Minutes of the Governance Sub-Group Meeting 3

14 May 2021 | 12:30 – 16:30

Held via Videoconference (Microsoft Teams)

Status of the Minutes: <u>Final</u>

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		

OTHER ATTENDEES

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

APOLOGIES

Dan Mason (Ofwat)	DM				

1. Welcome

1.1 The Chair welcomed everyone to the meeting and summarised the agenda, which included reviewing CPM021 and the questions for consultation.

2. Alternative Code Principles

2.1 FM introduced the item, explaining that CW had proposed alternative principles to those identified in CPM040 'Panel Membership and Voting Rights'. These principles would be put forward to Ofwat to adopt, however if Ofwat chose not to adopt them they would be put forward as potential alternatives under CPM040.

2.2 Members noted that the essential differences in the two sets of principles were on competition and efficiency. A Sub-Group Member explained that the principle on competition they had proposed was drawn from statute and the principle on efficiency merged the current definitions used in the Market Arrangements Code (MAC) and the Wholesale-Retail Code (WRC).

2.3 The members discussed the principles and agreed they required definitions explaining what they were and how they should be used. Consideration was given to the Balancing and Settlement Code (BSC) principles. It was decided that resilience should be about the resilience of water resources, and therefore related to water efficiency as opposed to just infrastructure resilience, which should be

made clearer in the principles. Members agreed that the principle on efficiency should not be too constraining.

2.4 Members felt that the principles should expressly set out the customer interest aspect, including acknowledgment that the codes needed to deliver benefits to customers, and make this clearer in code changes. Transparency and clarity could be tightened by clarifying different roles, so customers understood who delivered what.

2.5 It was agreed that the purpose of the guiding principles was to aid with decision making in respect of the codes. Consideration was given to whether the existing or proposed principles did this and it was suggested that this could be a question for consultation. Members queried whether different groups may need different principles.

2.6 The Chair asked MOSL to draft statements for principles relating to customer benefits and resilience and feed these principles back to Ofwat.

Action GSG03_01

3. CPM021 'Panel Membership and Voting Rights' Solution

3.1 HC provided an overview of the two options contained in CPM021. The first option proposed the use of a Code Review Panel and Code Change Panel, whilst the second option had the addition of a strategic forum. The options would be developed with feedback from the sub-group.

Option 1 – Separate the Code Review and Change Panels

3.2 HC explained that option one would separate the Code Review and Code Change panels. The Code Review Panel would determine actions against strategic direction set by Ofwat and Defra, and would have oversight of the Code Change Panel. The Code Change Panel would be responsible for delivering the changes that had been defined as part of the programme set out by the Code Review Panel and could delegate the development of changes to sub-groups or MOSL. One member queried if the Code Change Panel was autonomous or if its authority derived from the Code Review Panel.

3.3 HC provided a summary of the composition of each panel, as set out in Paper GSG02_05, with the significant point of note being that the Code Review Panel would be an open forum where a nominated representative from each trading party could attend and vote.

3.4 Members considered whether the composition of the Code Review Panel would potentially create barriers to entry if existing parties were resistant to changes which would benefit new entrants. Additionally, concerns were raised about whether the voices of the customer representative and independents would be diluted due to the number of trading parties, or alternatively if it could lead to dominance of bigger trading parties if resources were an issue for smaller ones. Members agreed that wider representation was required and considered the mechanisms for doing so.

3.5 Members queried whether the lack of distinction between associated and un-associated retailer members in the composition of the Code Change Panel would raise concerns about representation. A suggested solution was to use the BSC model which provided for the Chair to appoint an additional member if needed to ensure the group contained appropriate expertise.

Option 2 – Strategic Forum with Separate Code Review and Change Panels

3.6 HC confirmed that option two was similar to the solution in CPM039, with the addition of a strategic forum. The strategic forum would discuss the strategy against the direction defined by Ofwat and Defra and would be an open forum where all trading parties could attend. The Code Review Panel would consider the priorities and how to deliver the strategy. Changes would be delegated to the Code Change Panel to take through the process.

3.7 It was confirmed that the Code Change Panel would sit on the same level as the committees, with the Code Review Panel having overall oversight of strategy and management of the codes. The composition of each body was outlined, as provided in Paper GSG02_05.

3.8 It was agreed that there needed to be clear guidance on the purpose and powers of each body, what the key outputs of each body would look like, where the decisions would be made and what the terms of reference would look like. Key concerns included the handoff between the Code Review and Code Change Panels.

3.9 Members discussed the strategic forum and how it would interact with the Code Review Panel. It was suggested that the strategic forum would sit to the side of the Code Review Panel as a key engagement body where trading parties could provide meaningful input into the strategic priorities. A query was raised about the extent to which the strategic forum should be codified.

3.10 Members examined whether the current Strategic User Forum (SUF) could be adapted to fit the needs for the Strategic Forum, and whether other industry groups, such as the RWG, should have input. Members felt engagement guidelines should be created separately but be referenced in the codes. The ability of different groups to raise a change was also discussed. This could be something that was provided in a recommendation report to the Panel to consider in the future.

3.11 The frequency of meetings for each body was discussed. It was agreed that the intention was for the Code Review Panel to meet less frequently, for example to meet no less than quarterly but have flexibility to have additional meetings where necessary. Members raised concerns about industry resources and costs if three industry bodies were created.

3.12 Feedback from the sub-group was varied in terms of the composition of each body with the number of trading party members, independent members, and customer representatives. It was confirmed that both proposals had a smaller composition than the current Panel.

3.13 A suggestion was made that Ofwat should be given an opportunity to provide a view earlier in the change process, keeping in mind the restrictions in the Water Industry Act 1991 on pre-approval. It was proposed that having Ofwat as an active member of the Code Review Panel could assist with this, or alternatively whether there should be a formal process to ask the regulator for provisional thinking. Members discussed the balance between trading party and non-trading party voices and where the customer voice would come in with this solution.

3.14 Additionally, members considered whether code changes should be owned by the Code Change Panel rather than the original proposer and whether the nomination process proposed in CPM039 could be easily transferred to CPM021.

3.15 There was agreement that the key principles in any solution should be about obtaining the broadest level of engagement possible and ensuring the customer voice is heard. Members discussed how engagement could be broadened on individual code changes and on strategic matters, and whether more creative solutions would be required, for example shared representation for smaller trading parties or whether larger players in the market could commit to funding a representative for the smaller parties. Engagement was not just about voting but having working practices in place to allow a good opportunity for parties to have meaningful input. Members contemplated whether change specific engagement could be used, with set standards for engagement depending on the type of change. AR confirmed that the piece around any detailed engagement process within a change process was not in the scope of the sub-group but could be picked up in a subsequent piece.

3.16 Consideration was given to the difference in language used in CPM021 and CPM039 and whether the Code Review Panel could be referred to as the 'Strategic Panel'. CW confirmed the language was used to avoid confusion between market strategy and the general direction on how to develop and maintain the codes.

3.17   The sub-group discussed the similarities and differences between solution CPM021 and CPM039 and considered whether a hybrid model of the two may be required to deliver all the necessary principles. Members had differing views as to the similarity between the two models. One member disagreed with the CPM021 solution and instead proposed building additional clarity into CPM039.

4. Next Steps

4.1 AR summarised the next steps for the sub-group. The consultation would be sent out as a single consultation containing the two solutions discussed with a set of specific questions being asked of the industry. The sub-group meetings in June would consider whether the solutions needed to be varied to account for feedback provided from the consultation.

4.2 Members raised concerns about how the consultation would be presented, open thinking should be encouraged, and it should be framed in a way to prevent binary views. A member suggested an effective way to present the solutions could be to highlight the differences between them. Consideration was given to the ways in which the industry could be engaged in the process, for example from a communication point of view and whether MOSL could run a webinar.

4.3 It was agreed that process flows would be useful to include in the consultation. Additionally, the two solutions should be put through three scenarios, to test how the solution would work for a strategic change, how opinion would filter in from a customer body, user group or other body, and finally how the solutions would work for a code change raised by a trading party.

Action GSG_02

4.4 Members suggested that the key principles discussed should be captured in the consultation, along with the panel purpose piece to provide an overview and ensure this worked with the solutions.

4.5 The sub-group discussed the need for an additional shorter meeting before the consultation would be sent out. It was agreed that a meeting would be arranged for Thursday 20 May 2021. There would be a quick turnaround for papers, which the sub-group should expect to receive late on Wednesday.

Action GSG_03

5. AOB and Close

5.1 SB explained the sub-group would need a later meeting in June to discuss the feedback from the consultation. The consultation would close on 14 June 2021 and the sub-group meeting was currently scheduled for the same date. The meeting would be changed from 14 June to either 16 or 17 June. Placeholders would be sent for these dates.

Action GSG03_04

5.2 The Chair thanked and closed the meeting.