was also smaller than the current Panel, which was thought to be unwieldy. A customer representative was supported as important and it was also noted that one of the independents would likely have a customer focus.
- 5.3 The sub-group members cautioned of the need for a trade-off of experience, independence and experience of the impacts. With the wrong composition the strategic panel could reach the wrong outcomes.
- 5.4 One sub-group member suggested that the nominations process should be open and transparent, including for independents, although some concerns were raised that this might be off-putting for applicants.
- 5.5 Engagement was again cited as a concern. The composition would be unlikely to include small retailers, who would not have the available time. There needed to be wider engagement than that proposed. However, there was general, but not unanimous, support for the proposed composition of the strategic panel.
- 5.6 The nomination and appointment process for the strategic panel was questioned, as to why it included both approaches, and why it could not have one consistent process. This suggestion would be considered further.

### **Action GSG02\_03**

- 5.7 It was suggested that the final composition could be unbalanced and there may be a need for some flexibility, perhaps by including two spare, additional members, as required.
- 5.8 The question of bringing in additional specialist expertise was also discussed, and it was agreed that the strategic panel would need the ability to bring in short term expertise as required, with a budget to do so. This would also be considered further.

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- 5.9 JT left the meeting at 4pm.

## 6. CPM040 and CPW121 - Code Principles

- 6.1 FM explained to the sub-group members that mixed responses had been received from sub-group members regarding what the code principles should be. The paper she presented included a breakdown of responses and some merged principles, based on the feedback and Ofwat's revisions. Ofwat had proposed principles linked to their statutory duties.
- 6.2 DM also highlighted the concept of a primary principle, which was missing from the papers, which the other eight would be supporting principles to. The primary principle proposed was:  
'The Wholesale Retail Code and arrangements established by or under the Wholesale Contract shall protect and promote the interests of, and promote participation by, existing and future Non-Household Customers.'
- 6.3 In addition, a further supporting principle of 'Continued development and sustainment of an effective market' was missing.
- 6.4 The sub-group members discussed the principles, with one view that they were, despite the definitions, still too 'woolly'. Others questioned the practical value of the principles. Competition was stressed as important, and the basis of the NHH market, and it was clarified that this was encompassed in the primary principle and some of the supporting principles.
- 6.5 The existing difference in the Market Arrangements Code and the WRC Principles was highlighted as a current area of uncertainty.
- 6.6 The Chair summarised the discussion, that there was a lot of consensus on the principles, but that customer benefit and competition could perhaps be amplified, and it would be useful to see how these applied in practice. This would be helpful to include in the consultation paper.

**Action GSG02\_05**

## 7. AOB and Close

- 7.1. AR summarised the conclusion of the sub-group discussion. The Code principles were close to agreement, subject to the elevations discussed and the practical examples.
- 7.2. There was a lot of consensus on the splitting of the Panel into two bodies in CPM039, and Ofwat would consider a single consistent mechanism for appointments/nominations. Another area of broad agreement had been that the code change board should include views from all Trading Parties
- 7.3. Some potential alternatives had been discussed, which might help inform the direction of CPM021.
- 7.4. Areas still open for refinement included the responsibility structure, and whether there were two bodies, or perhaps one panel with dual responsibilities. Composition needed more discussion. Ofwat has proposed that strategic engagement would be kept fairly light, to avoid overloading stakeholders, but could be something addressed through the drafting of the process. The concerns about ensuring wider engagement, raised by several sub-group members, were duly noted.
- 7.5. The Chair thanked all attendees for their contribution and closed the meeting at 4.35pm., noting that the discussion would be continued at the meeting the following day, 14 May 2021.